



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

**MEETING:  
November 14, 2017**

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

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

MICHAEL H. VINCENT, PRESIDENT  
GEORGE B. COLE, VICE PRESIDENT  
ROBERT B. ARLETT  
IRWIN G. BURTON III  
SAMUEL R. WILSON JR.



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ROBIN GRIFFITH  
CLERK

# Sussex County Council

## AGENDA

NOVEMBER 14, 2017

10:00 A.M.

### Call to Order

### Approval of Agenda

### Approval of Minutes

### Reading of Correspondence

### Public Comments

### Consent Agenda

1. Wastewater Agreement No. 1038-2  
Sussex County Project No. 81-04  
Governors - Pump Station & Force Main  
West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District
2. Wastewater Agreement No. 1038-4  
Sussex County Project No. 81-04  
Governors – Phase 1A, 1B & 1C (Construction Record)  
West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District

### Tony DePrima, Executive Director, Delaware Sustainable Energy Utility – PACE Presentation

### Todd Lawson, County Administrator

1. Sussex Sports Center Foundation Proposal – Update and Discussion
2. Administrator's Report



**Scott Dailey, Recorder of Deeds**

1. Land Records Management System
  - A. RFP Award and Contract Approval

**Jim Hickin, Airport Manager**

1. Aeronautical Obstruction Removal, Project 18-01
  - A. Balancing Change Order and Substantial Completion

**Patti Deptula, Director of Special Projects**

1. Diamond Acres Proposed Chapter 95 Streetlighting District

**Hans Medlarz, County Engineer**

1. Concord Road Utility Upgrade – Expansion of the Blades Sanitary Sewer District
  - A. Recommendation to Award

**John Ashman, Director of Utility Planning**

1. Report on Ellendale Water District Referendum

**Grant Request**

1. Good Samaritan Aid Organization for Holiday Basket/Toy Outreach
2. Georgetown Little League for operating expenses

**Introduction of Proposed Zoning Ordinances**

**Council Members' Comments**

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

**Possible Action on Executive Session Items**

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

**Change of Zone No. 1827 filed on behalf of Fenwick Commons, LLC**

**“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 13.33 ACRES, MORE OR LESS” (located at the southwest corner of Lighthouse Road (Route 54) and Sand Cove Road and the east side of Sand Cove Road, approximately 211 feet south of Lighthouse Road (Route 54) (Tax I.D. No. 533-19.00-52.00) (911 Address: Not Available)**

**Conditional Use No. 2098 filed on behalf of Fenwick Commons, LLC**

**“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MULTI-FAMILY (62 DUPLEX UNITS) STRUCTURE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 13.33 ACRES, MORE OR LESS” (located at the southwest corner of Lighthouse Road (Route 54) and Sand Cove Road and the east side of Sand Cove Road, approximately 211 feet south of Lighthouse Road (Route 54) (Tax I.D. No. 533-19.00-52.00) (911 Address: Not Available)**

**Adjourn**

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

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In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on November 7, 2017, 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 listed may be considered out of sequence.

###

## 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](http://sussexcountyde.gov)

HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

BRAD HAWKES  
DIRECTOR OF UTILITY ENGINEERING

November 06, 2017

### FACT SHEET

SUSSEX COUNTY PROJECT 81-04  
GOVERNORS - PUMP STATION & FORCE MAIN  
AGREEMENT NO. 1038 - 2

#### DEVELOPER:

Mr. Nick Hammonds  
Governors Lewes, LP  
246 Rehoboth Avenue  
c/o Jack Lingo Asset Mgt  
Rehoboth Beach, DE 19971

#### LOCATION:

South of Rt.9, (Kings Highway), West of Road  
267, (Gills Neck Road).

#### SANITARY SEWER DISTRICT:

West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District

#### TYPE AND SIZE DEVELOPMENT:

Pump station and force main.

#### SYSTEM CONNECTION CHARGES:

\$0.00

#### SANITARY SEWER APPROVAL:

Sussex County Engineering Department Plan Approval  
07/18/17

Department of Natural Resources Plan Approval  
11/17/15

#### SANITARY SEWER CONSTRUCTION DATA:

Construction Days – 270  
Construction Admin and Construction Inspection Cost – \$67,316.77  
Proposed Construction Cost – \$448,778.50



COUNTY ADMINISTRATIVE OFFICES  
2 THE CIRCLE | PO BOX 589  
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HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

BRAD HAWKES  
DIRECTOR OF UTILITY ENGINEERING

November 06, 2017

### FACT SHEET

SUSSEX COUNTY PROJECT 81-04  
GOVERNORS - PHASE 1A, 1B & 1C (CONSTRUCTION RECORD)  
AGREEMENT NO. 1038 - 4

#### DEVELOPER:

Mr. Nick Hammonds  
Governors Lewes, LP  
246 Rehoboth Avenue  
c/o Jack Lingo Asset Mgmt.  
Rehoboth Beach, DE 19971

#### LOCATION:

South of Rt.9, (Kings Highway), West of Road  
267, (Gills Neck Road).

#### SANITARY SEWER DISTRICT:

West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District

#### TYPE AND SIZE DEVELOPMENT:

11 Single family lots and 104 Townhouses in this  
phase.

#### SYSTEM CONNECTION CHARGES:

\$664,125.00

#### SANITARY SEWER APPROVAL:

Sussex County Engineering Department Plan Approval  
08/18/17

Department of Natural Resources Plan Approval  
11/17/15

#### SANITARY SEWER CONSTRUCTION DATA:

Construction Days – 120

Construction Admin and Construction Inspection Cost – \$46,187.85

Proposed Construction Cost – \$307,919.00



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GEORGETOWN, DELAWARE 19947

# Memo



TO: Sussex County Council

FROM: Tony DePrima, DESEU Executive Director

DATE: November 6, 2017

RE: PACE Financing – Support for Senate Bill 113

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Thank you for giving me an opportunity to present a new economic development strategy for commercial properties that brings environmental benefits. PACE financing is voluntary tax-assessment based financing mechanism for energy efficiency, renewable energy, and water conservation projects. What makes PACE unique is it better secures loans through voluntary property assessments. This added security brings new financing opportunities to businesses that help them with their bottom line while increasing property value.

Senate Bill 113 would enable Delaware to join 19 other states by allowing PACE financing through a partnership between the DESEU, the counties, and private lenders. Some key features of the SB 113 are:

1. It is voluntary on the part of the county to participate. Counties do the loan servicing and in turn collect a fee for service.
2. The liens take priority over private mortgages and liens, but are subordinate to county or municipal liens
3. It requires approval of the primary mortgage holders.
4. PACE becomes operational after DESEU publishes guidelines in collaboration with stakeholders, including the counties.
5. DESEU serves as program administrator insuring that program requirement including energy and water savings requirements and underwriting standards are met.

I look forward to giving a more detailed presentation to the Sussex County Council and hope that they will join others who support this legislation. Thus far we have had support from Delaware State Chamber of Commerce, Delawareans for Economic and Environmental Development, MDV-Solar Energy Industries Association, Delaware Valley Green Building Council, National Electrical Contractors Assn, four lenders including PNC Bank, and several Delaware contractors and commercial property owners.

Attached is a copy of SB 113.



# Property Assessed Clean Energy (PACE) Financing for Delaware Sussex County Council

November 14, 2017







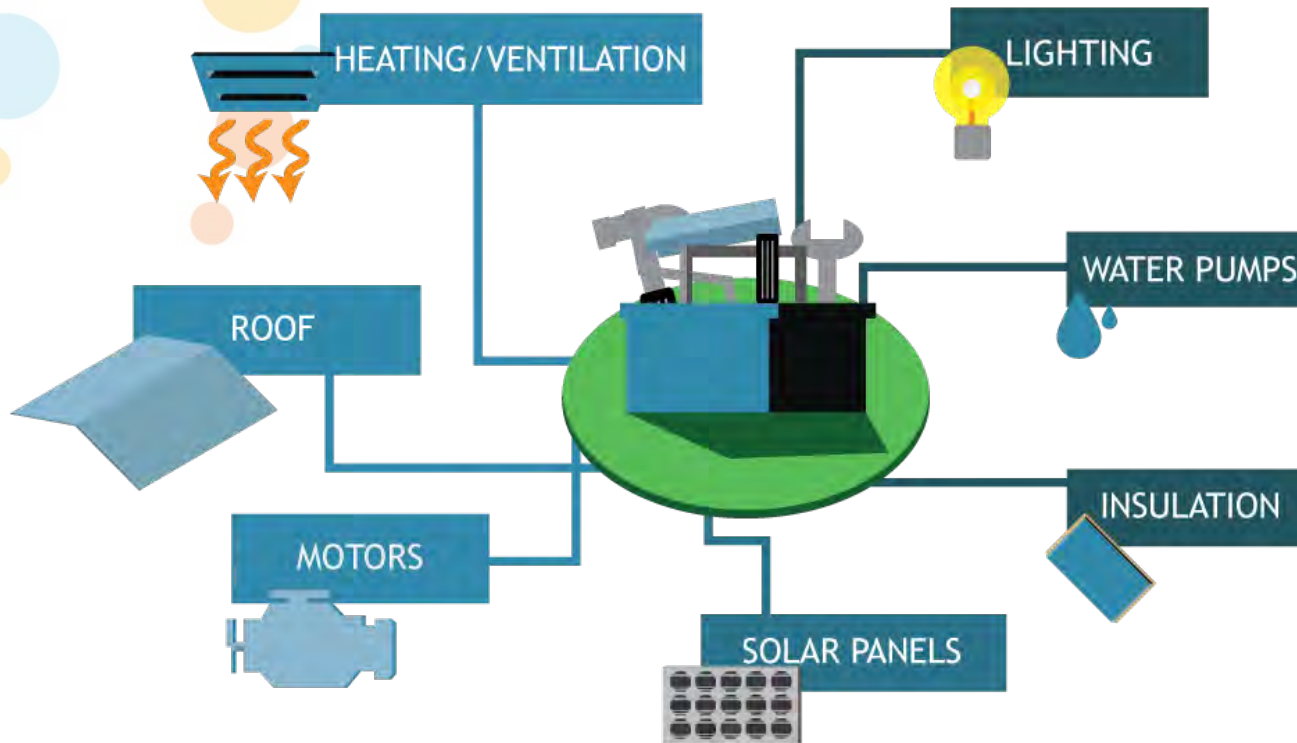
# What is PACE

- A new economic development strategy with environmental benefits for commercial buildings.
- Secures private investment in energy savings and renewable energy through voluntary property assessments.
- Helps with business bottom line while increasing property value.

# What For?



## *Projects that Save or Generate Clean Energy*



# Active PACE Programs Today

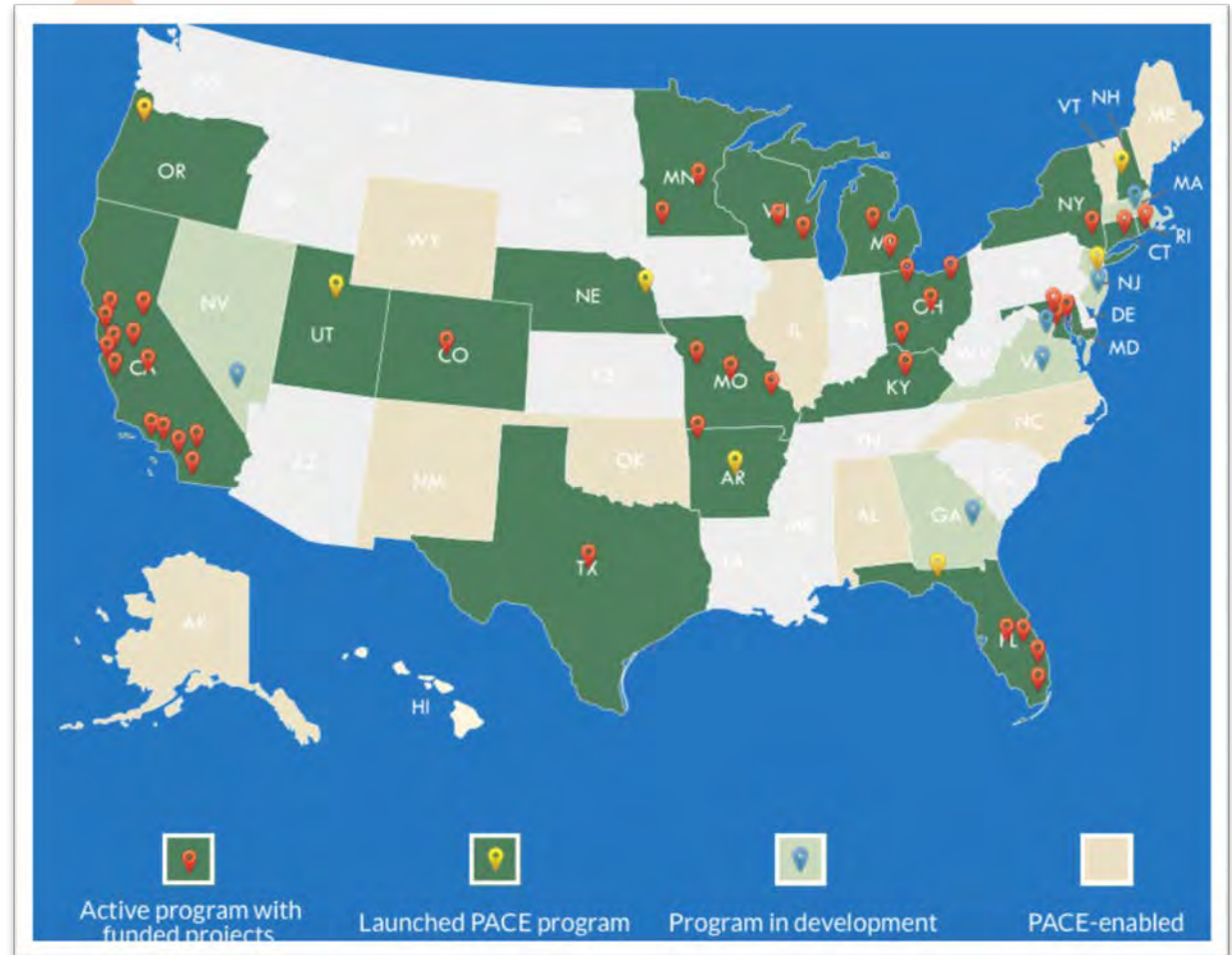
Delaware  
Sustainable  
Energy Utility

[www.energizedelaware.org](http://www.energizedelaware.org)



32 States + DC  
with PACE  
legislation

19 states + DC  
with active  
programs



# Maryland PACE Counties

Delaware  
Sustainable  
Energy Utility

[www.energizedelaware.org](http://www.energizedelaware.org)

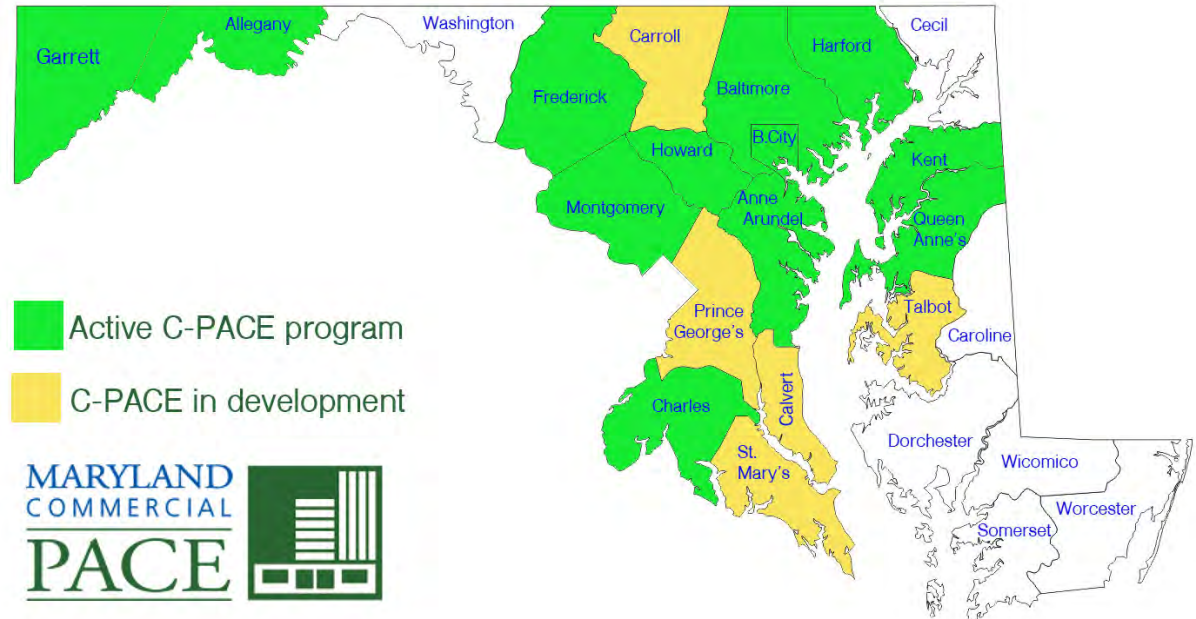


## Open for Business

- Allegany County
- Anne Arundel County
- Baltimore City
- Baltimore County
- Charles County
- Frederick County
- Garrett County
- Howard County
- Kent County
- Montgomery County\*\*
- Queen Anne's County

## Considering PACE

- Calvert County
- Carroll County
- Prince George's County
- St. Mary's County
- Talbot County



\* Not MD-PACE



# PACE Basics

## Assessment Based Financing

- ✓ Statewide legislation to enable – SB 113
- ✓ Financing dollars come from private sources
- ✓ County assessment placed to pay debt service similar to property assessments. County collects service fees.
- ✓ PACE assessment survives sales, including foreclosures
- ✓ Future PACE assessments can assumed in the future by whomever buys the building





# Why do Lenders Like PACE?

- *Stronger collateral*
- *Lower default rates*
- *Spreads costs and benefits to the tenants*
- *Opens new markets*



# Why Building Owners Like PACE



- *Long-term payback – up to 20 year funding*
- *No money out of pocket – 100% funding*
- *Positive cash flow basis*
- *Increases property value*
- *PACE can transfer on sale*
- *Share benefits and costs with tenants – eliminates split incentive*

# Why are Mortgage Lenders Giving Consent?

- Makes the lender's collateral – more valuable
- Improves borrowers cash flow, better able to pay mortgage
- Only PACE assessment in arrears is collectible Does not extinguish subordinate liens
- Lender can always say NO...



# Why Do Local Governments Like PACE?

- Economic development
- Job creation
- Reduced CO2 emissions
- No tax money used
- Fees support assessor costs





# D-PACE in Delaware

## Voluntary is Key Phrase

- **Voluntary** for Local Governments to Participate
- **Voluntary** for Borrower
- **Voluntary** for Lender
- **Voluntary** Approval of Primary Mortgage Holder

# Delaware Assessed Clean Energy (D-PACE) for Commercial Buildings



- SEU serves as Program Administrator
- Proposes county tax offices do loan servicing with a fee for service.
- Operational after SEU and stakeholder develop guidelines and after a public hearing
- SEU will cover start up cost, including assist county administration.

# Status of Legislation

- Senate Bill 113 is on Senate Ready List
- Senator McDowell and Rep. Trey Paradee Primary Sponsors
- Has Support From ....
  - Commercial and Industrial Realtors Council
  - Delaware State Chamber of Commerce
  - Delawareans for Economic and Environmental Development
  - MDV-Solar Energy Industries Association
  - Delaware Valley Green Building Council
  - National Electrical Contractors Assn.
  - Delaware contractors and commercial property owners





SPONSOR: Sen. McDowell & Rep. Paradee  
Sens. Bushweller, Hansen, Walsh; Reps. Bennett, Brady,  
Lynn, Mulrooney, Spiegelman, Viola

DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL NO. 113

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO A DELAWARE VOLUNTARY  
CLEAN ENERGY FINANCING PROGRAM THROUGH LOCAL GOVERNMENT ASSESSMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1            Section 1. Amend §8061, Title 29 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3            §8061 Delaware Voluntary Clean Energy Financing Program Based on Property Assessments (D-PACE) or Other  
4 Local Assessments.

5            (a) The General Assembly finds and declares that:

6                    (1) The production and efficient use of energy will continue to play a central role in the economic future  
7 and environmental sustainability of Delaware and the nation as a whole; and

8                    (2) The development, production, and efficient use of clean energy will strengthen the economy, improve  
9 the public and environmental health of this state, and contribute to the energy security of our nation; and

10                   (3) The financing of clean energy systems and energy efficient technologies, and the powers conferred  
11 and expenditures made pursuant to this statute, will serve a valid public purpose and that the enactment of  
12 this statute is expressly declared to be in the public interest.

13            (b) It is the purpose and intent of the General Assembly:

14                   (1) To establish a voluntary commercial property assessed clean energy program in the state to provide  
15 access to financing for clean energy systems and energy efficient technologies with free and willing  
16 commercial property owners of both existing properties and new construction within the State of  
17 Delaware.

18                   (2) To utilize the Sustainable Energy Utility and the unique capabilities and qualities inherent within its  
19 structure and finances to launch a commercial voluntary assessed clean energy program that ensures the  
20 private capital markets can participate in this program.

