

Sussex County Council Public/Media Packet

MEETING: March 17, 2020

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

COUNTY COUNCIL

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





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

SUSSEX COUNTY COUNCIL

<u>A G E N D A</u>

MARCH 17, 2020

10:00 A.M.

NEW START TIME – 12:00 P.M.

*AMENDED on March 11, 2020 at 11:30 a.m.1

**AMENDED on March 16, 2020 at 12:30 p.m.²

PLEASE NOTE - AS PERMITTED BY GUBERNATORIAL AUTHORITY, IN ORDER TO LIMIT THE RISK OF POTENTIAL COVID-19 EXPOSURE, THE PUBLIC SHALL BE DENIED ENTRY TO THE COUNCIL MEETING EXCEPT FOR THE 1:30 P.M. PUBLIC HEARING. THE PUBLIC IS ENCOURAGED TO WATCH OR LISTEN TO THE COUNCIL MEETING ELECTRONICALLY AT HTTPS://SUSSEXCOUNTYDE.GOV.

Call to Order

Approval of Agenda

Approval of Minutes

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

1. Administrator's Report

Karen Brewington, Human Resources Director

1. Pharmacy Cost Review and Recommendation



Michael Costello, Government Affairs Manager

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

Hans Medlarz, County Engineer

- 1. 2019 Delaware Coastal Airport & Business Park Property Maintenance RFP
 - A. Sussex Conservation District Ditch Bank Clearing/Mowing Services Renewal
- 2. Bulk Delivery of Sodium Hypochlorite, Project M20-29
 - A. Recommendation to Award
- * 3. North Coastal Planning Area, Inland Bays Regional Wastewater Facilities (IBRWF) Treatment & Disposal Expansion, Project 17-16
 - A. Approval, Agricultural Spray Agreement
 - B. Approval, WRA Associates, Inc. Contract Amendment No. 15
 - 4. Black Creek Cove Road Swale Remediation
 - A. Melvin L. Joseph Construction Co., Inc. Assumption of Select Contract Items
 - 5. Piney Neck Regional Wastewater Facility
 - A. Diversion Transmission System Standalone EJCDC Engineering Agreement

Patrick Brown, Project Engineer III

- 1. Professional Aeronautical Consultant Services, RFO 20-27
 - A. Recommendation to Award Professional Services Contract
- 2. New Road Estates, Chapter 96 Sussex Community Improvements
 - A. Project Referendum Resolution

John Ashman, Director of Utility Planning

- 1. Use of Existing Infrastructure Agreements
 - A. Coastal Tide/Arbors of Cottagedale Coastal Tide Partners, LLC
 - B. Sycamore Chase Charter Oak Development, LLC

Old Business

Conditional Use No. 2203 filed on behalf of Christopher F. Booth

"AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE AND LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.227 ACRES, MORE OR LESS" (lying on the north side of Omar Road, approximately 0.36 mile west of Armory Road) (Tax I.D. No. 433-7.00-13.01) (911 Address: 30725 Omar Road, Frankford)

Change of Zone No. 1900 filed on behalf of Michael P. Justice, Trustee

"AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 16.1 ACRES, MORE OR LESS" (lying on the west side of Parker House Road, approximately 0.35 mile south of Beaver Dam Road) (Tax I.D. No. 134-16.00-51.00) (911 Address: None Available)

Grant Requests

- 1. First State Community Action Agency for Equity Summit expenses
- 2. The Coming Edge for Youth Empowerment Program
- 3. Trinity Foundation for Annual Heart & Sole 5K fundraiser
- 4. Cape Henlopen Senior Center for Rehoboth Concert Band fundraiser
- 5. Ocean Waves Quilt Guild for Art/Quilt Show fundraiser
- 6. Greater Lewes Foundation for Lewes in Bloom Children's Learning Garden

Introduction of Proposed Zoning Ordinances

Council Members' Comments

11:30 a.m. Luncheon and discussion with the Sussex Conservation District

Location: Sussex County Association of Realtors Office, Georgetown

1:30 p.m. Public Hearing

Conditional Use No. 2211 filed on behalf of Indian River School District
"AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1
AGRICULTURAL RESIDENTIAL DISTRICT FOR A SPECIAL NEEDS
SCHOOL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND
BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 32.43
ACRES, MORE OR LESS" (lying on the east side of Patriots Way approximately
0.73 mile south of Zoar Road) (Tax I.D. No. 133-7.00-8.01) (911 Address: None
Available)

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

Possible Action on Executive Session Items

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

In accordance with 29 <u>Del.C.</u> §10004(e)(2), this Agenda was posted on March 10, 2020 at 4:15 p.m., and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

####

Members of the public who choose to attend the 1:30 p.m. public hearing should expect to undergo additional precautionary measures to limit the risk of exposure, such as health screening and mandatory "social distancing" seating in Council Chambers.