21            (c) Definitions:

- 22 (1) "Delaware Voluntary Property Assessed Clean Energy program" or "D-PACE program" means a  
23 program that facilitates reductions in energy production and consumption and utilizes the benefit  
24 assessments authorized by this section as security for the financing of these qualifying energy  
25 improvements;
- 26 (2) "Benefit assessment" means a voluntary property assessment or other government service fee  
27 assessment, as authorized by this section, which is the mechanism through which a commercial property  
28 owner repays the financing for the qualifying energy improvements;
- 29 (3) "Benefited property owner" means an owner of qualifying commercial real property who desires to  
30 install qualifying energy improvements and provides free and willing consent to the benefit assessment  
31 against the qualifying commercial real property;
- 32 (4) "Qualifying energy improvements" means any construction, renovation or retrofitting of energy  
33 efficient technology, clean energy systems, or qualifying waste heat recovery technologies that are  
34 permanently fixed to qualifying commercial real property;
- 35 (5) "Energy efficient technologies" means any device or piece of equipment, used in conjunction with  
36 existing infrastructure and appliances or as a replacement, that reduces energy consumption, but does not  
37 itself generate energy;
- 38 (6) "Clean energy systems" means renewable energy power generation including solar photovoltaic and  
39 thermal, wind, biomass, or geothermal and including waste heat recovery and other zero or net-zero  
40 emission energy sources available with advancing technology;
- 41 (7) "Qualifying waste heat recovery technologies" means equipment and processes that capture the waste  
42 thermal energy from electric generation and other waste heat sources for use in non-power generating  
43 commercial/industrial processes, including but not limited to space and water heating, in qualifying  
44 commercial real estate where fossil fuel power generation is not the principal business;
- 45 (8) "Qualifying commercial real property" means any commercial property located in the State of  
46 Delaware, regardless of ownership, that meets the qualifications established for the D-PACE program;
- 47 (9) "Commercial property" means any real property other than a residential dwelling containing less than  
48 five dwelling units;
- 49 (10) "Energy Utilities" means Delmarva Power and Light, Chesapeake Utilities, Delaware Electric Co-  
50 operative, Delaware Municipal Electric Corporation, or their successors as defined in Title 26, Chapter 10  
51 of the Delaware Code;

52 (11) "County" means any county as defined in Title 9 of the Delaware Code, and as authorized by this  
53 legislation or the SEU to issue benefit assessments;

54 (12) "Participating county" means a county that has entered into a written agreement, as approved by its  
55 legislative body, with the D-PACE program pursuant to which the county has agreed to levy benefit  
56 assessments for qualifying energy improvements for benefited commercial property owners within such  
57 county and costs reasonably incurred in performing such duties;

58 (13) "SEU" means the Sustainable Energy Utility as defined in Title 29, Chapter 80 of the Delaware  
59 Code; and

60 (14) "Third party capital provider" means one or more entities, other than the SEU, that provides  
61 financing to benefited property owners for energy improvements.

62 (d) The SEU shall establish a D-PACE program in the state to fund qualifying energy improvements to  
63 commercial real property, such that the improvements, property, and owner(s) fulfill the requirements enumerated herein,  
64 and those established by the SEU as part of the administration of the program.

65 (1) If a benefited property owner requests D-PACE financing from the SEU or a third party capital  
66 provider for qualifying energy improvements under this section, the SEU shall:

67 a. Require performance of an SEU approved energy audit or feasibility analysis of such  
68 qualifying energy improvements on the qualifying commercial real property that assesses the  
69 expected energy cost savings over the useful life of such improvements unless a qualifying  
70 energy improvement is deemed automatically qualified by the SEU;

71 b. Require an evaluation of the property owner's credit, history, and other financial obligations,  
72 before approving such financing;

73 c. If financing is approved, either by the SEU or the third party capital provider, require the  
74 participating county to levy a benefit assessment on the qualifying commercial real property  
75 with the property owner in a principal amount sufficient to pay the costs of the improvements  
76 and any associated costs covered by the D-PACE program that will benefit the qualifying  
77 commercial real property;

78 d. Impose requirements and criteria to ensure that the proposed improvements are consistent  
79 with the purpose of the D-PACE program;

80 e. Impose requirements and conditions on the financing to ensure timely repayment, including,  
81 but not limited to, procedures for placing a lien on a property as security for the repayment of the

82 benefit assessment;

83 f. Require that written consent for a superior lien from all existing mortgage holders be obtained

84 before any improvements are financed or made; and

85 g. Allow the property owner to rescind any D-PACE financing agreement entered into, with

86 either the SEU or a third party capital provider, not later than three business days after such an

87 agreement.

88 (2) SEU shall collect fees to offset costs associated with executing the program, including but not limited

89 to, administrative costs, conducting feasibility studies, and monitoring and verifying project results.

90 (3) The SEU may serve as an aggregating entity for the purpose of securing public, foundation, or private

91 third-party financing for qualifying energy improvements pursuant to this section.

92 (4) The SEU may use the services of one or more private, public or quasi-public third-party

93 administrators to administer, provide support, or obtain financing for the D-PACE program.

94 (5) The benefit assessment:

95 a. May cover up to 100% of project costs, including but not limited to, application fees, audits,

96 equipment, maintenance, labor, and other costs directly related to the project over the project's

97 life;

98 b. May also cover a portion of the D-PACE program costs;

99 c. May be neither extinguished nor accelerated in the event of default or bankruptcy; and

100 d. Shall be levied and collected as to assessment payments currently and past due in the same

101 manner as the property assessments of the participating county government on real property.

102 (6) The benefit assessment shall constitute a lien against the qualifying commercial real property on

103 which the qualifying energy improvements are made. This lien shall:

104 a. Be superior to any other liens except the lien for other property taxes and other governmental

105 service assessments of the participating county and other municipalities and share the same

106 senior lien as other property taxes and governmental service assessments to the extent only of

107 the amount of the D-PACE assessments, penalties and fees currently due and/or in arrears;

108 b. Remain with the real property upon sale, including foreclosure; and

109 c. In the event of default or delinquency, be pursued in the same manner as with other property

110 assessments, with respect to any penalties, fees and remedies and lien priorities; provided that in

111 any event a foreclosure sale brought with respect to D-PACE assessments shall not have the

112 effect of extinguishing any subordinate mortgage liens against the qualifying commercial real  
113 property.

114 d. Notwithstanding any other provision of law:

115 (A) At the time of a transfer of property ownership including foreclosure, the past due  
116 balances of any special assessment under this subchapter shall be due for payment, but  
117 future payments shall continue as a lien on the property.

118 (B) In the event of a foreclosure action, the past due balances described in subdivision (A)  
119 immediately above shall include all payments on an assessment under this subchapter that  
120 are due and unpaid as of the date the action is filed, and all payments on the assessment that  
121 become due after that date and that accrue up to and including the date title to the property  
122 is transferred to the mortgage holder, the lien holder, or a third party in the foreclosure  
123 action. The person or entity acquiring title to the property in the foreclosure action shall be  
124 responsible for payments on the assessment that become due after the date of such  
125 acquisition.

126 (7) The liens created by benefit assessments may be assigned as follows:

127 a. Any participating county may assign to the SEU any and all liens filed by the tax collector, as  
128 provided in the written D-PACE agreement between participating county and the SEU;

129 b. The SEU may sell or assign, for consideration, any and all liens received from the  
130 participating county;

131 c. The assignee(s) of such liens shall have and possess the same powers and rights at law or in  
132 equity as the participating county and its tax collector with regard to the precedence and priority  
133 of such lien, the accrual of interest, the fees and expenses of collection, and lien enforcement  
134 including, but not limited to, foreclosure and a suit on the debt; and

135 d. Costs and reasonable attorneys' fees incurred by the assignee as a result of any foreclosure  
136 action or other legal proceeding brought pursuant to this section and directly related to the  
137 proceeding shall be assessed in any such proceeding against each person having title to any  
138 property subject to the proceedings. Such costs and fees may be collected by the assignee at any  
139 time after demand for payment has been made by the assignee.

140 (8) The SEU shall allow third party capital providers to provide loans directly to benefited property  
141 owners in lieu of, or in addition to, the SEU providing such loans.

142 (9) Pursuant to the purpose and objectives outlined herein, and with respect to the responsibilities of  
143 administering the D-PACE program, the SEU shall develop program guidelines governing the terms  
144 and conditions under which financing may be made available to the D-PACE program, in consultation  
145 with the Department of Natural Resources and Environmental Control, Division of Energy and  
146 Climate, energy utilities, the banking industry, local governments, and commercial property owners;  
147 The program guidelines document shall include:

148 a. Underwriting criteria, which at a minimum must include verification of ownership, an  
149 assessment of property debt and value, an ability to pay evaluation, and for all financing  
150 arrangements by the SEU and third party capital providers a savings to investment ratio  
151 evaluation;

152 b. A requirement that the life of the improvements is greater than the term of the financing;

153 c. Qualifications for improvements, including but not limited to: minimum project life for cost-  
154 effective, permanent application; minimum project value, consistent with ensuring the recapture  
155 of applicable administrative costs; maximum project value and project value relative to property  
156 value, consistent with local and national renewable and energy efficiency credit/funding  
157 programs and ensuring mortgage lender support; and maximum renewable energy project size  
158 consistent with local and national credit/funding programs, and with local energy service  
159 company (utility) regulations;

160 d. Recommended energy efficiency improvements to qualified commercial property owners  
161 seeking financing for clean energy generation systems;

162 e. Criteria for approving energy audits and auditors, selecting engineering reports for feasibility  
163 analyses, and determining the appropriate method of analyzing expected energy performance for  
164 D-PACE projects;

165 f. Standards for the processes of approval, financing, construction, repayment, including optional  
166 repayment at the time of sale of the property and SEU, third party capital provider, and/or  
167 participating county actions of recourse in the event of default;

168 g. Standards for monitoring and verifying the energy and cost savings and other relevant  
169 outcomes of D-PACE funded projects, consistent with the project scale and scope, as well as the  
170 goals of the D-PACE program;

171 h. A requirement to educate the property owner about the costs and risks associated with



172 participating in the D-PACE program established by this section, including but not limited to,  
173 the effective interest rate of the benefit assessment, fees charged by the SEU to administer the  
174 program, and the risks related to the failure of the property owner to pay the benefit assessment;  
175 and  
176 i. Greater detail on all program specifications, processes, and party duties as assigned to the SEU  
177 in this bill, as well as all necessary program guidelines and other specifications consistent with  
178 the administration of a statewide D-PACE program not listed herein.

179 (e) The SEU shall have the authority to:

- 180 (1) Issue debt to finance qualifying projects;
- 181 (2) Use principal and interest payments from existing benefit assessments to fund other projects;
- 182 (3) Use other legally available funds for project financing, including but not limited to, existing revenues,  
183 federal, state, local, or philanthropic grants, or private financing, notes, or other obligations;
- 184 (4) Impose fees to offset costs associated with executing the financing, including but not limited to,  
185 administrative costs, attorney fees, conducting feasibility studies, and monitoring and verifying  
186 project results;
- 187 (5) Specify whether these fees are to be collected at certain steps or intervals, or added into the project  
188 financing;
- 189 (6) Set a fixed or variable rate of interest for the repayment of the financing amount at the time the  
190 financing is arranged, or allow a third party capital provider to set the interest rate, provided that party is  
191 financing the improvements;
- 192 (7) Enter into a financing agreement with the owner of qualifying commercial real property, to include  
193 billing and receiving payments from the participants (in the same manner property and government  
194 service assessments are collected);
  - 195 a. With approval of the participating county, transfer the rights and authorities of the financing  
196 agreement, including but not limited to billing and receiving payments, to a third party capital  
197 provider, such that the party is directly financing the qualified energy improvement.
- 198 (8) Establish a D-PACE Loss Reserve.

199 (g) The D-PACE program shall not be operational and available for commercial property owner  
200 participation/financing until a comprehensive program guideline document is adopted by the SEU Board of Directors. Prior  
201 to submission to the Board of Directors for adoption, the SEU shall:

- 202                   (1) Organize a public hearing regarding the program guidelines document;  
203                   (2) Publish a notice to include the time, date, place of the public hearing, and a summary of the  
204                   nature of the guidelines in at least two Delaware newspapers of general circulation, and by electronic  
205                   posting on the SEU website, a minimum of twenty days prior to such hearing; and  
206                   (3) Provide the SEU Board of Directors minutes of the public hearing with the submission of the  
207                   program guidelines.

#### SYNOPSIS

This bill authorizes the creation of a Delaware Voluntary Property Assessed Clean Energy (D-PACE) program to establish a clean energy financing program for the installation of energy efficiency technologies and clean energy systems for qualifying commercial real properties statewide. PACE programs are authorized in more than 30 states nationwide. The financing will be secured by and payable from a voluntary assessment imposed on the property benefited by the qualifying energy improvement. The bill calls upon the Sustainable Energy Utility (SEU) to administer the program and establish a statewide financing program to aid counties in expanding clean energy projects in their jurisdictions. Projects under D-PACE can be financed through the SEU or other participating financial institutions.

Author: Senator McDowell

**RECORDER OF DEEDS**

SCOTT DAILEY  
RECORDER OF DEEDS  
CATHERINE JENKINS  
CHIEF DEPUTY RECORDER OF DEEDS



**Sussex County**

DELAWARE  
PO BOX 827  
GEORGETOWN, DELAWARE 19947  
(302) 855-7785 T  
(302) 855-7787 F

TO: Sussex County Council

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

FROM: The Honorable Scott Dailey  
Recorder of Deeds

DATE: November 2, 2017

RE: Land Records Management System RFP Award and Contract Approval

On Tuesday, November 14, 2017, I will be requesting your approval for a new Land Records Management System RFP Award and Contract for the Recorder of Deeds Office.

The new Land Records Management System contract agreement will be between Pioneer Technology Group LLC and Sussex County for Recorder of Deeds. A new system is necessary due to our current contract ending with ACS Enterprise Solutions LLC, now known as Conduent Enterprise Solutions LLC.

This new System will allow our staff to dramatically increase their work efficiency. It also provides improved online research options for the legal community and fraud protections for the general public.

Please let me know if you have any questions.

Attachment

**11.8.17**



**SOFTWARE LICENSE AGREEMENT**

between

**PIONEER TECHNOLOGY GROUP, LLC**

**(“PTG”)**

having its principal place of business at:

1100 Central Park Drive, Suite 100

Sanford, Florida 32751

Fax No.: 407-321-7434

Tax Id. No. 20-3750929\_  
and

**Sussex County**

**(“Clerk”)**

having its principal address at:

2 The Circle,  
Georgetown, DE 19947

**(1) Definitions and Identifications.** For all purposes of this Agreement, unless the context specifically indicates otherwise, and in addition to other terms defined only within the internal text of this Agreement, the terms defined in this §1 shall be applicable:

(a) *Agreement* – this Agreement, all exhibits thereto, and any and all subsequent duly executed amendments thereto.

(b) *Confidential Information* – Copyrights, Trade Secrets, Technical Information, Technology, and any and all other confidential and/or proprietary information as described below and provided by one Person (“Discloser”) to another Person (“Recipient”) pursuant to this Agreement or otherwise, relating to, among other items, the research, development, products, processes, business plans, customers, finances, suppliers, and personnel data of or related to the business of Discloser, including, without limitation, the Software and all Documentation. Confidential Information does not include any information: (1) Recipient knew before Discloser provided it; (2) which has become publicly known through no wrongful act of Recipient; (3) which Recipient developed independently, as evidenced by appropriate documentation; or, (4) of which Recipient becomes aware from any third Person not bound by non-disclosure obligations to Discloser and with the lawful right to disclose such information to Recipient. Notwithstanding the foregoing, specific information will not be deemed to be within the foregoing exceptions merely because it is contained within more general information otherwise subject to such exceptions. Notwithstanding the foregoing, this Agreement, the Software Maintenance Agreement, and any attachments or exhibits thereto and any invoices or financial records related to the Software License or Maintenance Agreements shall not be considered Confidential Information.

(c) *Copyrights* – copyrighted and copyrightable materials, whether or not registered, published, or containing a copyright notice, in any and all media, and further including, without limitation, any and all moral rights and corresponding rights under international agreements and conventions, all Derivatives thereof, and any and all applications for registrations, registrations, and/or renewals of any of the foregoing.

(d) *Day* – calendar day unless specifically designated as a business day, which shall exclude weekends and State holidays.

(e) *Deliverables* – those components, milestones, and/or materials, including, without limitation, the Software, Documentation, Maintenance Modifications, and Enhancements to be completed by one Party and delivered or otherwise provided to the other Party in accordance with the terms of this Agreement and/or an effective Maintenance Agreement. Deliverables can mean either Deliverables required from PTG (“PTG Deliverables”) or Deliverables required from Licensee (“Clerk Deliverables”).

(f) *Derivatives* – any and all adaptations, enhancements, improvements, modifications, revisions, or translations, whether to Intellectual Property or otherwise.

(g) *Documentation* – manuals, user guides, and other documentary materials for use with the Deliverables, including, without limitation, all Derivatives thereof.

(h) *Enhancements* – changes or additions, other than Maintenance Modifications, to Software and related Documentation, including, without limitation, all new releases, that improve functions, add new functions, or significantly improve performance by changes in system design or coding; *provided, however*, that Enhancements do not include any New Product.

(i) *Error* – (1) any error or defect resulting from an incorrect functioning of Software caused by the Software’s failure to meet a Functional Specification therefor; or, (2) any error or defect resulting from an incorrect or incomplete statement in Documentation caused by the failure of the Software and/or the Documentation to meet a Functional Specification therefor.

(j) *Field of Use* – the Field of Use described in the License Summary.

(k) *Functional Specifications* – the design and/or performance criteria for and qualities of the Software described as Functional Specifications in the License Summary.

(l) *Intellectual Property* – (1) Trade Secrets, (2) Copyrights, (3) Derivatives, (4) Documentation, (5) Patents, (6) Software, (7) Technical Information, (8) Technology, and (9) any and all proprietary rights relating to any of the foregoing, subject to this License Agreement.

(m) *Clerk* – the Licensee executing this Agreement.

(n) *Clerk Data* – all data of Licensee, whether proprietary or non-proprietary to Clerk, converted to the System.

(o) *Clerk Materials* – all Licensee Data and all Derivatives thereof.

(p) *License Summary* – the License Summary attached hereto as *Exhibit 1* and incorporated by reference herein.

(q) *Maintenance Agreement* – a separate written agreement setting forth the terms and conditions under which maintenance services for the Software will be provided by PTG to Clerk after the expiration of the Warranty Period. A copy of the Maintenance Agreement is attached hereto as Exhibit 2 and is incorporated herein by reference.

(r) *Maintenance Modification* – any modification or revision (except to the extent the same constitutes an Enhancement or a New Product) to Software or Documentation that corrects Errors, supports new releases of the operating systems with which the Software is designed to operate, supports new input/output (I/O) devices, or provides other incidental updates and corrections.

(s) *Material Breach* – failure by a Party to perform any requirement, duty, or obligation upon it as provided for in this Agreement, other than as excepted pursuant to the provisions of §15 (Excusable Delays) of this Agreement.

(t) *New Product*. Any change or addition to Software and/or related Documentation that: (1) has a value or utility separate from the use of the Software and Documentation; (2) as a practical matter, may be priced and offered separately from the Software and Documentation; and, (3) is not made available to PTG’s licensees generally without separate charge.

(u) *Party* – either PTG or Clerk, and “Parties” means both of the same.

(v) *Patents* – all patentable materials, letters patent, and utility models, including, without limitation, all reissues, continuations, continuations-in-part, renewals, Derivatives, and extensions of any of the foregoing, and all applications therefor (and patents which may issue on all such applications).

(w) *Person* – an individual, partnership, corporation, association, joint stock company, limited liability company, trust, joint venture, unincorporated organization, or any governmental agency or authority.

(x) *Scope of Services* – the written description and specifications for the System, including, without limitation, the Deliverables and Functional Specifications, and all milestone, delivery, and acceptance schedules, as described in the License Summary.

(y) *Software* – includes, as applicable, the PTG software System known as Landmark recording system supplied by PTG pursuant to this Agreement. Software shall include any Maintenance Modification or Enhancement thereto created by PTG from time to time during the Warranty Period of this Agreement and/or thereafter during the term of any effective Maintenance Agreement. The term “Software” does not include New Products except to the extent added to the Software by separate agreement of the Parties as to additional fees, terms, and conditions.

(z) *Software Acceptance Date* – the date of final acceptance of the System by Clerk as described in §4(e) of this Agreement.

(aa) *System* – the Software system developed by PTG in accordance with the Scope of Services for use by Clerk in the Field of Use and solely in the Territory pursuant to the terms and conditions of this Agreement.

(bb) *Taxes* – all federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar taxes), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other taxes of any kind, including, without limitation, any interest, penalty, or addition thereto, whether or not disputed.

(cc) *Technical Information* – know-how, data, and other technical information including, without limitation: (1) engineering documentation, such as development records, production software information, algorithms, flow charts, design information, drawings, specifications, and data sheets; (2) manufacturing documentation such as manufacturing drawings, instructions, specifications, procedures, methods, standards documentation, tooling and fixture drawings, process specifications and instructions; and, (3) quality and reliability documentation such as quality plans, specifications, instructions, procedures, test plans, test records and regulatory documentation; and further including any and all Intellectual Property therein or relating or referring thereto.

(dd) *Technology* – know-how, show-how, procedures, systems, processes, Trade Secrets, inventions (whether or not patentable and whether or not reduced to practice), algorithms, formulae, research and development data, manufacturing, development, and production techniques, and all other proprietary information relating thereto, and further including any and all Intellectual Property therein or relating or referring thereto.

(ee) *Territory* – the Territory described in the License Summary.

(ff) *Test Validation Criteria* – the acceptance criteria for the PTG Deliverables, including, without limitation, the Software, set forth in the Scope of Services. A sample of Test Validation Criteria is attached hereto as *Exhibit 3* (“SQA Test Plan”) and is incorporated herein by reference. The actual Test Validation Criteria will be developed by both Parties as a part of the installation.

(gg) *Third Party Software* – software utilized in tandem with the Software, and necessary to enable the Software to perform the Functional Specifications, supplied either by PTG with the Software or by Clerk independently of PTG.

(hh) *Trade Secrets* – shall have the meaning set forth under Delaware statutory law at 6 Del. C. § 2001(4); *provided, however*, that, where both statutory and common law may be applicable, the broadest possible definition shall apply.

(ii) *Trademarks* – trademarks, service marks, logos, trade names, and/or domain names including, without limitation, any and all common law and/or statutory rights therein and any and all applications to register and/or registrations therefor, anywhere within or outside of the Territory.

(jj) *Warranty Period* – the ninety (90) day period commencing on the Software Acceptance Date.

**(2) *Agreement to License.*** This Agreement provides for the perpetual license of Software, by PTG to Clerk, in accordance with the terms and conditions of this Agreement. PTG shall license to Clerk, and Clerk shall license from PTG, the Software as described on the attached License Summary. Clerk may license additional New Product hereunder by execution of a subsequent License Summary.

**(3) *Fees, Installation Charges, and Taxes.***

(a) *License Fees.* The license fees for the initial items of licensed Software are set forth on the License Summary. Subsequent orders of a New Product shall be at the fees in effect at the time of receipt by PTG of any applicable subsequent License Summary executed by Clerk and PTG. Fees resulting from the provision by PTG to Clerk of Third Party Software are passed through by PTG to Clerk, and, such fees payable by Clerk shall not be increased during the term of this Agreement, unless Clerk agrees in writing.

(b) *Installation Fees.* Clerk shall also pay for installation of Software at the then prevailing fees, plus any travel expenses required, including reasonable mileage, air fare, meals, lodging, and similar expenses. Meals will be billed at the applicable GSA per diem rate.

**(4) *Delivery and Acceptance.***

(a) *Delivery.* Each Party shall timely perform delivery of its required Deliverables in accordance with the Scope of Services, including the delivery schedule specified therein. Clerk is responsible for movement into or within Clerk's premises, site preparation per PTG requirements, and other site expenses required for installation.

(b) *Testing.* Testing of PTG Deliverables shall be completed by Clerk in accordance with the Test Validation Criteria within twenty (20) business days following initial delivery to Clerk.

(c) *Initial Acceptance.* Within twenty (20) business days following initial delivery to Clerk, Clerk shall either: (i) accept the PTG Deliverables in writing; or, (ii) reject the PTG Deliverables and provide PTG with a statement of Errors resulting in operation not in conformance with the Test Validation Criteria. Failure by Clerk to provide the rejection and statement of Errors within the twenty (20) business day period provided herein shall be deemed to be acceptance by Clerk of the PTG Deliverables. PTG will



correct any Error and redeliver the affected Deliverables to Clerk within twenty (20) business days following receipt of the statement of Errors. Clerk shall, within twenty (20) business days following such redelivery, retest and accept or reject the redelivered PTG Deliverables in accordance with the procedures set forth herein. Failure by Clerk to provide a statement of either acceptance or Errors within twenty (20) business days following redelivery of the PTG Deliverables shall be deemed to be acceptance by Clerk of the PTG Deliverables. An acceptance of PTG Deliverables shall not constitute a representation by Clerk that the Software System or other PTG Deliverables are free from errors or otherwise in conformity with this Agreement.

(d) *Installation.* Within twenty (20) business days following acceptance of the PTG Deliverables, PTG shall install the System at the Clerk's facilities for final acceptance testing.

(e) *Final Acceptance.* Within ten (10) business days following completion of installation, Clerk shall either: (i) accept the System in writing; or, (ii) reject the System and provide PTG with a statement of Errors resulting in operation not in conformance with the Test Validation Criteria. PTG will correct any Error and redeliver the System to Clerk within thirty (30) business days following receipt of the statement of Errors. Clerk shall, within ten (10) business days following such redelivery, accept or reject the redelivered System in accordance with the procedures set forth herein. Failure by Clerk to provide a statement of acceptance or Errors within either of the ten (10) business day periods specified herein shall be deemed to be final acceptance by Clerk of the System. An acceptance of PTG Deliverables shall not constitute a representation by Clerk that the Software or any other PTG Deliverable is free from defects; the acceptance shall represent the County's determination, to the extent of its actual knowledge, that the Software's basic functions appear to be operational.

**(5) Payment.**

(a) *Initial License Summary.* Payment of the Software license fee, on the initial License Summary will be made in installments as follows:

Software License Costs Payment Milestones		
Project Milestone	Payment (% of Total)	Associated Test
Project Kick-Off and Project Plan Approval	20%	Kick-Off Meeting has been completed and the County has signed off on the Project Plan deliverable.
Initial System Implementation	20%	Identified users can access the off-the-shelf system from all workstations.
System Configuration Complete	25%	The County has provided formal acceptance that all business requirements have been successfully configured and end users can access the configured test environment.
Approval of Go-Live	20%	The County has signed off on the test results.
Acceptance of System	15%	The County has signed off on at least two months of system operations and financial statements.

(b) *Subsequent License Summary.* Payment of license fees, installation fees, and other fees to PTG on any subsequent License Summary shall be made as specified in such subsequent License Summary.

(c) *Ancillary Charges and Out of Pocket Expenses.* Notwithstanding §5(a) of this Agreement, all ancillary charges (e.g., additional training charges) and all out of pocket expenses of PTG (e.g., travel expenses), if undisputed by Clerk, which are payable by Clerk hereunder shall be due and payable within thirty (30) days following invoice by PTG.

(d) *Failure of Payment.* In the event payment is not made as specified in this Agreement, Clerk shall pay interest at the rate of one and one-half percent (1.5%) per month (or the highest applicable legal rate, whichever is lower) on the outstanding overdue balance for each month or part thereof that such sum is overdue; *provided, however*, that if Clerk is a governmental agency or authority subject to a “Prompt Payment” or similar statutory requirement for the transaction contemplated in this Agreement, such statutory requirement shall control to the extent the same is inconsistent with the requirements of this §5(d).

**(6) Warranty, Exclusions, and Disclaimer.**

(a) *Software and Conversion Warranty.* PTG warrants that the Software delivered hereunder shall conform to the Functional Specifications set forth in the License Summary and will be free of Errors during the Warranty Period and during the term of the Maintenance Agreement attached hereto. PTG's responsibility to Clerk under the foregoing warranty is to remedy, at no cost to Clerk, any such Error reported to PTG during the Warranty Period and throughout the term of the Maintenance Agreement. Notwithstanding the foregoing or any other term or provision of this Agreement, with respect to Third Party Software provided by PTG hereunder, PTG makes no warranties, but shall, to the extent legally permitted, pass through to Clerk all warranties provided by the original licensor/manufacturer. In making the data conversion or otherwise handling the transfer of the County's information, records and data into the Software, PTG warrants that the existing data, records, and information shall be preserved, and such data, records, and information shall not be damaged or denigrated in any form or manner.

(b) *Software Warranty Exclusions.* The foregoing warranties do not apply to any of the following: (i) Incidental, special or consequential damages that may be the result of Clerk-purchased hardware, Clerk back up and disaster recovery processes or lack thereof, intentional misuse of Software by Clerk employees or contractor other than PTG, breaches of security that leads to data loss, ransomware, or other failure of the software or other Clerk systems, Clerk's infrastructure including but not limited to data connection, network or power supply.

(ii) Intentional operator error by Clerk; and

(iii) causes beyond the reasonable control of PTG, including, without limitation, any matter described in §14 (Excusable Delays) of this Agreement.

(c) *SOFTWARE WARRANTY DISCLAIMER.* PTG DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL PTG BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT MAY BE THE RESULT OF CLERK- PURCHASED HARDWARE, CLERK BACK UP AND DISASTER RECOVERY PROCESSES OR LACK THEREOF, MISUSE OF SOFTWARE BY CLERK EMPLOYEES OR CONTRACTOR OTHER THAN PTG, UNAUTHORIZED MAINTENANCE OF SOFTWARE, ANY INTERNAL OR EXTERNAL HACKS OR OTHER BREACHES OF SECURITY THAT LEADS TO DATA LOSS, RANSOMWARE, OR OTHER FAILURE OF THE SOFTWARE OR OTHER CLERK SYSTEMS, CLERK'S INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO DATA CONNECTION, NETWORK OR POWER SUPPLY.

IN NO EVENT SHALL THE LIABILITY HEREUNDER WITH RESPECT TO THIS AGREEMENT IN THE AGGREGATE FOR ALL CLAIMS EXCEED THE AMOUNT OF THE CLAIMS COVERED BY INSURANCE REQUIRED BY THIS AGREEMENT OR IF SUCH CLAIM(S) ARE NOT COVERED BY THE INSURANCE, NO MORE THAN \$300,000.00 IN THE AGGREGATE DURING ANY ONE YEAR PERIOD FOR ALL CLAIMS NOT COVERED BY INSURANCE. THE LIMITATIONS OF PTG'S LIABILITY HEREUNDER SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE. CLERK UNDERSTANDS THAT THE FEES CHARGED HEREUNDER BY PTG SPECIFICALLY REFLECT THE ALLOCATION OF RISK AND EXCLUSION OF DAMAGES PROVIDED FOR IN THIS §13.

**(7) Functional Specifications.**

(a) *Functional Specifications.* PTG shall ensure that the Software complies with all Functional Specifications for each of the items of Software licensed by Clerk from PTG hereunder as set forth in the License Summary.

(b) *Customized Software.* Clerk understands that such Functional Specifications shall be defined in the Software License Summary and that any application and/or communication and/or functions not currently supported by PTG shall be considered "customized" and, as such, may incur additional costs and delivery schedules beyond those stated and agreed to by PTG.

**(8) *Training.*** PTG shall provide Clerk with classroom training for up to ten (10) employees per class in the operation and maintenance of the Software at Clerk's facilities at which the Software is installed per the License Summary. The number of Training days available is listed in section 5 of the License Summary, which is listed as under Onsite Support). Clerk may request additional training time and/or additional personnel to be trained, provided that any such additional training shall be chargeable to Clerk at PTG's then current fee for the requested training.

**(9) *Maintenance Agreement.*** Clerk shall execute a Software Maintenance Agreement, attached as Exhibit 2, at the time this Agreement is executed. Separate fees for Software maintenance will commence as specified in the Maintenance Agreement.

**(10) *Software License.***

(a) *Background.* PTG and/or its suppliers have designed, developed, and made available proprietary computer Software containing Trade Secrets of PTG and/or its suppliers. Use of this Software is strictly governed by the terms of this Agreement. No title or ownership in the Software is transferred to Clerk. The License granted hereby is for Clerk's internal use only, and only in the Territory and the Field of Use. Clerk shall not copy or in any way duplicate the Software, except for necessary backup and archival procedures (non-printed, machine readable form) approved by PTG in advance, and in writing, which approval shall not be unreasonably withheld. In connection with any such permitted copy, Clerk shall reproduce and incorporate all Trade Secret and/or Copyright notices, and the same shall be subject to all of the terms and conditions of this Agreement. All copies made by Clerk of the Software and any Documentation, including, without limitation, all translations, compilations, partial copies, *etc.*, are the exclusive property of PTG. Software, Documentation, and all copies thereof may not be assigned, conveyed, relicensed, sublicensed, published, disclosed, displayed, or otherwise transferred (voluntarily, involuntarily, by operation of law, or otherwise) by Clerk for the benefit of a third Person, except as necessary in providing its recording and indexing services to the public. Clerk shall secure and protect the Software licensed hereunder and all copies thereof and all Documentation relating thereto in a manner consistent with the full preservation of PTG's rights therein, and shall take such appropriate action, by agreement, with its employees and necessary contractors as shall be reasonably requested by PTG in order to protect PTG's rights therein. Clerk shall not adapt, modify, reverse engineer, decompile, or disassemble, in whole or in part, any of the Software and/or any Documentation. Clerk is entitled to all Enhancements and/or Maintenance Modifications to the Software and Documentation as are expressly provided for in this Agreement or in any effective Maintenance Agreement between PTG and Clerk. Clerk is not entitled to any New Product (or other product of PTG) hereunder, under any Maintenance Agreement, or otherwise, except pursuant to a separate written agreement with PTG and separate payment therefor.

(b) *License.* PTG grants Clerk, during the term of the grant of license specified herein, a nontransferable and nonexclusive license for use of the Software (machine readable version) and Documentation therefor, solely by Clerk in accordance with the terms and conditions of this Agreement. Such use shall be limited to Clerk only, and only within the Territory and the Field of Use. The term of the

grant of license herein shall remain in effect until termination pursuant to the express provisions of this Agreement. Title to the Software remains in PTG. PTG shall be the sole and exclusive owner of all rights to Patents, Copyrights, Trademarks, Trade Secrets, and all other Intellectual Property rights in the Software and in all Maintenance Modifications and Enhancements thereto. Notwithstanding any other provision of this Agreement, PTG agrees that Clerk is permitted to allow the public access to the Software and any other document as necessary to provide its recording and indexing services to the public.

(c) *Third Party Software.* As set forth in the License Summary, the Software does not require the purchase or acquisition of Third Party Software, other than Microsoft Windows operating system and SQL Server, both of which Clerk shall purchase and maintain separately and without assistance from PTG.

**(11) *Restrictions Upon Disclosure of Confidential Information.***

(a) *Protection.* Recipient shall use commercially reasonable care, but in no event less than the same degree of care it uses to protect its own most confidential and proprietary information, to prevent the unauthorized use, disclosure, publication, or dissemination of Discloser's Confidential Information. Recipient shall provide Discloser's Confidential Information to its employees and necessary contractors as needed, and always subject to the terms of this Agreement. Recipient agrees to accept and use Discloser's Confidential Information solely in connection with Recipient's participation in, and solely with respect to, this Agreement. Recipient shall inform its employees and necessary contractors of the obligations contained within this §11(a), and shall take such steps as may be reasonably requested by Discloser to prevent unauthorized disclosure, copying, or use of Discloser's Confidential Information. Recipient acknowledges that, in the event of a breach by Recipient of its obligations under this §11, in addition to any other right or remedy available to Discloser, at law or in equity, Discloser will suffer irreparable injury, and shall be entitled to preliminary and final injunctive relief (without bond except as otherwise required by applicable law) in order to prevent any further or other breach of this §11 or any unauthorized use of Discloser's Confidential Information. Recipient shall notify Discloser immediately upon discovery of any prohibited use or disclosure of any of Discloser's Confidential Information, or any other breach of the requirements of this §11 by Recipient (including, without limitation, by any contractors), and shall fully cooperate with Discloser to assist Discloser in regaining possession of its Confidential Information and to prevent further unauthorized use or disclosure of the same. If requested in writing by Discloser upon the termination or expiration of this Agreement, Recipient shall, except as otherwise expressly provided by the terms of this Agreement, return the following: Computer programs, documentation, software diagrams, notes, and plans and any other materials reasonably deemed to be the property of the Discloser.

(b) *Limited Disclosure.* PTG acknowledges that Clerk is a public body and, therefore, is subject to the disclosure requirements of the Delaware Freedom of Information Act (29 Del. C., Chapter 100) ("FOIA"). However, either party, as the recipient of Confidential Information ("Recipient,") may be required to disclose Confidential Information as required by law, regulation, subpoena, court order or other legal process. During the term of this Agreement, upon Recipient's receipt of a request or demand of any third person or entity not a party to this Agreement ("Requester") for production, copying and/or inspection of information designated by the Discloser as Confidential Information, Recipient, as soon as practicable but within a reasonable time of the request, shall make reasonable efforts to notify party who initially disclosed the Confidential Information ("Discloser") that such request has been made, by telephone call, email, letter sent via facsimile and/or by US Mail to the address and facsimile number listed in this Agreement. Recipient shall respond to the request as required by statute and shall provide access only to those documents that are not confidential and do not fall under one of the statutory exemptions. If the Requester challenges Recipient's response by making further demand(s) or seeks a legal determination as to the disclosure of Discloser's Confidential Information as defined herein, the Discloser shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be

Confidential Information and to prevent release of information to the Requester by the Recipient. If Discloser takes no such action, after receiving the foregoing notice from the Recipient, the Recipient shall be permitted to comply with the Requester's demand and is not required to defend against it. However, if requested by Discloser, at Discloser's expense, Recipient shall provide reasonable assistance to the Discloser to secure confidential treatment of the Confidential Information. If Discloser institutes legal action to protect its Confidential Information from disclosure, Recipient may disclose only such Confidential Information that it is legally required to disclose by such judicial action; provided, however, Discloser shall be afforded the opportunity to exhaust all reasonable legal remedies to maintain the Confidential Information in confidence prior to any disclosure by Recipient.

The Recipient may cooperate with the Discloser in any efforts to prevent release of the Confidential Information; however, Recipient shall not be required to expend any monies in excess of the cost of notifying the Discloser by telephone, email, facsimile and/or mail of the pendency of a demand for Confidential Information. So long as the Recipient complies with the provisions of notification set forth in this Agreement, the Recipient shall not be liable for, and Discloser hereby releases Recipient from, any liability for any damages arising from any requirement under the law that the Recipient release Confidential Information to a Requester, and such release includes the elected and appointed officials, employees, attorneys, agents, and representatives, as those terms apply to Recipient, without limitation.

(c) *Ownership.* All Discloser Confidential Information, including, without limitation, any and all adaptations, enhancements, improvements, modifications, revisions, or translations thereof created by Discloser or Recipient, shall be and remain the property of Discloser, and no license or other rights to such Confidential Information is granted or implied hereby. Except as otherwise expressly provided in this Agreement, all Discloser Confidential Information is provided "AS IS" and without any warranty, express, implied, or otherwise, regarding its accuracy or performance, except as otherwise set forth in this Agreement.

(d) *Survival.* The obligation of Recipient to maintain the confidentiality of Discloser's Confidential Information shall survive the expiration or termination of this Agreement indefinitely, unless and until: (i) such Confidential Information shall cease to be Confidential Information; or, (ii) otherwise agreed to in writing by Discloser.

## **(12) *Intellectual Property Rights.***

(a) *Warranty.* PTG warrants and represents to Clerk that, to PTG's knowledge, the Software does not infringe upon any Intellectual Property of any other Person; *provided, however*, that no warranty is provided by PTG in this §12 with respect to any Third Party Software, but PTG shall, to the extent legally permitted, pass through to Clerk any infringement warranty with respect to all Third Party Software provided by the original licensor/manufacturer. The foregoing warranty of PTG shall be ineffective if any of the Software delivered by PTG hereunder has been modified, altered, or otherwise changed by Clerk (or on behalf of Clerk by any Person other than PTG). Notwithstanding the foregoing, PTG will have no liability or obligation under this §12 where any claim of infringement is based upon: (i) the combination, operation, or use of the Software with any Intellectual Property other than PTG Intellectual Property, if such claim would have been avoided but for such combination, operation, or use; and/or, (ii) any Derivative of any PTG Intellectual Property created by any Person other than PTG. PTG shall have sole control over the selection of counsel and the defense of any legal proceeding or other claim described herein and any settlement thereof, and Clerk, at no expense to Clerk, shall provide PTG with all reasonable assistance in the defense of the same.

(b) *Remedy.* In the event of a breach by PTG of the warranty contained within §12(a) hereof, PTG shall have the right, as Clerk's sole remedy against PTG, at PTG's sole election, to: (i) modify the allegedly infringing Software to be non-infringing, provided that such modification does not adversely impact the functionality of the Software licensed to Clerk hereunder in any material respect; or, (ii) obtain a license to enable Clerk to continue to use the applicable Software as contemplated in this Agreement, provided that PTG shall have no obligation to obtain such license in the event annual payments or royalties for such license would exceed twenty-five percent (25%) of the annual amount paid by Clerk to PTG under the Maintenance Agreement (unless Clerk agrees to pay any and all such excess costs), and then only if and to the extent any such Maintenance Agreement remains in effect. In the event PTG fails to accomplish either of the foregoing alternatives within a commercially reasonable period, or if a permanent injunction shall be entered against the use of the Software by Clerk, the license granted to Clerk pursuant to this Agreement shall terminate on notice by either Party to the other Party, and, in such event, PTG shall refund to Clerk the license fee provided for in §3(a) of this Agreement, less: (i) three percent (3%) thereof for each month, or part thereof, from the Software Acceptance Date to the effective date of termination; and less, (ii) all amounts paid by PTG to Clerk pursuant to §6 of this Agreement.

(c) *Notification.* Clerk shall promptly notify PTG of any claim described in this §12 which comes to the attention of Clerk.

(d) *Limitation of Liability*  
IN NO EVENT SHALL PTG BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT MAY BE THE RESULT OF CLERK- PURCHASED HARDWARE, CLERK BACK UP AND DISASTER RECOVERY PROCESSES OR LACK THEREOF, MISUSE OF SOFTWARE BY CLERK EMPLOYEES OR CONTRACTOR OTHER THAN PTG, UNAUTHORIZED MAINTENANCE OF SOFTWARE, ANY INTERNAL OR EXTERNAL HACKS OR OTHER BREACHES OF SECURITY THAT LEADS TO DATA LOSS, RANSOMWARE, OR OTHER FAILURE OF THE SOFTWARE OR OTHER CLERK SYSTEMS, CLERK'S INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO DATA CONNECTION, NETWORK OR POWER SUPPLY.

IN NO EVENT SHALL THE LIABILITY HEREUNDER WITH RESPECT TO THIS AGREEMENT IN THE AGGREGATE FOR ALL CLAIMS EXCEED THE AMOUNT OF THE CLAIMS COVERED BY INSURANCE REQUIRED BY THIS AGREEMENT OR IF SUCH CLAIM(S) ARE NOT COVERED BY THE INSURANCE, NO MORE THAN \$300,000.00 IN THE AGGREGATE DURING ANY ONE YEAR PERIOD FOR ALL CLAIMS NOT COVERED BY INSURANCE. THE LIMITATIONS OF PTG'S LIABILITY HEREUNDER SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE. CLERK UNDERSTANDS THAT THE FEES CHARGED HEREUNDER BY PTG SPECIFICALLY REFLECT THE ALLOCATION OF RISK AND EXCLUSION OF DAMAGES PROVIDED FOR IN THIS §13.

**(13) *Protection of Software and Clerk Materials.***

(d) *Survival.* The provisions of this §12 shall survive the expiration or other termination of this Agreement.