¹This amendment to the description of #3 under "<u>Hans Medlarz, County Engineer</u>" is to provide additional detail for clarification purposes only and does not include any new topics for discussion.

²These amendments are to limit the exposure and risk related to "COVID-19" for County personnel and members of the public who may attend the County Council Meeting. These amendments are being made under the authority issued by Governor John C. Carney through Proclamation No. 17-3292. See: https://governor.delaware.gov/proclamation-173292-03132020/.

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 10, 2020

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 10, 2020, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent
Irwin G. Burton III
Douglas B. Hudson
John L. Rieley
Samuel R. Wilson Jr.

President
Vice President
Councilman
Councilman
Councilman

Todd F. Lawson
Gina A. Jennings
J. Everett Moore, Jr.

County Administrator
Finance Director
County Attorney

Call to Order

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

Mr. Vincent called the meeting to order.

M 102 20 Amend and Approve

Agenda

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to amend the Agenda by striking "Introduction of Proposed Zoning Ordinances" and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Minutes The minutes of February 25, 2020 were approved by consent.

Correspondence Mr. Moore reported on correspondence received from the following: Delaware Adolescent Program, Inc. and Peninsula Regional Medical Center

Foundation.

Director/
Planning &
Zoning

Mr. Lawson reported on the interview and selection process for the position of Planning and Zoning Director and he announced that the Council wishes to appoint Jamie Whitehouse to that position.

M 103 20 Appoint Director of Planning A Motion was made by Mr. Burton, seconded by Mr. Wilson, that the Sussex County Council appoints Mr. Jamie Whitehouse to the position of Planning and Zoning Director for Sussex County, effective immediately.

and Zoning Motion Adopted: 5 Yeas.

M 103 20 (continued)

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

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

1. Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County

The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County will meet March 16th at 10:00 a.m. at the Sussex County Administrative Offices West Complex, 22215 North DuPont Boulevard, in Georgetown. The Conference Planning Subcommittee will also meet at 11:30 a.m. to discuss planning for the May 8, 2020, conference. A copy of the agenda for each meeting is attached.

2. Blackwater Village Public Hearing

The Sussex County Engineering Department will be conducting a public hearing on the proposed boundary for the Blackwater Village Area of the Sussex County Unified Sanitary Sewer District on Friday, March 13th, starting at 6:00 p.m. at the Indian River High School Auditorium.

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

Request to Post Notices/ Ocean Park and Herola Property Annexations John Ashman, Director of Utility Planning, presented for Council's consideration two requests to prepare and post notices for proposed expansions to the Sussex County Unified Sanitary Sewer District.

The Proposed Ocean Park Expansion includes parcels on the corner of Plantation Road and Cedar Grove Road; the expansion would consist of 5.482 acres, more or less. A tentative public hearing has been scheduled for April 2020.

The Proposed Herola Expansion includes a parcel along Route 24 (John J. Williams Highway); the expansion would consist of 18.793 acres, more or less. A tentative public hearing has been scheduled for April 2020.

M 104 20 Post Notices/ Ocean Park Expansion A Motion was made by Mr. Hudson, seconded by Mr. Burton, that the Sussex County Engineering Department is authorized to prepare and post notices for the Ocean Park Expansion of the Sussex County Unified Sanitary Sewer District to include parcels 334-12.00-50.00 and 51.00, located at the corner of Plantation Road and Cedar Grove Road, as presented.

Motion Adopted: 5 Yeas.

M 104 20 (continued)

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

M 105 20 Post Notices/ Herola Property Expansion A Motion was made by Mr. Burton, seconded by Mr. Hudson, that the Sussex County Engineering Department is authorized to prepare and post notices for the Herola Expansion of the Sussex County Unified Sanitary Sewer District to include parcel 334-12.00-127.01, located along Route 24 (John J. Williams Highway), as presented.

Motion Adopted: 5 Yeas.