(a) *PTG Ownership.* As between PTG and Clerk, PTG shall be the sole owner of all right, title, and interest in and to the Software, the Documentation, and any and all copies or Derivatives therein

or thereof, created by either Party, exclusive only of the Clerk Materials. Clerk hereby irrevocably grants, transfers, and assigns to PTG, without reservation, all worldwide ownership rights, title, and interest, including, without limitation, any and all Patent, Copyright, Trademark, and/or Trade Secret rights, which Clerk may have or acquire, by operation of law or otherwise, in and to any or all of the Software, the Documentation, and in and to any other Intellectual Property of PTG, along with the good will of the business appurtenant to the use of any of the same. Clerk further hereby irrevocably transfers and assigns to PTG any and all moral rights Clerk may have in and to such Software, the Documentation, and in and to any other Intellectual Property of PTG, and hereby forever waives and agrees never to assert any moral rights it may have therein, either prior to or following the termination of the license granted pursuant to this Agreement.

(b) *Clerk Ownership.* As between PTG and Clerk, Clerk shall be the sole owner of all right, title, and interest in and to all Clerk Materials. PTG hereby irrevocably grants, transfers, and assigns to Clerk, without reservation, all worldwide ownership rights, title, and interest, including, without limitation, any and all Intellectual Property rights, which PTG may have or acquire, by operation of law or otherwise, in and to any or all of the Clerk Materials, along with the good will of the business appurtenant to the use of any of the same. PTG further hereby irrevocably transfers and assigns to Clerk any and all moral rights PTG may have in such Clerk Materials, and hereby forever waives and agrees never to assert any moral rights it may have therein, even after termination of the license granted pursuant to this Agreement. PTG shall, at the request of Clerk, execute any and all documentation necessary to formally transfer such rights to Clerk.

(c) *Protection of PTG Intellectual Property.* PTG shall have the right, but not the obligation, to file and prosecute all rights in and to any or all of its Intellectual Property, which is subject to this Agreement, in its own name and at its own cost, within and outside of the Territory. Clerk shall cooperate with PTG, at the request of PTG, in providing any information, documentation, or other assistance to PTG reasonably necessary to enable PTG to file and prosecute any and all such rights. Clerk has no right to file or prosecute, in its own name, on behalf of PTG, or otherwise, any right in or to any or all of the Intellectual Property of PTG without the prior consent of PTG in each instance, which consent may be withheld in the sole and absolute discretion of PTG.

(d) *Enforcement of PTG Intellectual Property.* PTG shall have the right to enforce its Intellectual Property throughout the Territory and elsewhere, in its own name, against any and all third Persons whose activities: (i) violate, infringe, unfairly compete with, or are likely to violate, infringe, or unfairly compete with any or all of the Software licensed to Clerk hereunder; or, (ii) cause, or are likely to cause, harm, injury, or damage to, Clerk or PTG. Clerk shall promptly notify PTG in writing of any such third Person violation, infringement, or unfair competition of which Clerk acquires knowledge. PTG shall have the right to refrain from taking any such action, if, in the determination of PTG, such requested action cannot be undertaken without unreasonable expense or risk to PTG and/or to the Software, the Documentation, and/or any other Intellectual Property right of PTG. Clerk shall not have the right to undertake any such action, whether at its own expense, in its own name, on behalf of PTG, or otherwise, without, in each instance, the prior written consent of PTG, which consent may be withheld in the sole and absolute discretion of PTG.

(e) *Protection of Clerk Materials.* PTG warrants that it shall protect all Clerk Materials, including its data, in converting to the Software and in any process related to the functioning of the Software performed by PTG, including but not limited to, Enhancements, the correction of Errors, any maintenance performed under the Warranty Period or during the Maintenance Agreement. In the event that any damage occurs to Clerk's data, PTG shall be responsible for promptly retrieving and/or repairing the data.



**(14) License Termination.** PTG may terminate Clerk's license as granted herein if Clerk commits any Material Breach of the terms and conditions of this Agreement and fails to cure said breach within thirty (30) Business days of receiving written notice from PTG. Clerk may terminate Clerk's license as granted herein if PTG commits any Material Breach of the terms and conditions of this Agreement and PTG fails to cure said breach within thirty (30) Business days of receiving written notice from Clerk. Upon termination for Material Breach and lack of cure, Clerk shall, within ninety (90) Business days therefrom, discontinue all use of the Software and shall return to PTG all copies of the Software, all related Documentation, and all other materials required to be returned pursuant to this Agreement. In such event, Clerk shall also permanently delete all copies of all such items residing in Clerk's on or off line computer memory. PTG shall be entitled to enter into any location controlled by Clerk to repossess and remove all Software, Documentation, and any other Confidential Information of PTG, and/or to deactivate any Software. Upon PTG's written request, Clerk shall, within five (5) days following the discontinuance of Clerk's use of the license hereunder, certify in writing to PTG to the best of his or her actual knowledge, by an executive officer of Clerk, that all copies of the Software and all Documentation, and all other materials required to be returned to PTG hereunder or to be deleted have been returned or deleted as appropriate.

(a) *Termination at Will.* During the Initial Term or any Subsequent Term of this Agreement, neither Party may terminate the term of this Agreement for reasons other than those expressly provided for in this Agreement; *provided, however*, that either Party hereto may terminate the term of this Agreement at any time as of and effective at the conclusion of the Initial Term or any Subsequent Term upon notice to the other Party given not later than ninety (90) days prior to the conclusion of the then current term of this Agreement.

**(15) Excusable Delays.** Notwithstanding any other term or provision of this Agreement, PTG and Clerk shall not be liable for delays in delivery, failure to deliver, or otherwise to perform any obligation hereunder when such delay or failure arises from the following causes beyond the reasonable control of PTG and Clerk: causes as acts of God or public enemies, labor disputes, supplier or material shortages, embargoes, rationing, acts of local, state or national governments or public agencies, utility or communication failures, fire, flood, storms, earthquake, settling of walls or foundations, epidemics, riots, terrorism, civil commotion, strikes, or war.

**(16) Source Code.** County has specifically requested a confidential copy of the Source Code for the Software for its sole internal use within the Territory and the Field of Use in connection with making potential future Maintenance Modifications to the Software within thirty (30) days of: (i) Filing of Bankruptcy by PTG or; (ii) Notice by PTG to County that Software will no longer be supported.

(a) *Delivery of Source Code.* Notwithstanding any contrary provision in the License Agreement, upon the receipt by PTG of all payments from County specified in §5(a) of the License Agreement, PTG shall deliver to County one (1) copy of the Source Code for all Software licensed to County pursuant to the terms of the License Agreement.

(b) *Custody and Replacement of the Source Code.* All Source Code delivered to County pursuant to the terms of this Addendum shall be deemed to be Confidential Material of PTG, with County as the Recipient thereof and PTG as its Deliverer. County shall not in any way or at any time reproduce, copy, or duplicate any such Source Code or any portion thereof. In the event of any destruction, damage, or corruption of such Source Code or any portion thereof, County shall notify PTG of the same and PTG

shall redeliver a copy of the Source Code. In addition, in the event of any substantial modification of the applicable Source Code as a result of Enhancements to the Software, PTG shall, replace the outdated version of the Source Code with the current version.

(c) *Use of Source Code by County.* County agrees and confirms to PTG that County shall:

(i) have only a non-exclusive perpetual license and right to use the Source Code delivered by PTG hereunder solely: (i) in the Territory and in the Field of Use; and (ii) for the internal support and maintenance of the Software.

(ii) maintain such Source Code as strictly confidential and will not disclose or make available the same to any Person except as strictly necessary in furtherance of its express rights pursuant to this Agreement and with adequate safeguards against misuse or unauthorized dissemination. The Source Code delivered hereunder to County shall not be reproduced, duplicated, or otherwise used by County except as expressly provided herein, and shall not be removed by County from the Territory except for delivery to PTG or pursuant to the express written instructions of an executive officer of PTG.

(d) *Unauthorized Change to Software by County.* In the event the Source Code delivered by PTG to County hereunder is used in any manner to effect changes in the Software in violation of the terms of this Agreement, PTG shall be, immediately thereupon, relieved of any continuing obligation to provide ongoing maintenance services to County pursuant to the terms of the Maintenance Agreement, the license granted to County in the License Agreement shall be immediately terminated, and all amounts which would have subsequently become due and payable by County to PTG pursuant to the terms of each of the Base Agreements shall thereupon become immediately due and payable to PTG.

(e) *Assignability by County.* The rights and duties of County created hereunder shall not be assignable or delegable by County without the prior written consent of PTG.

#### **(17) *Miscellaneous Provisions.***

(a) *Materiality of Breach.* Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and, therefore, is a material term hereof.

(c) *Binding upon Successors and Assigns.* Subject to, and unless otherwise provided in, this Agreement, each and all of the covenants, terms, and provisions contained herein shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

(d) *Severability.* If any provision of this Agreement shall be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event no such limiting construction is possible, such invalid or unenforceable provision shall be deemed severed from this Agreement without affecting the validity of any other term or provision hereof.

(e) *Entire Agreement.* This Agreement, together with the License Summary and the Software Maintenance Agreement, constitute the entire understanding and agreement of the Parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, inducements, and conditions, express or implied, written or oral, between the Parties with respect thereto. The express terms hereof control and supersede any course of performance or usage of trade inconsistent with any of the terms hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original as against any Party whose signature appears thereon, and all of which together shall constitute one and the same agreement.

(f) *Amendment and Waivers.* Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the Party to be bound thereby. The waiver by a Party of any breach hereof or default hereunder shall not be deemed to constitute a waiver of any other breach or default. The failure of any Party to enforce any provision hereof shall not be construed as or constitute a waiver of the right of such Party thereafter to enforce such provision.

(g) *Notices.* Whenever any Party hereto desires or is required to give any notice, demand, consent, approval, satisfaction, statement, or request with respect to this Agreement, each such communication shall be in writing and shall be effective only if it is delivered by personal service (which shall include delivery by delivery service, over-night delivery service, telecopy, or telefax) or mailed, by United States certified mail, postage prepaid, and addressed to each Party at its notice address provided on the cover page of this Agreement. Such communications, when personally delivered, shall be effective upon receipt, but, if sent by certified mail in the manner set forth herein, shall be effective three (3) days following deposit in the United States mail. Any Party may change its address for such communications to another address in the United States of America by giving notice thereof to the other Party in accordance with the requirements of this section.

(h) *Construction of Agreement.* This Agreement has been negotiated by the respective Parties hereto, and the language hereof shall not be construed for or against any Party. The titles and headings herein are for reference purposes only, and shall not in any manner limit the construction of this Agreement which shall be considered as a whole.

(i) *Further Assurances; Cooperation.* Each Party hereto shall execute such further instruments, documents, and agreements, and shall provide such further written assurances, as may be reasonably requested by the other Party to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Agreement.

(k) *Independent Contractor Status.* Clerk hereby retains PTG as an independent contractor to Clerk, and PTG hereby accepts such appointment. It is the intention of the Parties hereto that their relationship, as created by this Agreement, is that of an independent contractor and contractee, and this Agreement shall not create any other relationship, whether partnership, joint venture, agency, or otherwise, between the respective Parties hereto. Neither Party shall hereby acquire any authority, whether actual, express, implied, or apparent, to bind or otherwise obligate the other Party in any capacity.

(l) *Absence of Third Party Beneficiary Rights.* No provision of this Agreement is intended or shall be construed to provide or create any third party beneficiary right or any other right of any kind in any Person other than the Parties and their proper successors and assigns, and all terms and provisions hereof shall be personal solely between the Parties to this Agreement and such proper successors and assigns.

(m) *Effect of License Termination.* No termination of the Software license granted in this Agreement shall terminate the continuing operation or effect of the indemnification or confidentiality provisions of this Agreement, or shall deny to any Party hereto the right to enforce any of such provisions of this Agreement, whether such enforcement occurs prior to or following any such termination.

(n) *Applicable Laws.* PTG shall be responsible for complying with all applicable federal, state, and local laws, regulations, policies, and requirements in performing its duties and obligations under this Agreement.

(o) *Insurance Requirements.* PTG shall comply with the following requirements with respect to insurance:

PTG shall not commence services until original certificates of insurance evidencing all required insurance has been submitted to and approved by Clerk. PTG shall maintain, at its own expense, and provide satisfactory evidence of the required insurance, throughout the term of this Agreement. All required insurance coverage must be underwritten by insurers allowed to do business in the State of Delaware and acceptable to Clerk. The insurers must have a Best's Financial Strength Rating of "A -" or better, and a financial size category of "Class VII" or higher, unless Clerk grants specific written approval for an exception. Any deductibles or retentions of \$5,000 or greater are subject to Clerk's written approval. Any deductible or retention amounts elected by PTG or imposed by PTG's insurer(s) shall be the sole responsibility of PTG.

Required Insurance means:

1. Employee theft insurance including client coverage, insuring all employees providing services to Clerk, with minimum limits of \$2,000,000 each occurrence.
2. Professional liability (or errors or omissions liability) insurance that insures against claims alleging acts, errors and omissions arising out of or in connection with the services provided to Clerk, with minimum limits of \$2,000,000 per occurrence; and \$2,000,000 annual aggregate.
3. If PTG hosted system is proposed and coverage is not specifically included in the professional liability (or errors or omissions liability) insurance, cyber and privacy liability insurance that covers claims arising from breaches in network security and or disclosure of personally identifiable non-public information with minimum limits of \$2,000,000 each wrongful act and policy limit is required. If cyber and privacy liability is included in the professional liability (or errors or omissions liability), certificates of insurance provided must confirm it is included.
4. 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 of \$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.
5. Commercial general liability insurance that insures against bodily injury, property damage, personal and advertising injury claims arising out of or in connection with the services provided to Clerk. The minimum limits of liability for this insurance are \$1,000,000 combined single limit - each occurrence, \$1,000,000 personal and advertising injury, \$2,000,000 combined single limit - general aggregate per project; and \$2,000,000 combined single limit - products/completed operations aggregate.

Clerk and its elected or appointed officials, officers, directors, employees, agents and consultants shall be additional insureds on primary basis with respect to liability arising out of or in connection with the services provided to Clerk.

If any liability insurance purchased by PTG is issued on a "claims made" basis, PTG must either:

1. Agree to provide certificates of insurance to Clerk evidencing the above coverages for a period of two years after termination of services. The certificates shall evidence a retroactive date no later than the date services commence; or
2. Purchase an extended (minimum two years) reporting period endorsement for each such "claims made" policy in force when services are terminated and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. The certificate or copy of the endorsement shall evidence a retroactive date no later than the date services commence.

PTG will be responsible for loss of or damage to PTG's property, equipment and materials and shall waive all rights against Clerk and its elected or appointed officials, officers, directors, employees, agents and consultants for loss of or damage to PTG's property, equipment and materials. Any property insurance policies shall permit waivers of subrogation by endorsement or otherwise.

(p) Indemnification. To the extent permitted by law, PTG shall indemnify, hold harmless, and defend Clerk, its elected and appointed officials, officers, employees, and agents from and against any and all claims, damages, injuries, and expenses (including related attorneys' fees and other defense costs) arising out of or resulting from PTG's actions or inactions which are related to its role as set forth in this Agreement and its duties with respect hereto, whether occurring in Sussex County, DE or elsewhere, including, but not limited to, claims, damages, losses, injuries or expenses attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible and intangible property, including the loss of use resulting there from, asserted by any person, persons or artificial entity, including, but not limited to PTG's employees, servants, representatives, guests, invitees, contractors, licensees, and visitors regardless of whether or not such claims, damages, injuries and expenses are caused in part by a party indemnified hereunder. For purposes of clarification, the following items and activities are not considered "related to PTG's role as set forth in this Agreement:" County purchased hardware, County back up and disaster recovery processes or lack thereof, misuse of Software by Clerk's employee or contractor other than PTG, unauthorized maintenance of Software, any breach of security, internal or external hacks, that leads to data loss, ransomware or other failure of the Software or other County Systems, and County infrastructure including but not limited to data connection, network, power supply.

(q) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original as against any Party whose signature appears thereon, and all of which together shall constitute one and the same agreement. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.

(r) Governing Law. This Agreement shall be governed by, construed and enforced under the laws of the State of Delaware, and venue lying in the State of Delaware.

IN WITNESS WHEREOF, the Parties have hereunto set their hands, by their duly authorized representatives.

Signed in the presence of:

\_\_\_\_\_  
\_\_\_\_\_

Name: (please print)

\_\_\_\_\_  
\_\_\_\_\_

Name: (please print)

Signed in the presence of:

\_\_\_\_\_  
\_\_\_\_\_

Name: (please print)

\_\_\_\_\_  
\_\_\_\_\_

Name: (please print)

**SUSSEX COUNTY:**

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

Name: Michael H. Vincent

Title: President, Sussex County Council

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

**PIONEER TECHNOLOGY GROUP, LLC**

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

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

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

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

**11.8.17**

**EXHIBIT 1**



**SOFTWARE LICENSE SUMMARY**

between

**PIONEER TECHNOLOGY GROUP, LLC**

**("PTG")**

having its principal place of business at:

1100 Central Park Drive, Suite 100

Sanford, Florida 32771

Facsimile: 407-321-7971

and

**Sussex County**

**("Clerk")**

having its principal address at:

2 The Circle  
Georgetown, DE 19947

1. **TERM and SOFTWARE DESCRIPTION.**

**A)** PTG has transferred a perpetual license for the Software to Clerk, which may be terminated in Clerk's discretion as set forth in the Software License Agreement. The term of this Agreement shall coincide with the term of the Software License Agreement.

2. **Software is described as the Landmark recording system, which meets all of the functional specifications attached hereto as Exhibit A.**

- **Territory** – Sussex County, DE
- **Field of Use** – Administration and Management of the Official Records for Sussex County, DE and online access

3. **SCOPE OF SERVICES:**

**Pioneer Technology Group Scope of Services**

- PTG will meet with Clerk staff to review the project plan and solidify timelines and provide a complete training, installation, and data conversion ("Plan"). A calendar will be developed and communicated to all members of the installation team.
- PTG shall define the communications vehicle(s) to be used by and between Clerk and PTG. The Plan shall define the format of and frequency for Status Reporting, Project Change Management Plan, and Conference Calls.
- PTG will assign a Project Manager and an Assistant Project Manager who will assist with timely execution of the Plan and be responsible for the communication of their respective sides' issues in a prompt fashion. Project managers will be available on a daily basis for phone conversations and will make themselves available weekly for phone conference meetings.
- PTG agrees that the only third party software required for the use of its Software will be Microsoft Windows operating system and SQL servers, which Clerk will obtain outside of this Agreement.
- PTG will provide training on-site at the Clerk at the rate of \$1,200.00 per day per trainer. This rate includes all costs related to travel, including but not limited to air and ground transportation, meals, lodging, and incidentals. . Training days are included in the Onsite Support days under section 5, Pricing.
- All relevant history will be loaded and converted to the System tables. Current data will be converted just before the final implementation date. Data conversion will be performed at a rate of \$175.00 per hour.
- Network connections and functionality will be tested. All workstations and peripherals will be fully tested with a dry run to insure a smooth start with the new system.



- PTG will promptly remedy any errors or malfunctions in the operation of the Software that are apparent after PTG's and Clerk's testing has been completed.
- PTG will provide Support and Maintenance service that includes diagnostic help, access to Pioneer Technology Group's help desk, upgrades to system software, and membership in the User Group in accordance with the signed Software Maintenance Agreement.
- PTG's Scope of Services shall be completed in full no later than five (5) months from the date Sussex County provides PTG with the Source Data to be converted.

### **Clerk Scope of Services**

- Clerk will assign a Project Manager who will cooperate in PTG's timely execution of the Plan and be responsible for the communication of their respective sides' issues in a reasonably prompt fashion. Project managers should be available for phone conversations on a reasonable basis.
- Clerk personnel, with the assistance of PTG, will conduct on-site testing of the system. This will ensure that all tables are properly configured and that all reports and forms are functioning as designed. Upon completion of final testing and acceptance, Clerk will confirm the final implementation date as set forth in the Software License Agreement.
- Clerk will provide network connections and test functionality. All workstations and peripherals will be fully tested with a dry run to insure a smooth start with the new system.
- Clerk shall purchase necessary servers, workstations, peripherals, network hardware and operating system software.
- Clerk shall define the System and Network Topology which outlines each server in the environment, its configuration and the network configurations to host the system.
- Clerk shall cooperate with PTG in the implementation of the system into a live environment.
- In conjunction with PTG's support, Clerk shall organize training for staff and departments to ensure all pertinent employees are being trained.

## **4. DELIVERABLES:**

### **Pioneer Technology Group Deliverables**

- Pioneer Technology Group will deliver the Landmark System to the Clerk via ftp to be installed on the server.
- PTG will provide full user documentation including logon and logoff procedures, error messages and their meanings, screen prints and instructions on how to use each screen specifically focused toward non-technical users.

- PTG will provide technical documentation in an Administrator's Guide; including but not limited to an explanation of workflow diagrams, table layout, table and column definitions, entity relationships, security administration, table maintenance, start-up and shut down procedures, performance monitoring and tuning procedures, technical and network specifications, reorganization procedures and schedules, application deployment instructions and system component list.
- PTG shall provide all user documentation and technical documentation in hard copy and Word format to allow Clerk to create additional training documents and/or user manuals for Clerk's personnel as Clerk sees fit.
- PTG will conduct its Final Test and Acceptance on the System in the Test environment in accordance with the provided Criteria. Clerk acceptance will be dependent on all software components, including third party software components, listed in the software component list having been delivered, installed, and are functioning as designed.

### **Clerk Deliverables**

- Clerk shall provide all relevant data and images exports from the current system as requested by PTG.
- Clerk shall install and setup all necessary servers, workstations, peripherals, network hardware and operating system software. Network connections and functionality will be tested. All workstations and peripherals will be fully tested with a dry run to insure a smooth start with the new system.
- Clerk will conduct its Final Test and Acceptance on the System in the Test environment in accordance with the provided Criteria.

### Third Party Software

PTG acknowledges and agrees that the only third party software needed to be acquired by Clerk are the following: 1) Microsoft Windows operating system; and 2) SQL Server. Clerk shall obtain this third party software outside of this Agreement and at Clerk's own expense.

## 5. Pricing

The pricing below for “Pioneer Services” that is dependent on a time and material basis shall be not exceed the limits in total listed below as amounts, unless Clerk otherwise agrees in writing. Work that is undertaken without the express written consent of Clerk beyond those amounts shall not be reimbursed by Clerk, unless otherwise agreed by the parties.

Landmark Software	
Description	Amount
• Landmark Perpetual License	
<b>Subtotal PTG License</b>	<b>\$65,000.00</b>
<b>Total Licenses</b>	<b>\$65,000.00</b>

Pioneer Services			
Description	Hours	Rate	Amount
<b>Project Management</b>			
<b>Project Management</b>			<b>\$30,000.00</b>
<b>Onsite Support</b>			
• Onsite Support and Training	9	\$1,200	\$10,800
<b>Onsite Support</b>		<b>9</b>	<b>\$1,200</b>
<b>System Customizations</b>			
• System Customizations	N/A	\$175	
<b>System Customizations</b>		<b>N/A</b>	<b>\$0</b>
<b>*Travel Costs (Included in Onsite Support)</b>			
		<b>Included</b>	<b>Included</b>
<b>Data &amp; Image Conversion</b>			
• Primary Database	230	\$175	\$40,250
<b>Data &amp; Image Conversion</b>		<b>230</b>	<b>\$40,250</b>

<b>Reports &amp; Forms</b>	<b>Hours</b>		
• 20 Standard Reports & Forms Setup	100	\$100	\$10,000
• Custom Reports & Forms (5 hours per report/form)	TBD	\$100	TBD
<b>Reports and Forms</b>	100	\$100	<b>\$10,000</b>
			<b>Total Services \$91,050.00</b>

<b>Landmark Maintenance/Support</b>		
<b>Description</b>		<b>Amount</b>
<b>Official Records Maintenance/Support</b>		
	<b>Maintenance Cost Year 1</b>	<b>\$12,500</b>
	<b>Annual Maintenance Cost beyond Year 1</b>	<b>\$24,000</b>
Includes:		
	Version Upgrades	
	Toll Free Help Desk Assistance	
	User Group Membership	
<b>Total Recurring Maintenance</b>		<b>\$24,000.00</b>

\_\_\_\_\_  
PTG Initials

\_\_\_\_\_  
Clerk Initials

**11.8.17**

Exhibit 2



**SOFTWARE MAINTENANCE AGREEMENT**

between

**PIONEER TECHNOLOGY GROUP, LLC.**

**(“PTG”)**

having its principal place of business at:

1100 Central Park Drive, Suite 100

Sanford, Florida 32779

Fax No.: 407-321-7434

Tax Id. No. 20-3750929

and

**Sussex County**

**(“Clerk”)**

having its principal address at:

2 The Circle

Georgetown, DE 19947

**(1) Definitions and Identifications.** For all purposes of this Agreement, unless the context specifically indicates otherwise, and in addition to other terms defined only within the internal text of this Agreement or incorporated by reference into this Agreement, the terms defined in this section shall be applicable. Unless otherwise specifically provided herein, all defined terms used in the Software License Agreement shall have the same meaning assigned thereto when used in this Agreement.

(a) *Basic Maintenance Fees* - the fees for Covered Maintenance Services specified in §7 of this Agreement.

(b) *Basic Maintenance Period* - the basic maintenance period specified in §6 of this Agreement.

(c) *Covered Maintenance Services* - includes all Conformity Maintenance Services and all Upgrade Maintenance Services.

(d) *Conformity Maintenance Services* - services necessary to insure that the Software operates in conformity with all Functional Specifications.

(e) *Contract Year* - each annual one year period during the term of this Agreement, with the first such period beginning on the Maintenance Agreement Effective Date, and ending on the date immediately preceding the first annual anniversary date of the Maintenance Agreement Effective Date, and each equivalent one year period succeeding the first Contract Year.

(f) *Critical Defect* - an Error in the Software or Documentation which renders the Software unable to perform a Functional Specification.

(g) *Non-Critical Defect* - any defect in the Software or Documentation other than a Critical Defect.

(h) *Online Support* - the provision of diagnostic advice and assistance concerning the use and operation of the Software via a virtual private network or similar method.

(i) *Telephone Support* - the provision of general information and diagnostic advice and assistance concerning the use and operation of the Software via telephone.

(j) *Upgrade Maintenance Services* - all Enhancements developed by PTG for the Software and related Documentation during the term of this Agreement.

**(2) Agreement.** This agreement ("Agreement") covers the maintenance of Software licensed or delivered by PTG for the benefit of Clerk pursuant to that certain concurrently effective Software License

Agreement (the "Software License Agreement") between the Parties. THIS AGREEMENT PROVIDES MAINTENANCE SERVICES ONLY WITH RESPECT TO SOFTWARE, INCLUDING THIRD PARTY SOFTWARE, SUPPLIED BY PTG TO CLERK PURSUANT TO THE TERMS OF THE SOFTWARE LICENSE AGREEMENT. THIS AGREEMENT DOES NOT PROVIDE FOR MAINTENANCE SERVICES FOR ANY THIRD PARTY SOFTWARE NOT SUPPLIED BY PTG TO CLERK OR FOR ANY HARDWARE.

(3) **Initial Maintenance Term.** The initial term ("Initial Term") of this Agreement for all modules, shall begin ninety (90) days following the Software Acceptance Date ("Maintenance Agreement Effective Date") for Landmark. Unless sooner terminated in accordance with §15 hereof, or unless extended in accordance with §4 hereof, the term of this Agreement shall remain in effect for a period ending on the date immediately prior to the second (2nd) annual anniversary date of the Maintenance Agreement Effective Date.

(4) **Subsequent Term.** Upon expiration of the Initial Term, this Agreement shall be automatically extended for successive one (1) year periods (each such one (1) year period referred to as a "Subsequent Term, unless the term of this Agreement is terminated during any such Subsequent Term in accordance with §15 of this Agreement.

(5) **Software.** This Agreement covers all Software as described in the initial License Summary incorporated into the Software License Agreement as *Exhibit 1* attached thereto. Unless Clerk otherwise notifies PTG, all subsequently ordered New Product installed by PTG shall be automatically added to this Agreement immediately upon the expiration of the Warranty Period for such subsequently ordered New Product (prorated for the applicable Contract Year).

(6) **Basic Maintenance Period.** The Basic Maintenance Period commences on Monday and continues through Friday of each week (8:30 a.m. to 5:00 p.m., Clerk Local Time), except on the following recognized holidays ("Holidays"): New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(7) **Basic Maintenance Fees.** Basic Maintenance Fees during the Initial Term are set forth in the License Summary, *Exhibit 1* to the Software License Agreement. Basic Maintenance Fees become effective upon the expiration of the Warranty Period. Basic Maintenance Fees for subsequently ordered New Products shall be the PTG Basic Maintenance Fees in effect and applicable thereto at the time of delivery. The rate of PTG's Basic Maintenance Fees for all Software originally included in the initial License Summary will not be increased during the Initial Term of this Agreement. For each Subsequent Term, the rate of Basic Maintenance Fees may be adjusted by PTG effective as of the commencement date of each Subsequent Term up to a maximum of three percent (3%).

(8) **Payment of Basic Maintenance Fees.**

(a) **Annual Invoices.** Basic Maintenance Fees shall be invoiced and paid annually in advance. Undisputed invoices for annual Basic Maintenance Fees shall be due and payable within thirty (30) days following receipt of invoice by Clerk.

(b) **Subsequently Ordered New Products.** Basic Maintenance Fees for subsequently ordered New Products shall be negotiated at the time of purchase and paid annually in advance but pro-rated for the

applicable Contract Year of this Agreement based upon the conclusion of the Warranty Period for such subsequently ordered New Products

(c) *Failure of Payment.* In the event payment is not made as specified in this Agreement, Clerk shall pay interest at the rate of one and one-half percent (1.5%) per month (or the highest applicable legal rate, whichever is lower) on the outstanding overdue balance for each month or part thereof that such sum is overdue; *provided, however*, that if Clerk is a governmental agency or authority subject to a “Prompt Payment” or similar statutory requirement for the transaction contemplated in this Agreement, such statutory requirement shall control to the extent the same is inconsistent with the requirements of this §8(c).

**(9) Covered Maintenance.**

(a) *General.* PTG will provide to Clerk all required Covered Maintenance Services. All Conformity Maintenance Services and all Online Support and Telephone Support will be performed by PTG during the Basic Maintenance Period. Covered Maintenance Services do not include the costs of accessories and expendable supplies necessary to operate the Software, such as magnetic tape cards, optical disks, disk packs, paper, and similar items, and such items are not provided free of charge by PTG hereunder.

(b) *Upgrade Maintenance Services.* As a part of this Agreement, Clerk shall also have the right to receive from PTG, without additional service charge, all Upgrade Maintenance Services. Upgrade Maintenance Services include the right to receive, during the applicable Software Warranty Period and during the term of this Agreement (except as otherwise provided in §9(c) hereof), all Enhancements to the Software, including all related update releases and associated Documentation. PTG shall notify Clerk in writing when any Enhancements to the Software become available. The right to receive Upgrade Maintenance Services does not include installation of any new release for an Enhancement or any training, and also does not include any New Product, all of which are separately chargeable by PTG.

(c) *Support of Outdated Software.* If PTG’s conditions of this subsection are met, support by PTG of previous versions of Software will cease ninety (90) days following the availability of a new Enhancement release. Clerk shall be responsible for installing Enhancements, provided that PTG provides sufficient instruction and any necessary items and support for installing the Enhancements and Clerk is given reasonable time do so. Failure of Clerk to install new Software Enhancement releases or any other correction or improvement provided by PTG shall relieve PTG of responsibility for the improper operation or any malfunction of the Software as modified by any subsequent correction or improvement, but in no such event shall Clerk be relieved of any of its payment obligations to PTG hereunder, and PTG shall be released thereafter from its obligation to support the Software as provided herein. After failure to install for in excess of ninety (90) days commencing on the date that PTG has provided all necessary items and support, in order for Clerk to return to current Software release level, Clerk must obtain a Software audit at the then current PTG rates. Following any such reinstatement to current release level, PTG will reinstate Covered Maintenance Services hereunder.

(d) *Online Support and Telephone.* Online Support and Telephone Support includes: (i) remote diagnostics; (ii) service desk and dispatch; (iii) question and answer consulting; and, (iv) non-chargeable user error remedies. A toll-free maintenance telephone number is provided for Telephone Support from PTG's corporate offices. Remote diagnostics equipment is required at a minimum of one Clerk location for remote support, which equipment is to be obtained by Clerk at its sole expense.



(e) *Exclusions.* Covered Maintenance Services do not include any of the following: (i) maintenance outside the agreed upon Basic Maintenance Period; (ii) maintenance required by: (a) Incidental, special or consequential damages that may be the result of Clerk-purchased hardware, Clerk back up and disaster recovery processes or lack thereof, intentional misuse of Software by Clerk employees or contractor other than PTG, breaches of security that leads to data loss, ransomware, or other failure of the software or other Clerk systems, Clerk's infrastructure including but not limited to data connection, network or power supply. (b) Intentional operator error or intentional improper operation by Clerk; (c) causes beyond the reasonable control of PTG, including, without limitation, any matter described in §14 (Excusable Delays) of this Agreement; (d) any New Product.

**(10) *Response Times.*** PTG will respond to notice from the Clerk of a need for Covered Maintenance Services in accordance with the schedule in attached Exhibit 4. Any such notice from Clerk shall, to the extent possible, identify all Critical Defects, and, in connection with the provision of any Conformity Maintenance Service, Online Support, and/or Telephone Support, Clerk shall, provide its reasonable support and cooperation with PTG's efforts at resolution.

**(11) *Billable Call Maintenance.*** Any maintenance service or related service or training other than Covered Maintenance Services will be charged at PTG's then current billable call maintenance rates in effect. Such rates apply to time spent performing maintenance, including travel time. The minimum charge for billable call maintenance is one-half of one hour (1/2 hour). Should billable call maintenance services require travel to the Clerk's site, Clerk will also be invoiced for actual expenses of travel, including, without limitation, as applicable, mileage, air fare (coach), accommodations, and meal allowance; or Pioneer will provide a daily rate that includes travel. *provided, however,* that travel expenses shall be limited by Clerk's travel expense policy or directives as set forth in writing and as may be amended from time to time. All undisputed charges for billable call maintenance shall be due and payable within thirty (30) days following invoice by PTG. A copy of PTG's current call maintenance rates is attached hereto as Exhibit 5 and is incorporated herein by reference. The call maintenance rates attached on Exhibit 5 shall be binding on PTG for the Initial Maintenance Term. PTG shall thereafter provide Clerk with its updated call maintenance rates as the same may be amended from time to time, and such updated rates shall be subject to Clerk's approval in writing before becoming effective.

**(12) *Taxes.*** All Software maintenance fees and all other charges payable hereunder are exclusive of federal, state, and local Taxes. PTG shall pay or reimburse Clerk for all such applicable Taxes.

**(13) *LIMITATION OF LIABILITY.*** IN NO EVENT SHALL PTG BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT MAY BE THE RESULT OF CLERK- PURCHASED HARDWARE, CLERK BACK UP AND DISASTER RECOVERY PROCESSES OR LACK THEREOF, MISUSE OF SOFTWARE BY CLERK EMPLOYEES OR CONTRACTOR OTHER THAN PTG, UNAUTHORIZED MAINTENANCE OF SOFTWARE, ANY INTERNAL OR EXTERNAL HACKS OR OTHER BREACHES OF SECURITY THAT LEADS TO DATA LOSS, RANSOMWARE, OR OTHER FAILURE OF THE SOFTWARE OR

OTHER CLERK SYSTEMS, CLERK'S INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO DATA CONNECTION, NETWORK OR POWER SUPPLY.

IN NO EVENT SHALL THE LIABILITY HEREUNDER WITH RESPECT TO THIS AGREEMENT IN THE AGGREGATE FOR ALL CLAIMS EXCEED THE AMOUNT OF THE CLAIMS COVERED BY INSURANCE REQUIRED BY THIS AGREEMENT OR IF SUCH CLAIM(S) ARE NOT COVERED BY THE INSURANCE, NO MORE THAN \$300,000.00 IN THE AGGREGATE DURING ANY ONE YEAR PERIOD FOR ALL CLAIMS NOT COVERED BY INSURANCE. THE LIMITATIONS OF PTG'S LIABILITY HEREUNDER SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE. CLERK UNDERSTANDS THAT THE FEES CHARGED HEREUNDER BY PTG SPECIFICALLY REFLECT THE ALLOCATION OF RISK AND EXCLUSION OF DAMAGES PROVIDED FOR IN THIS §13.

**(14) *Excusable Delays.*** Notwithstanding any other term or provision hereof, PTG and the Clerk shall not be liable for delays in delivery, failure to deliver, or otherwise to perform any obligation hereunder when such delay or failure arises from the following causes which are beyond the reasonable control of PTG or the Clerk: acts of God or public enemies, labor disputes, supplier or material shortages, embargoes, rationing, acts of local, state, or national governments or public agencies, utility or communication failures, fire, flood, storms, earthquake, settling of walls or foundations, epidemics, riots, terrorism, civil commotion, strikes, or war.

**(15) *Termination.***

(a) *Termination at Will.* During the Initial Term or any Subsequent Term of this Agreement, neither Party may terminate the term of this Agreement for reasons other than those expressly provided for in this Agreement; *provided, however,* that either Party hereto may terminate the term of this Agreement at any time as of and effective at the conclusion of the Initial Term or any Subsequent Term upon notice to the other Party given not later than ninety (90) days prior to the conclusion of the then current term of this Agreement.

(b) *Termination by PTG for Non-Payment or Upon Termination of License.* PTG may terminate the term of this Agreement and its obligation to provide Covered Maintenance Services or any other service hereunder upon notice to Clerk in the event: (i) Clerk fails to make any payment when due to PTG after thirty (30) days' notice of such failure to pay from PTG; or, (ii) in the event of the termination of Clerk's license of Software.

(c) *Termination by Clerk.* Clerk may terminate the term of this Agreement upon notice to PTG in the event Clerk's license of the Software is terminated pursuant to §12(b) of the Software License Agreement.

(e) *General Effect of Terminations.* No termination of the term of this Agreement shall terminate any right or remedy available to a Party as a consequence of any breach of this Agreement by the other Party. In the event that this Agreement is terminated for any reason, the Software License Agreement may also be terminated, at the option of either Party.

**(16) *Miscellaneous Provisions.***

(b) *Binding upon Successors and Assigns.* Subject to, and unless otherwise provided in, this Agreement, each and all of the covenants, terms, and provisions contained herein shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

(c) *Severability.* If any provision of this Agreement shall be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event no such limiting construction is possible, such invalid or unenforceable provision shall be deemed severed from this Agreement without affecting the validity of any other term or provision hereof.

(d) *Entire Agreement.* This Agreement, together with the Software License Summary, Software License Agreement and all exhibits hereto, constitute the entire understanding and agreement of the Parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, inducements, and conditions, express or implied, written or oral, between the Parties with respect thereto. The express terms hereof control and supersede any course of performance or usage of trade inconsistent with any of the terms hereof.

(e) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original as against any Party whose signature appears thereon, and all of which together shall constitute one and the same agreement. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.

(f) *Amendment and Waivers.* Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the Party to be bound thereby. The waiver by a Party of any breach hereof or default hereunder shall not be deemed to constitute a waiver of any other breach or default. The failure of any Party to enforce any provision hereof shall not be construed as or constitute a waiver of the right of such Party thereafter to enforce such provision.

(g) *Notices.* Whenever any Party hereto desires or is required to give any notice, demand, consent, approval, satisfaction, statement, or request with respect to this Agreement, each such communication shall be in writing and shall be effective only if it is delivered by personal service (which shall include delivery by delivery service, over-night delivery service, telecopy, or telefax) or mailed, by United States certified mail, postage prepaid, and addressed to each Party at its notice address provided on the cover page of this Agreement. Such communications, when personally delivered, shall be effective upon receipt, but, if sent by certified mail in the manner set forth herein, shall be effective three (3) days following deposit in the United States mail. Any Party may change its address for such communications to another address in the United States of America by giving notice thereof to the other Party in accordance with the requirements of this section.

(h) *Construction of Agreement.* This Agreement has been negotiated by the respective Parties hereto, and the language hereof shall not be construed for or against any Party. The titles and headings herein are for reference purposes only, and shall not in any manner limit the construction of this Agreement which shall be considered as a whole.

(i) *Further Assurances; Cooperation.* Each Party hereto shall execute such further instruments, documents, and agreements, and shall provide such further written assurances, as may be reasonably requested by the other Party to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Agreement.

(j) *Independent Contractor Status.* Clerk hereby retains PTG as an independent contractor to Clerk, and PTG hereby accepts such appointment. It is the intention of the Parties hereto that their relationship, as created by this Agreement, is that of an independent contractor and contractee, and this Agreement shall not create any other relationship, whether partnership, joint venture, agency, or otherwise, between the respective Parties hereto. Neither Party shall hereby acquire any authority, whether actual, express, implied, or apparent, to bind or otherwise obligate the other Party in any capacity.

(k) *Absence of Third Party Beneficiary Rights.* No provision of this Agreement is intended or shall be construed to provide or create any third party beneficiary right or any other right of any kind in any Person other than the Parties and their proper successors and assigns, and all terms and provisions hereof shall be personal solely between the Parties to this Agreement and such proper successors and assigns.

(l) *Effect of License Termination.* No termination of the Software license granted in this Agreement shall terminate the continuing operation or effect of any the indemnification or confidentiality provisions of this Agreement, or shall deny to any Party hereto the right to enforce any of such provisions of this Agreement, whether such enforcement occurs prior to or following any such termination.

(m) *Insurance Requirements.* PTG shall comply with the following requirements with respect to insurance:

PTG shall not commence services until original certificates of insurance evidencing all required insurance has been submitted to and approved by Clerk. PTG shall maintain, at its own expense, and provide satisfactory evidence of the required insurance, throughout the term of this Agreement. All required insurance coverage must be underwritten by insurers allowed to do business in the State of Delaware and acceptable to Clerk. The insurers must have a Best's Financial Strength Rating of "A -" or better, and a financial size category of "Class VII" or higher, unless Clerk grants specific written approval for an exception. Any deductibles or retentions of \$5,000 or greater are subject to Clerk's written approval. Any deductible or retention amounts elected by PTG or imposed by PTG's insurer(s) shall be the sole responsibility of PTG.

Required Insurance means:

1. Employee theft insurance including client coverage, insuring all employees providing services to Clerk, with minimum limits of \$2,000,000 each occurrence.
2. Professional liability (or errors or omissions liability) insurance that insures against claims alleging acts, errors and omissions arising out of or in connection with the services provided to Clerk, with minimum limits of \$2,000,000 per occurrence; and \$2,000,000 annual aggregate.
3. If PTG hosted system is proposed and coverage is not specifically included in the professional liability (or errors or omissions liability) insurance, cyber and privacy liability insurance that

covers claims arising from breaches in network security and or disclosure of personally identifiable non-public information with minimum limits of \$2,000,000 each wrongful act and policy limit is required. If cyber and privacy liability is included in the professional liability (or errors or omissions liability), certificates of insurance provided must confirm it is included.

4. 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 of \$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.

5. Commercial general liability insurance that insures against bodily injury, property damage, personal and advertising injury claims arising out of or in connection with the services provided to Clerk. The minimum limits of liability for this insurance are \$1,000,000 combined single limit - each occurrence, \$1,000,000 personal and advertising injury, \$2,000,000 combined single limit - general aggregate per project; and \$2,000,000 combined single limit - products/completed operations aggregate. Clerk and its elected or appointed officials, officers, directors, employees, agents and consultants shall be additional insureds on primary basis with respect to liability arising out of or in connection with the services provided to Clerk.