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Lease Agreement/ R & H Filters, Inc. Eric Littleton, Manager, Delaware Coastal Airport and Business Park, presented for consideration a Lease Agreement with R & H Filters, Inc. for Lot 19B in the Delaware Coastal Business Park. R & H Filters, Inc. has leased Lot 19B since 1985; the current lease expires on March 15, 2020. Mr. Littleton presented the terms of the lease.

M 106 20 Approve Lease Agreement/ R & H A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the Lease Agreement between Sussex County and R & H Filters, Inc. for Lot 19B, as presented.

Filters, Inc. Motion Adopted: 5 Yeas.

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Grant

Requests Mrs. Jennings presented grant requests for the Council's consideration.

M 107 20 Councilmanic Grant A Motion was made by Mr. Rieley, seconded by Mr. Burton, to give \$500.00 (\$250.00 each from Mr. Vincent's and Mr. Rieley's Councilmanic Grant Accounts) to Laurel Elementary School for their 5K run and wellness walk

fundraiser.

Motion Adopted: 5 Yeas.

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

M 108 20

Councilmanic Grant A Motion was made by Mr. Burton, seconded by Mr. Hudson, to give \$3,000.00 from Mr. Vincent's Councilmanic Grant Account to the Town of Bethel for its anniversary celebration.

M 108 20

Motion Adopted: 5 Yeas.

(continued)

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

M 109 20 Councilmanic Grant A Motion was made by Mr. Hudson, seconded by Mr. Burton, to give \$500.00 (\$250.00 each from Mr. Hudson's and Mr. Burton's Councilmanic Grant Accounts) to the Police Unity Tour, Chapter 10, for the Annual Police Unity Memorial Bicycle Tour.

Motion Adopted: 5 Yeas.

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Rules

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

Public Hearing/ Plantation Medical Annexation A Public Hearing was held to consider expanding the boundary of the West Rehoboth Area of the Sussex County Unified Sanitary Sewer District (SCUSSD) to include properties situated on the south side of County Road 275 - Plantations Road (Plantation Medical Expansion). The two parcels are the Plantation Medical Expansion and the Metropolitan Community Church. The Engineering Department sent letters to the neighboring parcels asking them if they wished to be included in the District at the same time; only the Metropolitan Community Church parcel requested to be included.

John Ashman, Director of Utility Planning, reported that the Engineering Department proposes the inclusion of two additional parcels for a total of four parcels, which would allow for a contiguous boundary. Parcels recommended to be included are 334-12.00-53.00/53.01/53.02/53.03.

There were no public comments.

The Public Hearing was closed.

M 110 20 Adopt R 004 20/ Plantation Medical Annexation A Motion was made by Mr. Wilson, seconded by Mr. Burton, to Adopt Resolution No. R 004 20 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), WEST REHOBOTH AREA, TO INCLUDE SEVERAL PARCELS OF LAND ALONG THE SOUTHWEST SIDE OF PLANTATION ROAD LOCATED IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE, AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE" (Plantation Medical Annexation).

Motion Adopted: 5 Yeas.

M 110 20 (continued) **Vote by Roll Call:** Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Public Hearing/ **Sycamore** Chase Annexation A Public Hearing was held to consider expanding the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD), Miller Creek Area, to include the Sycamore Chase Subdivision on Bayard Road (included are parcels 134-18.00-55, 134-19.00-5 and 6, and a community known as The Meadows at Bayard). The proposed annexation contains 55 acres, more or less.

John Ashman, Director of Utility Planning, reported that the Sycamore Chase subdivision has received preliminary approval. Sycamore Chase is a proposed 104 lot subdivision; The Meadows at Bayard is a 10-lot subdivision that is currently restricted to 5 lots based on their existing onsite community septic system.

There were no public comments.

The Public Hearing was closed.

M 111 20 Adopt R 005 20/ **Sycamore** Chase **Annexation** A Motion was made by Mr. Riley, seconded by Mr. Wilson, to Adopt Resolution No. R 005 20 entitled "A RESOLUTION TO EXTEND THE **BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER** DISTRICT (SCUSSD), MILLER CREEK AREA, TO INCLUDE SEVERAL PARCELS OF LAND ALONG THE NORTH AND WEST SIDE OF BAYARD ROAD LOCATED IN BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE, AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, **DELAWARE**" (Sycamore Chase Expansion).

Motion Adopted: 5 Yeas.