If any liability insurance purchased by PTG is issued on a "claims made" basis, PTG must either:

1. Agree to provide certificates of insurance to Clerk evidencing the above coverages for a period of two years after termination of services. The certificates shall evidence a retroactive date no later than the date services commence; or

2. Purchase an extended (minimum two years) reporting period endorsement for each such "claims made" policy in force when services are terminated and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. The certificate or copy of the endorsement shall evidence a retroactive date no later than the date services commence.

PTG will be responsible for loss of or damage to PTG's property, equipment and materials and shall waive all rights against Clerk and its elected or appointed officials, officers, directors, employees, agents and consultants for loss of or damage to PTG's property, equipment and materials. Any property insurance policies shall permit waivers of subrogation by endorsement or otherwise.

(n) *Indemnification.* To the extent permitted by law, PTG shall indemnify, hold harmless, and defend Clerk, its elected and appointed officials, officers, employees, and agents from and against any and all claims, damages, injuries, and expenses (including related attorneys' fees and other defense costs) arising out of or resulting from PTG's actions or inactions which are related to its role as set forth in this Agreement and its duties with respect hereto, whether occurring in Sussex County, DE or elsewhere, including, but not limited to, claims, damages, losses, injuries or expenses attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible and intangible property, including the loss of use resulting there from, asserted by any person, persons or artificial entity, including, but not limited to PTG's employees, servants, representatives, guests, invitees, contractors, licensees, and visitors regardless of whether or not such claims, damages, injuries and expenses are caused in part by a party indemnified

hereunder. For purposes of clarification, the following items and activities are not considered “related to PTG’s role as set forth in this Agreement:” County purchased hardware, County back up and disaster recovery processes or lack thereof, misuse of Software by Clerk’s employee or contractor other than PTG, unauthorized maintenance of Software, any breach of security, internal or external hacks, that leads to data loss, ransomware or other failure of the Software or other County Systems, and County infrastructure including but not limited to data connection, network, power supply.

(p) *Governing Law.* This Agreement shall be governed by, construed and enforced under the laws of the State of Delaware, and venue lying in the State of Delaware.

(q) *Applicable Laws.* PTG shall be responsible for complying with all applicable federal, state, and local laws, regulations, policies, and requirements in performing its duties and obligations under this Agreement.

IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement by their duly authorized representatives.

Signed in the presence of:

\_\_\_\_\_

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

\_\_\_\_\_

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

Signed in the presence of:

\_\_\_\_\_

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

\_\_\_\_\_

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

**SUSSEX COUNTY:**

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

Name: Michael H. Vincent

Title: President, Sussex County Council

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

**PIONEER TECHNOLOGY GROUP, LLC:**

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

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

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

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

## ENGINEERING DEPARTMENT

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



# Sussex County

DELAWARE

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

HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

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

### MEMORANDUM

**TO:** Sussex County Council

**THROUGH:** Todd Lawson  
County Administrator

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

**DATE:** Nov 14, 2017

**RE:** *Aeronautical Obstruction Removal  
Balancing Change Order and Substantial Completion  
Project No. 18-01*

On September 26, 2017, Council awarded Project No. 18-01, Aeronautical Obstruction Removal, to Strobert Tree Services, in the amount of \$65,810.00.

The attached Balancing Change Order increases the contract amount by an additional \$3,631.00. Contract time is unchanged.

Based on field observations during the removal process, two individual trees were added and a tree removal area was increased by 11,276 sq ft. These changes eliminated the need for an additional tree removal contract.

Tree removal began on October 23, 2017 and was considered Substantially Complete on October 27, 2017. Sussex County Engineering Department recommends concurrence in granting Substantial Completion for the project as of October 27, 2017.

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





**SUSSEX COUNTY  
CHANGE ORDER REQUEST**

**A. ADMINISTRATIVE:**

1. Project Name: **AERONAUTICAL OBSTRUCTION REMOVAL**
2. Sussex County Contract No. 18-01
3. Change Order No. 1
4. Date Change Order Initiated - 9/13/17
5.
  - a. Original Contract Sum \$65,810.00
  - b. Net Change by Previous Change Orders \$0.00
  - c. Contract Sum Prior to Change Order \$65,810.00
  - d. Requested Change \$3,631.00
  - e. Net Change (No. of days) -0-
  - f. New Contract Amount \$69,441.00
6. Contact Person: Jim Hickin, A.A.E.  
Telephone No. (302) 855-7774

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

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



- 7. Other (explain below):

**C. BRIEF DESCRIPTION OF CHANGE ORDER:**

This change order balances the final quantities for the project. Additional trees were identified in the field as potential obstructions after tree removal began.

**D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?**

Yes   X   No           

**E. APPROVALS**

1. Strobert Tree Services, Project General Contractor

  
Signature 10/31/17  
Date

  Andy Strobert    
Representative's Name in Block Letters

2. Sussex County Engineer

  
Signature 11/8/17  
Date

3. Sussex County Council President

\_\_\_\_\_  
Signature Date

# Aeronautical Obstruction Removal

Project 18-01

Strobert Tree Services

Bid				Actual					
AREA	QTY	UNIT PRICE	TOTAL PRICE	AREA	QTY	UNIT PRICE	TOTAL PRICE	Diff	
		Part A				Part A		Units	Price
1	50	\$ 100	\$ 5,000	1	57.189	\$ 100	\$ 5,719	7.189	\$ 719
2	49	\$ 100	\$ 4,900	2	42.883	\$ 100	\$ 4,288	-6.117	\$ (612)
3	40	\$ 375	\$ 15,000	3	39.424	\$ 375	\$ 14,784	-0.576	\$ (216)
3a	0	\$ -	\$ -	3a	11.276	\$ 375	\$ 4,229	11.276	\$ 4,229
4	13	\$ 460	\$ 5,980	4	9.252	\$ 460	\$ 4,256	-3.748	\$ (1,724)
5	23	\$ 430	\$ 9,890	5	18.316	\$ 430	\$ 7,876	-4.684	\$ (2,014)
6	14	\$ 360	\$ 5,040	6	20.803	\$ 360	\$ 7,489	6.803	\$ 2,449
Tree	35	\$ 400	\$ 14,000	Tree	38	\$ 400	\$ 15,200	3	\$ 1,200
Wetland Tree	15	\$ 400	\$ 6,000	Wetland Tree	14	\$ 400	\$ 5,600	-1	\$ (400)
			<u>\$ 65,810</u>				<u>\$ 69,441</u>	<u>\$ 3,631</u>	



## **PROPOSED MOTION**

### **DIAMOND ACRES**

### **PROPOSED STREETLIGHTING DISTRICT**

BE IT MOVED THAT SUSSEX COUNTY COUNCIL HAS DETERMINED THE COMMUNITY, KNOWN AS "DIAMOND ACRES", SATISFIES THE CRITERIA OF A SUBURBAN COMMUNITY, AS DEFINED IN CHAPTER 95 OF THE SUSSEX COUNTY STREETLIGHTING CODE, PARAGRAPH 95-1, AND AUTHORIZES THE SUSSEX COUNTY ENGINEERING DEPARTMENT TO CIRCULATE THE ATTACHED PETITION FORM TO DETERMINE IF A STREETLIGHTING DISTRICT MAY BE ESTABLISHED, AS REQUIRED BY CHAPTER 95 OF THE SUSSEX COUNTY STREETLIGHTING CODE.

Presentation to Sussex County Council: Nov.14, 2017

By: Patricia Lowe Deptula  
Director of Special Projects

Approved on: \_\_\_\_\_

**PETITION TO ESTABLISH A STREETLIGHTING DISTRICT  
FOR DIAMOND ACRES  
SUSSEX COUNTY, DELAWARE**

To the Sussex County Council, Delaware:

I, the undersigned **owner of property having an improvement** constructed for residential or business use, situated within the Subdivision known as **Diamond Acres**, on the streets known as **East Diamond Street**, or **West Diamond Street**, and located on **Sussex County Tax Map Number 2-33-6**, **Parcels 48, 49.10, 49.11, 49.12, 49.13, 49.20, 49.21, 49.22, 49.23, 49.24, 49.25, 49.27, 49.28, 49.29, 49.30, 49.31, 49.32, 49.33, 49.34, 49.35, 50, 65, 66**, do hereby petition the Sussex County Council to obtain estimates of the costs and charges for streetlighting, and submit the question of establishing the Streetlighting District to an Election. The proposed Streetlighting District boundary shall be as shown on **Exhibit "A"** attached hereto, showing these parcels of land, and roadways to be located within the Streetlighting District.

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

Signature: \_\_\_\_\_  
*Signature must be notarized by a licensed Notary Public as witnessed below*

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Lot No.: \_\_\_\_\_ No. of Improvements: \_\_\_\_\_  
*If known*

Sussex County Tax Map ID #: 2-33-6 - Parcel \_\_\_\_\_

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**STATE OF DELAWARE**

**COUNTY OF SUSSEX**




**BE IT REMEMBERED**, That on this \_\_\_\_ day of \_\_\_\_\_, A.D., 2017, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, \_\_\_\_\_, party to this indenture, known to me personally to be such, he or she acknowledged this indenture to be his or her act and deed, and his or her signature is in his or her own proper handwriting.

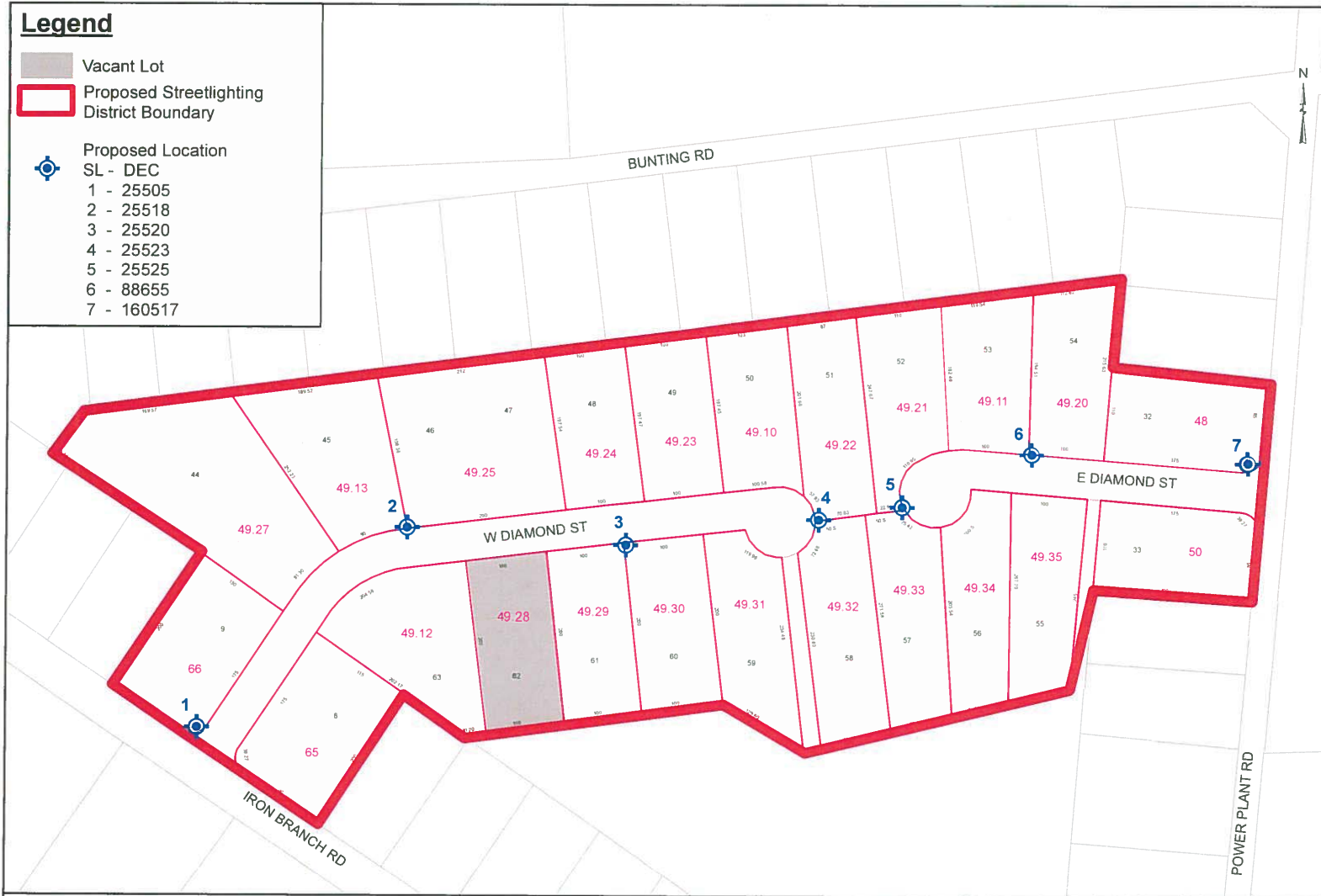
**SO, SWORN AND SUBSCRIBED** before me the day and year aforesaid.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

**Legend**

-  Vacant Lot
-  Proposed Streetlighting District Boundary
-  Proposed Location
- SL - DEC
- 1 - 25505
- 2 - 25518
- 3 - 25520
- 4 - 25523
- 5 - 25525
- 6 - 88655
- 7 - 160517



Tax Map #233-6.00  
 Parcels 48.00, 49.10 - 49.13,  
 49.20 - 49.25, 49.27 - 49.35,  
 50.00, 65.00 and 66.00  
 In proposed boundary

**Diamond Acres Proposed Streetlighting District  
 Sussex County Chapter 95  
 Exhibit "A"**



Date: 10/10/2017



Sussex County  
 Mapping & Addressing

## 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  
JOSEPH WRIGHT, P.E.  
ASSISTANT COUNTY ENGINEER

## Memorandum

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

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

RE: ***CONCORD ROAD UTILITY UPGRADE –  
EXPANSION OF THE BLADES SANITARY SEWER DISTRICT  
RECOMMENDATION TO AWARD***

DATE: November 14, 2017

The original Blades Sanitary Sewer District expansion was presented to Council and approved on September 24, 2013. An application for funding assistance was submitted to USDA, Rural Development, Rural Utility Service on January 28, 2014 and the County received obligation documentation on August 19, 2014. On July 21, 2015, Council accepted the conditions associated with the \$729,000.00 loan and \$449,000.00 grant. However, supplemental funding will be required to complete the project.

Davis, Bowen and Friedel (DBF) the Town of Blades' Engineer of Record designed a USDA/RD/RUS funded water distribution system expansion in the same vicinity of Concord Road as the County's sewer project. On October 3, 2017 Council approved a construction agreement with the Town and an amendment with the engineer to complete both projects concurrently for a cost-effective construction approach.

Subsequently the project was advertised and bid in one construction document with separate bid schedules and design plans for the County Sewer Project and for the Blades Water Project. Out of eleven (11) plan holders, four (4) submitted bids. The low bidder was Zack's Excavating at a combined bid of \$2,403,782.00.

Satisfied with the bid for both water and sewer portions, the Town of Blades and Sussex County Engineering concurred on recommending award to the low bidder. The Blades Town Council is scheduled to approve the alternate bid at their council meeting on November 13, 2017, contingent upon Sussex County Council awarding the whole project. The Engineering Department recommends to award to Zack's Excavating for the base bid at \$1,605,824.75 and the alternate bid at \$797,957.25 for a total bid of \$2,403,782.00 contingent upon USDA/RD concurrence. This bid is under the engineer's estimate and DBF recommends award.





November 7, 2017

*Michael S. Wigley, AIA, LEED AP  
W. Zachary Crouch, P.E.  
Michael E. Wheelerton, AIA  
Jason P. Loar, P.E.  
Ring W. Latham, P.E.*

Sussex County Engineering  
Sussex County Administrative Office  
2 The Circle  
P.O. Box 589  
Georgetown, Delaware 19947

Attn: Mr. Hans Medlarz  
County Engineer

RE: Concord Road Utility Upgrade  
Bid Award Recommendation  
Sussex County, Delaware  
DBF # 1897B011.A01

Mr. Medlarz:

The correspondence is in response to the bids opened on November 2, 2017. Four bids were received with the apparent low bidder being Zack's Excavating in the amount of \$1,605,824.75 for the base sewer bid and \$797,957.25 for the alternate water bid. The total price bid being \$2,403,782.00.

Zack's Excavating had an error on the bid form that appears to have been caused by a mathematical error. The total price bid for the alternate water bid was listed higher than the summation of the individual bid items. This decreased the total alternate water price listed on the bid form. The bid form acknowledged all addendum and included bid bond, sub-contractors list, certification of bidder, business license, and major products list. All documentation was not provided with the bid as required by the specification and the sub-contractors list also included a mathematical error. These forms have since been provided by the Contractor to the County and the errors have been amended in the sub-contractors list. With the clarification to the sub-contractor's list, the Contractor listed an additional sub-contractor to complete the electrical portion of the project.


The additional three bidders in order of cost from low to high were Teal Construction, JJID, and Pact One. The cost difference between the apparent low bidder and the next price bid for the collective project was \$295,535.00. The price bid by the apparent low bidder was in line with the Engineers estimate of \$2,450,523.65.

Mr. Hans Medlarz  
Sussex County Engineering  
Page 2 of 2

Davis, Bowen & Friedel, Inc., recommends that the County wave informalities with the bid documents and award to the apparent low bidder, Zack's Excavating for construction of the Concord Road Utility Upgrade Project contingent upon the concurrence from the Town of Blades for the alternate water bid and approval by the funding agency, the United States Department of Agriculture.

Should you have any questions, comments, concerns, or would like to discuss this further, please feel free to call me at your convenience.

Sincerely,  
DAVIS, BOWEN & FRIEDEL, INC.

A handwritten signature in black ink, appearing to read 'AKG', written over a faint background of the company name.