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

SCRWF and **RB WTP Project** Change **Orders**

Hans Medlarz, County Engineer, discussed the South Coastal Regional Wastewater Facility Treatment Process Upgrade No. 3 and the Rehoboth Beach Wastewater Treatment Plant Capital Improvement Program, Phase 2 - General Construction, Project C19-11. The Engineering Department requests acceptance of M.F. Ronca & Sons, Inc. Change Order for drainage network improvements in the amount of \$196,637.27 and BW Electric, Inc. Change Order for design change in the credit amount of \$6,800.00.

M 112 20 **Approve** C/O -

A Motion was made by Mr. Burton, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for Contract C19-17, South Coastal Regional

SCRWF & RB WTP

M 112 20 (continued)

Wastewater Facilities Treatment Process Upgrade No. 3 and Rehoboth Beach Wastewater Treatment Plant Capital Improvement Program, Phase 2 – General Construction, be approved, increasing the contract amount by \$196,637.27, for a new contract total of \$39,723,037.27.

Motion Adopted: 5 Yeas.

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

M 113 20 Approve Change Order/ SCRWF & RB WTP A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 2 for Contract C19-17, South Coastal Regional Wastewater Facilities Treatment Process Upgrade No. 3 and Rehoboth Beach Wastewater Treatment Plant Capital Improvement Program, Phase 2 – Electrical Construction, be approved, decreasing the contract amount by \$6,800.00, for a new contract total of \$21,412.499.20.

Motion Adopted: 5 Yeas.

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

The Owl's Nest Pavement Improvements Project Hans Medlarz, County Engineer, presented the Final Balancing Change Order and request to grant Substantial Completion for The Owl's Nest Pavement Improvements Project, Project T20-01. The Final Balancing Change Order (#2), in the amount of \$2,892.74 for overrun/underrun in quantity. Final restoration was completed on January 30, 2020. A Public Hearing will be scheduled to adopt the assessment roll for the Chapter 96 Sussex Community Improvement project.

M 114 20 Approve Change Order/ The Owl's Nest Pavement Improvements Project A Motion was made by Mr. Burton, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 2 for Contract T20-01, The Owl's Nest Pavement Improvements, be approved for Final Balancing, decreasing the total contract amount to \$84,760.91, and that Substantial Completion be granted effective January 30, 2020, and any held retainage be released in accordance with the Contract documents.

Motion Adopted: 5 Yeas.

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Mallard Creek Sanitary Sewer Expansion/ Standalone USDA Engineering Services Agreement

Hans Medlarz, County Engineer, presented a Standalone USDA **Engineering Agreement for the Mallard Creek Sewer Expansion.** George Miles & Buhr (GMB) provided a draft Base Owner-Engineer Professional Services Agreement for design and bidding services associated with the Mallard Creek Sewer Expansion Project, with an estimated total cost of \$177,780.00. For this project, GMB was asked to develop and submit a scope of work with fee estimate for preliminary design, final design, and bidding phase services. Additionally, a standalone project-based agreement for professional services is required with USDA funding; therefore, the Department worked with GMB to make necessary federal revisions to the original base agreement. The agreement, scope and cost were reviewed and forwarded to the USDA for concurrence. The Engineering Department recommends authorization of the professional services agreement with GMB at a not-to-exceed value of \$177,780.00, for design and bidding of the Mallard Creek Sewer Expansion, Project S20-26, contingent upon USDA approval.

M 115 20 Approve Engineering Services Agreement/ Mallard Creek Sewer Expansion A Motion was made by Mr. Hudson, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that the Engineering Services Agreement with George Miles & Buhr (GMB) be approved in the amount not to exceed \$177,780.00 for design and bidding phases of Sussex County Project S20-26, Mallard Creek Sewer Expansion, contingent upon approval by the U.S. Department of Agriculture (USDA).

Motion Adopted: 5 Yeas.

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Old Business/ MOU with DelDOT Under Old Business, an update was given on the Memorandum of Understanding (MOU) between Sussex County and DelDOT regarding the process of land use applications. Vince Robertson, Assistant County Attorney; Marc Coté, Director of Planning for DelDOT, and Jamie Whitehouse, Sussex County Planning and Zoning Director, presented the update.

During the Public Hearing on the MOU, several revisions were suggested; these suggestions followed the prior recommended changes from the Planning and Zoning Commission. After the Public Hearing, Mr. Robertson met with representatives of DelDOT to discuss the comments and recommended changes. Mr. Robertson and Mr. Coté reviewed the more significant changes and noted that the update does not include minor word changes, additions or deletions, or text revisions that are not substantive.