Aaron K. Goller, P.E.  
Project Manager

AKG  
N:\18\1897\1897B011.A01\LETTERS\MEDLARZ 110617 AKG.DOC



CONCORD RD UTILITY UPGRADE - SEWER EXPANSION OF THE BLADES  
 SANITARY SEWER DISTRICT  
 PROJECT NO. 15-03

Bid Item	Description of Work	Size or Depth	Quantity	Unit	Engineer's Estimate		Zack Excavating		Teal Construction		Pact One		JJJD	
					Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
<b>PART A - BASE BID</b>														
1A.	Mobilization	-	1	LS	\$71,625.60	\$71,625.60	\$62,500.00	\$62,500.00	\$72,421.00	\$72,421.00	\$95,000.00	\$95,000.00	\$100,000.00	\$100,000.00
2A.	Furnish and Install Traffic Control	-	1	LS	\$35,000.00	\$35,000.00	\$120,000.00	\$120,000.00	\$62,100.00	\$62,100.00	\$25,000.00	\$25,000.00	\$150,000.00	\$150,000.00
3	Furnish Dewatering for Pipe Installation	-	1	LS	\$28,000.00	\$28,000.00	\$75,000.00	\$75,000.00	\$19,800.00	\$19,800.00	\$20,000.00	\$20,000.00	\$30,000.00	\$30,000.00
4	Furnish and Install Sewer Pump Station (Complete)	-	900	LF	\$47.00	\$42,300.00	\$27.00	\$24,300.00	\$35.00	\$31,500.00	\$20.00	\$18,000.00	\$60.00	\$54,000.00
5	Furnish and Install Gravity Sewer, Fittings, and Appurtenances (SDR-35)	8"	1,980	LF	\$80.00	\$156,400.00	\$80.00	\$156,400.00	\$103.00	\$203,940.00	\$245.00	\$485,100.00	\$120.00	\$237,600.00
6	Furnish and Install Gravity Sewer, Fittings, and Appurtenances (Ductile Iron)	10"	900	LF	\$110.00	\$99,000.00	\$70.00	\$63,000.00	\$117.00	\$105,300.00	\$255.00	\$229,500.00	\$135.00	\$121,500.00
7	Furnish and Install Gravity Sewer, Fittings, and Appurtenances (Ductile Iron)	12"	60	LF	\$140.00	\$8,400.00	\$112.00	\$6,720.00	\$144.00	\$8,640.00	\$265.00	\$15,900.00	\$140.00	\$8,400.00
8	Furnish and Install SDR-35 Gravity Sewer Clean Out and Appurtenances	14"	12	LF	\$210.00	\$2,520.00	\$400.00	\$4,800.00	\$399.00	\$4,788.00	\$285.00	\$3,420.00	\$250.00	\$3,000.00
9	Furnish and Install SDR-35 Gravity Sewer Clean Out and Appurtenances	6"	27	EA	\$450.00	\$12,150.00	\$500.00	\$13,500.00	\$746.00	\$20,142.00	\$900.00	\$13,500.00	\$900.00	\$24,300.00
10	Furnish and Install SDR-35 Gravity Sewer Terminal Clean Out	8"	4	EA	\$650.00	\$2,600.00	\$500.00	\$2,000.00	\$1,041.00	\$4,164.00	\$900.00	\$3,600.00	\$1,300.00	\$5,200.00
11	Furnish and Install SDR-35 Gravity Sewer Tee Clean Out	6"	3	EA	\$650.00	\$1,950.00	\$1,200.00	\$3,600.00	\$950.00	\$2,850.00	\$1,200.00	\$3,600.00	\$2,000.00	\$6,000.00
12.a	Furnish and Install SDR-35 Gravity Sewer Tee Clean Out	8"	2	EA	\$775.00	\$1,550.00	\$1,200.00	\$2,400.00	\$1,247.00	\$2,494.00	\$1,500.00	\$3,000.00	\$2,100.00	\$4,200.00
12.b	Furnish and Install SDR-35 Gravity Sewer Tee Clean Out	8"x8"	1	EA	\$1,250.00	\$1,250.00	\$1,000.00	\$1,000.00	\$980.00	\$980.00	\$150.00	\$150.00	\$2,100.00	\$2,100.00
13.a	Furnish and Install SDR-35 Gravity Sewer Lateral and Appurtenances	12"x8"	1	EA	\$1,400.00	\$1,400.00	\$1,000.00	\$1,000.00	\$1,129.00	\$1,129.00	\$250.00	\$250.00	\$2,200.00	\$2,200.00
13.b	Furnish and Install SDR-35 Gravity Sewer Lateral and Appurtenances (Trenchless M	6"	280	LF	\$45.00	\$12,600.00	\$100.00	\$28,000.00	\$39.50	\$11,060.00	\$60.00	\$16,800.00	\$100.00	\$28,000.00
14	Furnish and Install SDR-35 Gravity Sewer Lateral and Appurtenances	8"	50	LF	\$85.00	\$4,250.00	\$100.00	\$5,000.00	\$43.50	\$2,175.00	\$65.00	\$3,250.00	\$100.00	\$5,000.00
15	Furnish and Install SDR-35 Gravity Sewer Lateral and Appurtenances (Trenchless M	6"	300	LF	\$45.00	\$13,500.00	\$120.00	\$36,000.00	\$221.00	\$66,300.00	\$80.00	\$24,000.00	\$150.00	\$45,000.00
16	Remove and dispose of Concrete Base Course Beneath Roadways	8"	0	LF	\$85.00	\$0.00	\$300.00	\$0.00	\$400.00	\$0.00	\$100.00	\$0.00	\$150.00	\$0.00
17	Furnish and Install manholes and Appurtenances	4' Dia.	89	VF	\$400.00	\$35,600.00	\$1,300.00	\$115,700.00	\$667.00	\$59,363.00	\$550.00	\$48,950.00	\$600.00	\$53,400.00
18	Furnish and Install Inside Drop Manholes and Appurtenances	5' Dia.	25	VF	\$625.00	\$15,625.00	\$1,500.00	\$37,500.00	\$751.00	\$18,775.00	\$750.00	\$18,750.00	\$700.00	\$17,500.00
19	Furnish and Install C-900 PVC Force Main	6"	975	LF	\$55.00	\$53,625.00	\$60.00	\$58,500.00	\$55.00	\$53,625.00	\$200.00	\$195,000.00	\$60.00	\$58,500.00
20	Furnish and Install Gate Valves and Appurtenances	12"	10	LF	\$150.00	\$1,500.00	\$120.00	\$1,200.00	\$58.00	\$580.00	\$220.00	\$2,200.00	\$100.00	\$1,000.00
21	Furnish and Install Gate Valves and Appurtenances	6"	1	EA	\$3,500.00	\$3,500.00	\$1,700.00	\$1,700.00	\$1,842.00	\$1,842.00	\$1,500.00	\$1,500.00	\$2,500.00	\$2,500.00
22	Mill Existing Asphalt and Dispose Millings	2"	4,950	SY	\$8.92	\$44,154.00	\$5.00	\$24,750.00	\$6.00	\$29,700.00	\$4.00	\$19,800.00	\$6.00	\$29,700.00
23	Remove and dispose of Concrete Base Course Beneath Roadways	Varies	880	SY	\$23.00	\$20,240.00	\$16.00	\$14,080.00	\$23.00	\$20,240.00	\$20.00	\$17,600.00	\$50.00	\$44,000.00
24	Furnish and Install Bituminous Concrete Surface Course	Varies	11,850	SY-IN	\$7.50	\$88,875.00	\$6.00	\$71,100.00	\$7.00	\$82,950.00	\$8.00	\$94,800.00	\$6.50	\$77,025.00
25	Furnish and Install Bituminous Concrete Base Course	Varies	15,975	SY-IN	\$5.83	\$93,134.25	\$5.50	\$87,862.50	\$10.80	\$172,530.00	\$8.00	\$127,800.00	\$6.00	\$95,850.00
26	Furnish and Install Graded Aggregate Subbase	Varies	2,325	TONS	\$21.00	\$48,825.00	\$35.00	\$81,375.00	\$29.00	\$67,425.00	\$20.00	\$46,500.00	\$60.00	\$139,500.00
27	Furnish and Install Line Stripping (white)	-	3,035	LF	\$0.62	\$1,881.70	\$0.35	\$1,062.25	\$1.40	\$4,249.00	\$1.00	\$3,035.00	\$3.00	\$9,105.00
28	Furnish and Install Line Stripping (Yellow including Centerline)	-	1,550	LF	\$0.49	\$759.50	\$0.70	\$1,085.00	\$2.30	\$3,565.00	\$2.00	\$3,100.00	\$3.00	\$4,650.00
<b>Contingency Items (If and as directed by Engineer)</b>														
30	Miscellaneous Excavation & Backfill for Test Pitting	-	200	CY	\$91.00	\$18,200.00	\$10.00	\$2,000.00	\$39.00	\$7,800.00	\$50.00	\$10,000.00	\$25.00	\$5,000.00

31	Furnish & Place Select Backfill	-	2500	CY	\$22.00	\$55,000.00	\$10.00	\$25,000.00	\$14.00	\$35,000.00	\$25.00	\$62,500.00	\$40.00	\$100,000.00
32	Excavation Below Subgrade & Gravel Refill	-	100	CY	\$40.00	\$4,000.00	\$1.00	\$100.00	\$11.50	\$1,150.00	\$50.00	\$5,000.00	\$75.00	\$7,500.00
33	Furnish & Place Miscellaneous Concrete	-	20	CY	\$190.00	\$3,800.00	\$200.00	\$4,000.00	\$175.00	\$3,500.00	\$300.00	\$6,000.00	\$250.00	\$5,000.00
34	Provide all Equipment and Labor Required to Remove and Dispose of Trees	-	7	EA	\$2,000.00	\$14,000.00	\$3,000.00	\$21,000.00	\$1,868.00	\$13,076.00	\$1,000.00	\$7,000.00	\$800.00	\$5,600.00
35	Remove and Replace Concrete Curbing	-	750	LF	\$35.00	\$26,250.00	\$1.00	\$750.00	\$39.00	\$29,250.00	\$40.00	\$30,000.00	\$45.00	\$33,750.00
36	Remove and Replace Concrete Sidewalk	4*	1,200	SF	\$18.00	\$21,600.00	\$11.00	\$13,200.00	\$8.00	\$9,600.00	\$12.00	\$14,400.00	\$12.00	\$14,400.00
37	Remove and Replace Concrete Valley Gutter	-	95	LF	\$53.00	\$5,035.00	\$50.00	\$4,750.00	\$57.00	\$5,415.00	\$140.00	\$13,300.00	\$75.00	\$7,125.00
38	Field Soil and Pavement Testing	-	720	per hour	\$75.00	\$54,000.00	\$10.00	\$7,200.00	\$57.50	\$41,400.00	\$125.00	\$90,000.00	\$120.00	\$86,400.00
39	Laboratory Soil Testing	-	75	EA	\$125.00	\$9,375.00	\$210.00	\$15,750.00	\$161.00	\$12,075.00	\$500.00	\$37,500.00	\$150.00	\$11,250.00
71	Saw Cut Existing Pavement and Concrete Base (only where concrete sub-base exist)	Varies	990	LF	\$8.75	\$8,662.50	\$6.00	\$5,940.00	\$7.00	\$6,930.00	\$5.00	\$4,950.00	\$8.00	\$7,920.00
73	Furnish and Install Replacement Residential Wells	4"x12"	3	EA	\$5,000.00	\$15,000.00	\$5,000.00	\$15,000.00	\$2,875.00	\$8,625.00	\$5,000.00	\$15,000.00	\$15,000.00	\$45,000.00
<b>Allowances</b>														
A-1	Allowance for Electrical Utility to Relocate Brace Pole	-	1	LS	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
<b>TOTAL SEWER BID</b>						<b>\$1,504,137.55</b>		<b>\$1,605,824.75</b>		<b>\$1,702,264.00</b>		<b>\$2,619,355.00</b>		<b>\$2,198,175.00</b>
<b>Alternate Water Bid</b>														
1B.	Mobilization, Bonds, and Insurance	-	1	LS		\$10,000.00	\$10,000.00	\$47,587.00	\$47,587.00	\$35,000.00	\$35,000.00	\$55,000.00	\$55,000.00	\$55,000.00
2B.	Furnish and Install Traffic Control	-	1	LS		\$25,000.00	\$25,000.00	\$49,680.00	\$49,680.00	\$20,000.00	\$20,000.00	\$75,000.00	\$75,000.00	\$75,000.00
40		6"	60	LF		\$60.00	\$3,600.00	\$54.00	\$3,240.00	\$100.00	\$6,000.00	\$75.00	\$4,500.00	
41	Furnish and Install Water Mains, Fittings, and Appurtenances (C-900)	8"	60	LF		\$70.00	\$4,200.00	\$60.00	\$3,600.00	\$105.00	\$6,300.00	\$85.00	\$5,100.00	
42		10"	3,400	LF		\$81.00	\$275,400.00	\$61.50	\$209,100.00	\$110.00	\$374,000.00	\$110.00	\$374,000.00	
43		6"	40	LF		\$50.00	\$2,000.00	\$161.00	\$6,440.00	\$110.00	\$4,400.00	\$80.00	\$3,200.00	
44	Furnish and Install Water Mains, Fittings, and Appurtenances (Ductile Iron)	8"	65	LF		\$153.00	\$9,945.00	\$178.00	\$11,570.00	\$120.00	\$7,800.00	\$90.00	\$5,850.00	
45		10"	240	LF		\$100.00	\$24,000.00	\$175.00	\$42,000.00	\$130.00	\$31,200.00	\$125.00	\$30,000.00	
46		10"	6	EA		\$3,000.00	\$18,000.00	\$2,747.00	\$16,482.00	\$1,800.00	\$10,800.00	\$3,500.00	\$21,000.00	
47	Furnish and Install Valves, Valve Boxes, and Appurtenances	8"	2	EA		\$1,900.00	\$3,800.00	\$1,933.00	\$3,866.00	\$1,200.00	\$2,400.00	\$3,000.00	\$6,000.00	
48	Furnish and Install Fire Hydrant Assemblies	-	6	EA		\$5,700.00	\$34,200.00	\$6,895.00	\$41,370.00	\$5,000.00	\$30,000.00	\$6,500.00	\$39,000.00	
49		1"	28	EA		\$700.00	\$19,600.00	\$480.00	\$13,720.00	\$200.00	\$5,600.00	\$500.00	\$14,000.00	
50	Furnish and Install Tapping Saddle, Corp. Stop, and Connection Fittings	2"	1	EA		\$700.00	\$700.00	\$708.00	\$708.00	\$300.00	\$300.00	\$1,000.00	\$1,000.00	
51	Furnish and Install Water Meter, Meter Box, Meter Setter and Appurtenances	1"	28	EA		\$3,500.00	\$98,000.00	\$1,805.00	\$50,540.00	\$600.00	\$16,800.00	\$1,000.00	\$28,000.00	
52		2"	1	EA		\$4,000.00	\$4,000.00	\$5,181.00	\$5,181.00	\$1,000.00	\$1,000.00	\$4,000.00	\$4,000.00	
53	Furnish and Install Water Services by Open Cut	1"	200	LF		\$36.00	\$7,200.00	\$59.00	\$11,800.00	\$50.00	\$10,000.00	\$70.00	\$14,000.00	
54		2"	100	LF		\$50.00	\$5,000.00	\$60.00	\$6,000.00	\$75.00	\$7,500.00	\$75.00	\$7,500.00	
55	Furnish and Install Water Services by Directional Bore or Missile Bore	1"	680	LF		\$40.00	\$27,200.00	\$69.00	\$46,920.00	\$50.00	\$34,000.00	\$80.00	\$54,400.00	
56	Mill Existing Asphalt and Dispose Millings	2"	4,050	SY		\$5.00	\$20,250.00	\$4.40	\$17,820.00	\$4.00	\$16,200.00	\$6.00	\$24,300.00	
57	Remove and dispose of Concrete Base Course Beneath Roadways	Varies	880	SY		\$16.00	\$14,080.00	\$23.00	\$20,240.00	\$20.00	\$17,600.00	\$40.00	\$35,200.00	
58	Furnish and Install Bituminous Concrete Surface Course	Varies	8,100	SY-IN		\$6.00	\$48,600.00	\$7.00	\$56,700.00	\$8.00	\$64,800.00	\$6.50	\$52,650.00	
59	Furnish and Install Bituminous Concrete Base Course	Varies	9,990	SY-IN		\$5.50	\$54,945.00	\$18.00	\$179,820.00	\$8.00	\$79,920.00	\$6.00	\$59,940.00	
60	Furnish and Install Graded Aggregate Subbase	Varies	1,450	TONS		\$35.00	\$50,750.00	\$29.00	\$42,050.00	\$20.00	\$29,000.00	\$60.00	\$87,000.00	
61	Furnish and Install Line Stripping (white)	-	3,035	LF		\$0.35	\$1,062.25	\$1.40	\$4,249.00	\$1.00	\$3,035.00	\$3.00	\$9,105.00	
62	Furnish and Install Line Stripping (Yellow including Centerline)	-	1,550	LF		\$0.70	\$1,085.00	\$2.30	\$3,565.00	\$2.00	\$3,100.00	\$3.00	\$4,650.00	
<b>Contingency Items (if and as directed by Engineer)</b>														
63	Miscellaneous Excavation & Backfill for Test Pitting	-	200	CY		\$10.00	\$2,000.00	\$39.00	\$7,800.00	\$50.00	\$10,000.00	\$25.00	\$5,000.00	
64	Furnish & Place Select Backfill	-	1,700	CY		\$10.00	\$17,000.00	\$14.00	\$23,800.00	\$25.00	\$42,500.00	\$40.00	\$68,000.00	
65	Excavation Below Subgrade & Gravel Refill	-	100	CY		\$1.00	\$100.00	\$11.50	\$1,150.00	\$50.00	\$5,000.00	\$75.00	\$7,500.00	
66	Furnish & Place Miscellaneous Concrete	-	20	CY		\$200.00	\$4,000.00	\$172.50	\$3,450.00	\$300.00	\$6,000.00	\$250.00	\$5,000.00	
67	Furnish and Install Additional Fittings NOT Shown on the Plans	-	1,000	LBS		\$3.00	\$3,000.00	\$8.00	\$8,000.00	\$7.00	\$7,000.00	\$5.00	\$5,000.00	
68	Remove and Replace Concrete Curbing	-	750	LF		\$1.00	\$750.00	\$0.90	\$675.00	\$40.00	\$30,000.00	\$45.00	\$33,750.00	
69	Field Soil and Pavement Testing	-	250	HR		\$10.00	\$2,500.00	\$57.50	\$14,375.00	\$125.00	\$31,250.00	\$120.00	\$30,000.00	
70	Laboratory Soil Testing	-	50	EA		\$1.00	\$50.00	\$161.00	\$8,050.00	\$500.00	\$25,000.00	\$150.00	\$7,500.00	
72	Saw Cut Existing Pavement and Concrete Base (only where concrete sub-base exist)	Varies	990	LF		\$6.00	\$5,940.00	\$7.00	\$6,930.00	\$5.00	\$4,950.00	\$8.00	\$7,920.00	
<b>TOTAL ALTERNATE WATER BID</b>						<b>\$946,386.10</b>		<b>\$797,957.25</b>		<b>\$997,053.00</b>		<b>\$978,455.00</b>		<b>\$1,184,065.00</b>
Bid Deduct								\$0.00		\$0.00		\$50,000.00		\$0.00
<b>TOTAL SEWER/WATER BID</b>						<b>\$2,450,523.65</b>		<b>\$2,403,782.00</b>		<b>\$2,699,317.00</b>		<b>\$3,547,810.00</b>		<b>\$3,382,240.00</b>

\*Zack's Bid - inaccurate math on water portion  
Teal math error bid item 59

## Ellendale Water District **Referendum Results**

- Referendum held November 4, 2017 from 9:00am till 1:00 pm at (2) locations, the Ellendale Fire Company and the Philadelphia Pentecostal Church based on request from the community.
- The Board of Elections brought in machines and BOE officials manned both locations. The results showed **107** in favor and **120** against. This was the tally from the voting machines and the Absentee Ballots that were received.
- In closing, the Referendum failed



# SUSSEX COUNTY GOVERNMENT

## GRANT APPLICATION

### SECTION 1 APPLICANT INFORMATION

ORGANIZATION NAME: Good Samaritan Aid Organization, Inc.

PROJECT NAME: Christmas Basket/Toy Outreach

FEDERAL TAX ID: 51-0303717 NON-PROFIT:  YES  NO

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

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

ORGANIZATION'S MISSION: Good Samaritan provides financial and food assistance to families in need throughout the year. The Christmas outreach is one of the efforts sponsored by the organization.

ADDRESS: P. O. Box 643  
115 West Market Street  
Laurel DE 19956  
(CITY) (STATE) (ZIP)

CONTACT PERSON: Melinda Tingle  
TITLE: President  
PHONE: 302-875-9710 EMAIL: mtingle57@comcast.net

**TOTAL FUNDING REQUEST: \$1,000.00**

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

If YES, how much was received in the last 12 months? \$1,000

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

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

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

## SECTION 2: PROGRAM DESCRIPTION

### PROGRAM CATEGORY (choose all that apply)

- |  |  |                                      |
|--|--|--------------------------------------|
| <input type="checkbox"/> Fair Housing                | <input checked="" type="checkbox"/> Health and Human Services                    | <input type="checkbox"/> Cultural    |
| <input type="checkbox"/> Infrastructure <sup>1</sup> | <input checked="" type="checkbox"/> Other Financial Assistance for disadvantaged | <input type="checkbox"/> Educational |

### BENEFICIARY CATEGORY

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

### BENEFICIARY NUMBER

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

690

## SECTION 3: PROGRAM SCOPE

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

The Christmas Outreach toy/food basket effort benefits over 190 low income families in the Laurel community. The intent of the program is to ensure that every child gets gifts for Christmas, and we take the opportunity to add food items to the outreach since we are already servicing families with minor children at home. Every family referred to the outreach by the schools, civic organizations, churches, and citizens receive Food Lion gift card, food box, and gifts for minor children, if applicable. The Laurel School District is eligible for federal funds for free lunches because the overall concentration of low income households represents more than 70% of the children in our schools. Consequently, school children and their siblings at home may not be enjoying all that the Christmas holidays should offer. We will utilize the funds to purchase Food Lion gift cards, scrapple and hot dogs, and toys/presents for all families referred to the outreach.



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

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

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

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

### SECTION 4: BUDGET

<b>REVENUE</b>	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
<b>TOTAL REVENUES</b>	10,000.00
<b>EXPENDITURES</b>	
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. <b>(Put amounts in as a negative)</b>	
	-\$ 6,000.00
<b>TOTAL EXPENDITURES</b>	-\$ 6,000.00
<b>TOTAL DEFICIT FOR PROJECT OR ORGANIZATION</b>	<b>\$ 4,000.00</b>

### SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the Good Samaritan Aid Organization, Inc. agrees that:  
(Name of Organization)

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

**SECTION 5: STATEMENT OF ASSURANCES (continued)**

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

Melinda R. Ingle  
Applicant/Authorized Official

11/3/2017  
Date

Stephanie A. Saffron  
Witness

11/3/2017  
Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

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



GJ/rc

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

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

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

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

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

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

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

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

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

Meinda R. Single  
Applicant/Authorized Official

President  
Title

Sylvia A. Saffron  
Witness

11/3/2017  
Date

Arlett + Vincent  
11-06-17



# SUSSEX COUNTY GOVERNMENT

## GRANT APPLICATION

### SECTION 1 APPLICANT INFORMATION

ORGANIZATION NAME:	Georgetown Little League		
PROJECT NAME:	operational expenses		
FEDERAL TAX ID:	51-0260574	NON-PROFIT:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
DOES YOUR ORGANIZATION OR ITS PARENT ORGANIZATION HAVE A RELIGIOUS AFFILIATION?			
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO *IF YES, FILL OUT SECTION 3B.			
ORGANIZATION'S MISSION:	Along with Little League International, the Georgetown Little League is proud to promote, develop, supervise, and voluntarily assist in all lawful ways, the interests of those who will participate in Little League baseball and softball. The little league program assists children in developing the qualities of citizenship, discipline, teamwork and physical well-being.		
ADDRESS:	PO Box 105		
	Georgetown	DE	19947
	(CITY)	(STATE)	(ZIP)
CONTACT PERSON:	Dennis Swain		
TITLE:	President		
PHONE:	302.542.0080	EMAIL:	dennis.swain@state.de.us

<b>TOTAL FUNDING REQUEST:</b>	
Has your organization received other grant funds from Sussex County Government in the last year?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
If YES, how much was received in the last 12 months?	\$2,000
If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for?	<input type="checkbox"/> YES <input type="checkbox"/> NO
Are you seeking other sources of funding other than Sussex County Council?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
If YES, approximately what percentage of the project's funding does the Council grant represent?	

## SECTION 2: PROGRAM DESCRIPTION

### PROGRAM CATEGORY (choose all that apply)

- Fair Housing  
 Infrastructure<sup>1</sup>

- Health and Human Services  
 Other

- Cultural  
 Educational

### BENEFICIARY CATEGORY

- Disability & Special Needs  
 Elderly Persons  
 Minority

- Victims of Domestic Violence  
 Low to Moderate Income<sup>2</sup>  
 Other

- Homeless  
 Youth

### BENEFICIARY NUMBER

Approximately the total number of Sussex County Beneficiaries served annually by this program:  
400-500

## SECTION 3: PROGRAM SCOPE

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

Dear Council,

The Georgetown Little League Board of Directors graciously asks for your support in the amount of \$3,000 to assist with operational expenses.

Thank you for your ongoing support of Georgetown Little League.

Dennis Swain, President  
Georgetown Little League

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

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

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

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



### SECTION 4: BUDGET

<b>REVENUE</b>	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
<b>TOTAL REVENUES</b>	0.00
<b>EXPENDITURES</b>	
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. <b>(Put amounts in as a negative)</b>	
assistance with operational expenses	-\$ 3,000.00
<b>TOTAL EXPENDITURES</b>	-\$3,000.00
<b>TOTAL DEFICIT FOR PROJECT OR ORGANIZATION</b>	-\$3,000.00

### SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the Georgetown Little League agrees that:  
(Name of Organization)

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

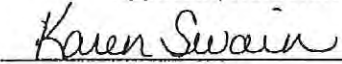
**SECTION 5: STATEMENT OF ASSURANCES (continued)**

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

  
\_\_\_\_\_  
Applicant/Authorized Official

11/1/17

Date

  
\_\_\_\_\_  
Witness

11/1/17

Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

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

GJ/mc

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

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

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

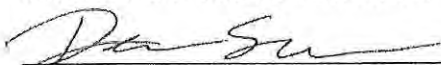
For non-religious organizations, all accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.

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

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

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

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



Applicant/Authorized Official

11/1/17

Title

Karen Swain

Witness

11/1/17

Date

Vincent  
11-02-17

MARTIN L. ROSS, CHAIRMAN  
KIM HOEY STEVENSON, VICE CHAIRMAN  
R. KELLER HOPKINS  
DOUGLAS B HUDSON  
ROBERT C. WHEATLEY



2 THE CIRCLE | PO BOX 417  
GEORGETOWN, DE 19947  
(302) 855-7878 T  
(302) 854-5079 F  
sussexcountyde.gov

# Sussex County

## Planning & Zoning Commission

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET  
Planning Commission Public Hearing Date October 12, 2017

Application: CZ 1827 & CU 2098 Fenwick Commons, LLC DH

Applicant/Owner: Fenwick Commons, LLC  
13 Brighton St.  
Millville, DE 19967

Site Location: Southwest corner of Lighthouse Rd. (Rt. 54) and Sand Cove Rd., and  
the east side of Sand Cover Rd. approximately 211 f.t south of  
Lighthouse Rd. (Rt. 54)

Current Zoning: AR-1 (Agricultural Residential District)

Proposed Zoning: MR (Medium Density Residential District)

Current Use: Agricultural

Proposed Use: 62 duplex units

Comprehensive Land  
Use Plan Reference: Environmentally Sensitive Developing Areas

Councilmatic  
District: Mr. Arlett

School District: Indian River School District

Fire District: Roxana Fire District

Sewer: Sussex County

Water: Artesian

Site Area: 13.33 ac. +/-

Tax Map ID.: 533-19.00-52.00



COUNTY ADMINISTRATIVE OFFICES  
2 THE CIRCLE | PO BOX 417  
GEORGETOWN, DELAWARE 19947



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



**Sussex County**

DELAWARE  
sussexcountype.gov

## Memorandum

To: Sussex County Council Members

From: Janelle Cornwell, AICP, Planning & Zoning Director

CC: Everett Moore, County Attorney

Date: November 8, 2017

RE: County Council Report for CZ 1827 Fenwick Commons, LLC and CU 2098 Fenwick Commons, LLC

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The Planning and Zoning Department received applications (CZ 1827 Fenwick Commons, LLC and CU 2098 Fenwick Commons, LLC) to allow for a change in zoned from AR-1 (Agricultural Residential District) to MR (Medium Density Residential District) and to allow for multi-family for 2 duplex units. The Planning and Zoning Commission held a public hearing on October 12, 2017. The following are the minutes and motion for the Change of Zone and Conditional Use applications from the Planning and Zoning Commission meeting.

The applicant requested that both of these applications be consolidated into a single public hearing. Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, comments from the Sussex Conservation District, results from the DelDOT Service Level Evaluation that stated a TIS is not required, site plan, exhibit book, PLUS letter, and six letters of opposition.

The Commission found that Gene Bayard, Esquire of Morris James Wilson Halbrog and Bayard, LLP and Ken Christenbury, with Axiom Engineering were present on behalf of the application; that Mr. Bayard spoke that the area has transitioned over 12 years from a low density to a medium density residential area with over 1,200 homes from 2005 to 2017; that an application in a B-1 district of 3 acres and 12.3 acres for MR-RPC was approved last year for 4.8 units per acre; that the Change of Zone is in character of the area and with the Comprehensive Plan; that there are no site development issues; that there is water and sewer in the area; that there no traffic issues per DelDOT; that it is a single parcel; that is a one phase project; that the applicant made the decision not to apply for a MR-RPC classification, instead to apply for a MR application with a Change of Zone with a Conditional Use; that MR will give the County more control of approving a project; that there are a lot of MR-RPC's in the area along with B-1 and C-1 uses; that Mr. Christenbury spoke that the site is a soybean field with woods; that there is a cemetery on site and it will be protected; that a DelDOT report did not require a TIS; that the first site plan submittal initially showed 62 units; that there will be a multi-modal path to connect a bike trail; that the wetlands are on the east side of Sand Cove Road; that the project went from 62 units down to 52 units to create better access for the cemetery and the amenities; that there will be 20 foot buffer around the cemetery and keep the existing woodlands in that area; that a ESDA report was prepared; that



Artesian will provide water and the County will provide the sewer; that per a report from Mr. Otter regarding the cemetery they redesigned to allow for easier parking to the amenities and the cemetery; that a fence will be put up around the cemetery; that this application accompanies a Conditional Use application; that it complies with 99-9C; that it will have a 20 foot forested buffer around the perimeter; that they have preserved 60 percent of the forest; that they may be able to keep a 100 year old red oak tree; that the stormwater pond will be located in the front; that the existing site is an agricultural field and uses manure as fertilizer; that going to single family will reduce pollution; that they will comply with the Sussex Conservation District; that DelDOT will make improvements to the intersection; that the developer will make additional improvements through Right-of-Way dedication; that will have a deceleration lane and no left turn lane; that a pedestrian trail will connect to the Bayside trail; that this will have no negative impact on values or schools; that this project is no longer a 62 unit development; that there is a 14 foot dedication from the corner to the first 100 feet and the rest of the property has a ten foot dedication; that on Sand Cove Road there is a 15 foot dedication for the entire front and a 19 foot dedication for the first 76 feet; that there will be a ten foot wide multi-modal path and will be built by the client; that the distance from Route 54 to the entrance to the project is approximately 250 feet to 300 feet; that a TIS and TOA were not required; that the amenities will be done by the 26<sup>th</sup> Certificate of Occupancy; that this project is a thoughtful design and it has been scaled back; that it is 41 percent of open space not including the stormwater pond and including two acres of preserved proposed trees; that this project is density is 3.90 units per acre; that a 185 foot long deceleration lane is on Sand Cove Road; that DelDOT is working on the intersection and the applicants not sure what plans they have for the intersection; that a sliver of land on the east side of Sand Cove Road with a ditch will help with drainage; that the drainage will head south away from Route 54; that the ditch is five to six feet deep and will not impact surrounding properties; that there will be one entrance and exit; that they could look at interconnectivity but believe people don't want it; that the interconnectivity is only for emergencies and will be addressed; that they are comparing density to just one phase in America Bayside which is the Melson property phase.

The Commission found that there was no one in support of the application.

The Commission found that Christopher W. Magee, Ed Waysz, and Barbara Shamp spoke in opposition to the application; that Mr. Magee stated that the hundred year old meadow has a cesspool from the old house and nobody has dug it up; that they have concerns with drainage; that the tax ditch is three and a half feet deep; that there is a severe drainage issue with the tidal ditch; that the farm field is a buffer for the water to go in; that the tax ditch is feeding all that water from the development and backups; that there are concerns with the pond and that his produce will get wet which will hurt his business; that there are tractors and other ag equipment on the road; that Mr. Waysz stated that Sand Cove Road is not big enough and only 12 feet wide; there they have concerns with the traffic; that when is enough, enough; that Route 54 won't be increased to capacity; that Ms. Shamp stated that she attended a DelDOT meeting and people were angry about the new Royal Farms and DelDOT stated it won't cause any traffic problems; that she can't get out of her development for two and a half months from Thursday to Sunday night; that Hurricane Sandy flooded Route 54 and couldn't get out for 3 days; that there has been two 1000 year storms since Hurricane Sandy that lasted less than 24 hours; that when Route 54 is flooded, people will not be able to evacuate.

At the conclusion of the public hearings, the Commission discussed these applications.

Motion by Mr. Hudson, seconded by Ms. Stevenson, and carried unanimously to defer action for further consideration for Change of Zone 1827. Motion carried 5-0.

Motion by Mr. Hudson, seconded by Mr. Wheatley, and carried unanimously to defer action for further consideration for Conditional Use 2098. Motion carried 5-0.

At their meeting on October 26, 2017, the Planning Commission deferred action for further consideration of Change of Zone 1827 Fenwick Commons, LLC. Motion carried 5-0.

At their meeting on October 26, 2017, the Planning Commission deferred action for further consideration for Conditional Use 2098 Fenwick Commons, LLC. Motion carried 5-0.

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**Sussex County**  
DELAWARE  
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## Memorandum

To: Sussex County Planning Commission Members  
From: Janelle Cornwell, AICP, Planning & Zoning Director  
CC: Vince Robertson, Assistant County Attorney and applicant  
Date: October 3, 2017  
RE: Staff Analysis for CZ 1827 Fenwick Commons

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1827 Fenwick Commons to be reviewed during the October 12, 2017 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 Change of Zone for parcel 533-19.00-52.00 to change the zoning from AR-1 (Agricultural Residential District) to MR (Medium Density Residential District). The size of the property is 13.33 ac. +/- . The property is zoned AR-1 (Agricultural Residential District). There is a concurrent Conditional Use application to request the use of 62 duplex units.

The 2008 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 indicates that the properties have the land use designation Environmentally Sensitive Developing Areas.

The surrounding land use to the north, south, east and west is Environmentally Sensitive Developing Areas. There is also Highway Commercial land use further to the west and south. The Environmentally Sensitive Developing Areas land use designations recognizes that a range of housing types should be permitted including single-family homes, townhouses and multi-family units. Retail and office uses are appropriate; however, larger retail and office uses should be located along arterial roads. Institutional uses can be appropriate to provide for convenient services and allow people to work from home. The MR zoning district is a zoning classification that can be considered within the Environmentally Sensitive Developing Areas.

The property is zoned AR-1 (Agricultural Residential District). The properties to the north (across Lighthouse Rd.) are zoned AR-1 (Agricultural Residential District). The properties to the west are zoned AR-1 (Agricultural Residential District), C-1 (General Commercial District) and CR-1 (Commercial Residential District). The properties to the south are zoned AR-1 (Agricultural Residential District) and MR (Medium Density Residential District). The properties to the east are zoned AR-1 (Agricultural Residential District), B-1 (Neighborhood Business District) and MR (Medium Density Residential District). There are no known Conditional Uses in the area.

Based on the analysis of the land use, surrounding zoning and uses, the Change of Zone request change the zoning from AR-1 (Agricultural Residential District) to MR (Medium Density Residential District) would be considered consistent with the land use, surrounding zoning and uses.



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## Memorandum

To: Sussex County Planning Commission Members  
From: Janelle Cornwell, AICP, Planning & Zoning Director  
CC: Vince Robertson, Assistant County Attorney and applicant  
Date: October 3, 2017  
RE: Staff Analysis for CU 2098 Fenwick Commons

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2098 Fenwick Commons to be reviewed during the October 12, 2017 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 parcel 533-19.00-52.00 to allow for the use of 62 duplex units. The size of the property is 13.33 ac. +/- . The property is zoned AR-1 (Agricultural Residential District). There is a concurrent Change of Zone application (CZ 1827) to request the change in zone from AR-1 (Agricultural Residential District) to MR (Medium Density Residential District).

The 2008 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 indicates that the properties have the land use designation Environmentally Sensitive Developing Areas.

The surrounding land use to the north, south, east and west is Environmentally Sensitive Developing Areas. There is also Highway Commercial land use further to the west and south. The Environmentally Sensitive Developing Areas land use designations recognizes that a range of housing types should be permitted including single-family homes, townhouses and multi-family units. Retail and office uses are appropriate; however, larger retail and office uses should be located along arterial roads. Institutional uses can be appropriate to provide for convenient services and allow people to work from home.

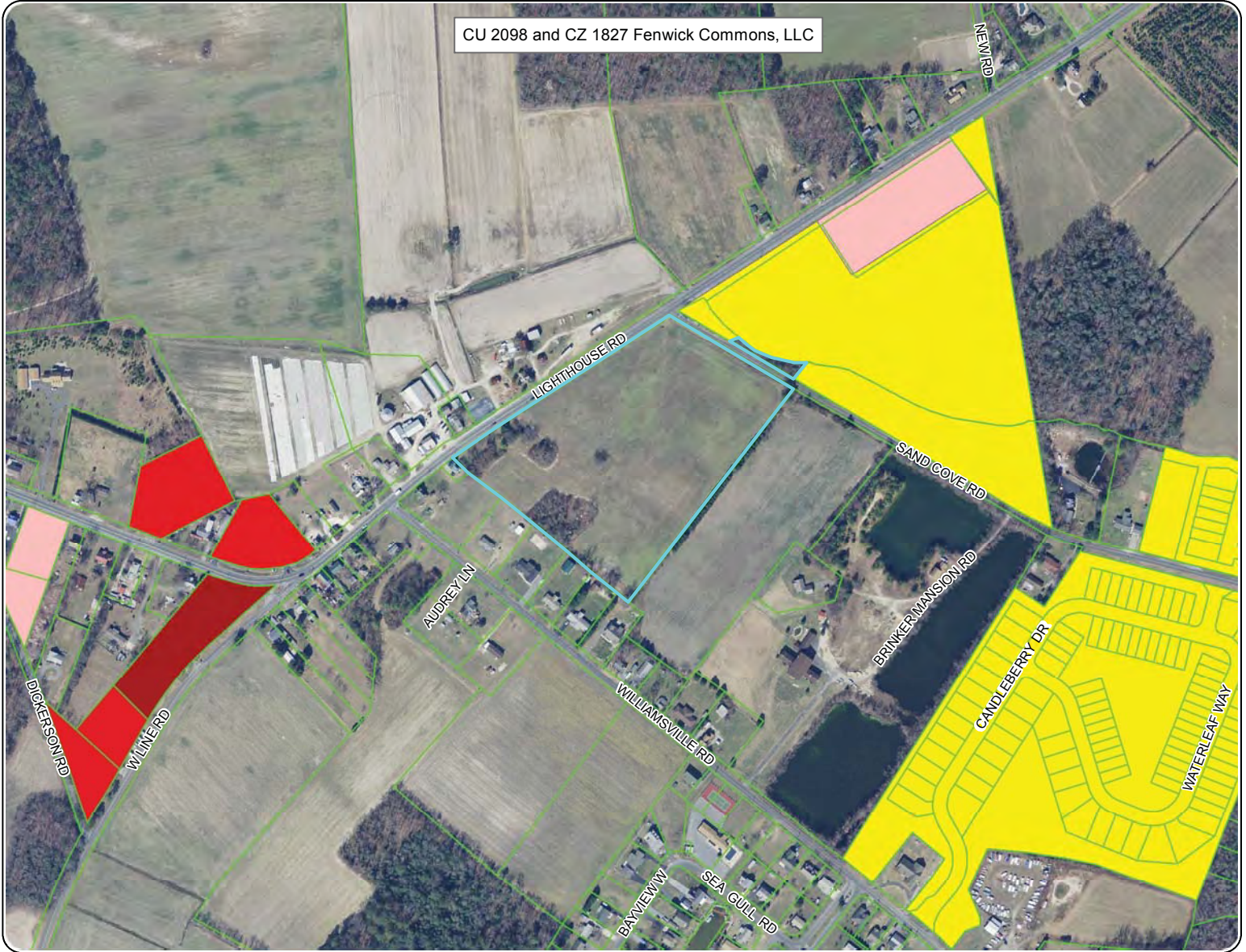
The property is zoned AR-1 (Agricultural Residential District). The properties to the north (across Lighthouse Rd.) are zoned AR-1 (Agricultural Residential District). The properties to the west are zoned AR-1 (Agricultural Residential District), C-1 (General Commercial District) and CR-1 (Commercial Residential District). The properties to the south are zoned AR-1 (Agricultural Residential District) and MR (Medium Density Residential District). The properties to the east are zoned AR-1 (Agricultural Residential District), B-1 (Neighborhood Business District) and MR (Medium Density Residential District). There are no known Conditional Uses in the area.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use request to allow for 62 duplex units could be considered consistent with the land use, surrounding zoning and uses. Staff notes that this staff analysis is contingent on Change of Zone request (CZ 1827) being approved.

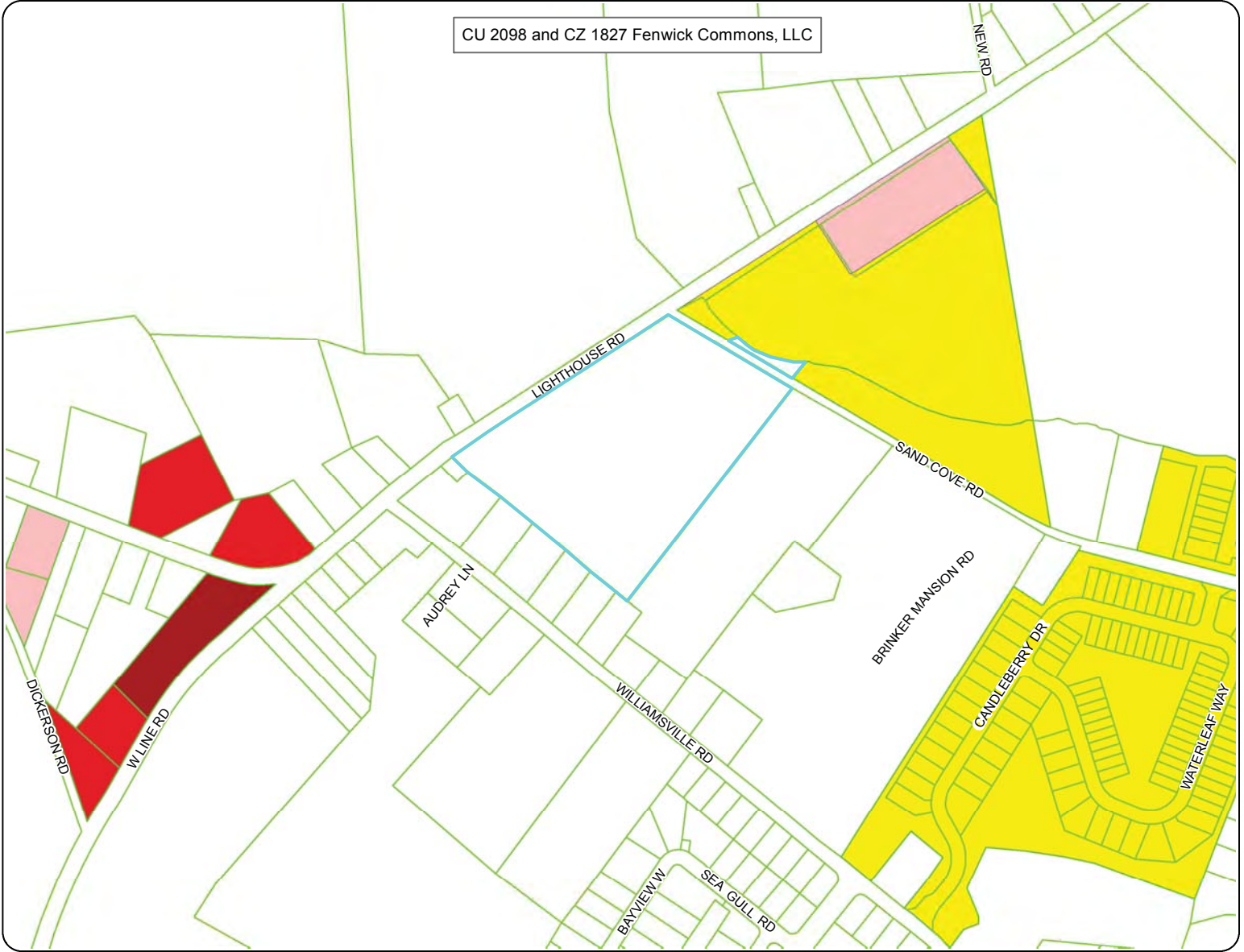




CU 2098 and CZ 1827 Fenwick Commons, LLC



CU 2098 and CZ 1827 Fenwick Commons, LLC





Introduced 05/23/17

Council District No. 5 - Arlett  
Tax I.D. No. 533-19.00-52.00  
911 Address: Not Available

ORDINANCE NO. \_\_\_\_

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 13.33 ACRES, MORE OR LESS

WHEREAS, on the 25th day of April 2017, a zoning application, denominated Change of Zone No. 1827, was filed on behalf of Fenwick Commons, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2017, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1827 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2017, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying at the southwest corner of Lighthouse Road (Route 54) and Sand Cove Road, and the east side of Sand Cove Road, approximately 211 feet south of Lighthouse Road (Route 54), and being more particularly described per the attached deed prepared by Parsons & Weidman, P.A., said parcel containing 13.33 acres, more or less.



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

PROPOSED

Introduced 05/23/17

Council District No. 5 – Arlett  
Tax I.D. No. 533-19.00-52.00  
911 Address: Not Available

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MULTI-FAMILY (62 DUPLEX UNITS) STRUCTURE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 13.33 ACRES, MORE OR LESS**

WHEREAS, on the 25th day of April 2017, a conditional use application, denominated Conditional Use No. 2098, was filed on behalf of Fenwick Commons, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2017, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2098 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2017, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

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

Section 1. That Chapter 115, Article V, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2098 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying at the southwest corner of Lighthouse Road (Route 54) and Sand Cove Road, and the east side of Sand Cove Road, approximately 211 feet south of Lighthouse Road (Route 54), and being more particularly described per the attached deed prepared by Parsons & Weidman, P.A., said parcel containing 13.33 acres, more or less.

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