Old Business/ MOU with DelDOT (continued)

Mr. Robertson reviewed the following significant changes:

- Generally accept the changes suggested by the Planning and Zoning Commission that are not modified here.
- Reorganize the MOU into a more readable format (instead of following the format of the 1988 MOU). This more clearly organizes the document by land use type and by traffic impact and the steps that follow each one.
- Reorganize certain areas into list, or outline form, whenever possible. Since this does not change the content, they are not all listed here. But, examples include the reformatting into list form the "Level of Service "explanation and the events that must occur prior to a hearing on a land use application.
- Change "Fee in Lieu" to "Area Wide Study Fee". There was a public comment to replace the definition of "Area Wide Study Fee", but the current definition is mandated by DelDOT's requirements, so it should remain the DelDOT definition for consistency.
- There was a request to delete the existing statement that where staff and DelDOT agree that the traffic impact from a proposed change in land use is diminutive, staff can waive the Preliminary Traffic Analysis ("PTA") requirement. Staff believes this should be left in, as it gives flexibility to waive the PTA at the beginning of the land use process if it is known to create little or no traffic impact.
- It is recommended to confirm that where traffic impact is "negligible", no further traffic analysis will be necessary. That change will be made. But DelDOT has requested an additional line confirming that "DelDOT may still identify the need for a TOA in a subsequent plan review process". In other words, as a project gets fine-tuned and goes through site plan review, additional information that comes in may warrant a TOA.
- It is recommended to permit developer to do its own TIS instead of payment of an Area Wide Study Fee.
- There was agreement from Planning and Zoning and several groups that commented to delete the reference to seasonal traffic counts. Instead, traffic counts are dictated by DelDOT's manuals that are based on industry standards.
- There was a request to delete the ability of Sussex County to require a TIS as part of a proposed land use project. Staff recommends that this tool remain available to Sussex County should the need arise.
- There was a request to delete the ability to do an Area Wide Study Fee when DelDOT has determined that an area has already been the subject of a TIS or TOA. It is recommended to leave this in, as it allows greater flexibility in areas where the roads have already been sufficiently studied.
- It maintains that DelDOT should recommend phasing wherever and whenever appropriate for Sussex County's consideration. But it should be clarified that this DelDOT recommendation should come in prior to Preliminary Site Plan approval. It should also be clarified

Old
Business/
MOU
with
DelDOT
(continued)

that phasing can refer to a number of building permits and not just an area of land within a development.

• Concerns were stated about Sussex County participating in DelDOT's "negotiations" with a developer, and what that means. "Negotiations" may not convey what was intended – Sussex County wants to be notified about, participate in and be aware of discussions and determinations between DelDOT and a developer with regard to a project. And, be aware of any changes that may occur. This paragraph should be revised to more clearly describe this.

Mr. Robertson stated that the next step is to take what is outlined and put it into agreement form for submission to Council for discussion and possible adoption.

M 116 20 Go Into Executive Session

At 11:09 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Wilson, to recess the Regular Session and go into Executive Session.

Motion Adopted: 5 Yeas.

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

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Executive Session

At 11:15 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to land acquisition. The Executive Session recessed at 12:05 p.m.

M 117 20 Reconvene Regular Session

At 12:09 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to come out of Executive Session and reconvene the Regular Session.

Motion Adopted: 3 Yeas, 2 Absent.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Absent;

Mr. Wilson, Absent; Mr. Burton, Yea;

Mr. Vincent, Yea

M 118 20 Recess

At 12:09 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to recess.

Motion Adopted: 3 Yeas, 2 Absent.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Absent;

Mr. Wilson, Absent; Mr. Burton, Yea;

Mr. Vincent, Yea

M 119 20 Reconvene

At 1:35 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Burton, to reconvene.

M 119 20

Motion Adopted: 4 Yeas, 1 Absent.

(continued)

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rielev, Yea;

Mr. Wilson, Absent; Mr. Burton, Yea;

Mr. Vincent, Yea

M 120 20 Go Into

At 1:37 p.m., a Motion was made by Mr. Burton, seconded by Mr. Rieley, to

recess the Regular Session and to reconvene the Executive Session.

Executive

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

> **Vote by Roll Call:** Mr. Hudson, Yea; Mr. Rieley, Yea;

> > Mr. Wilson, Absent; Mr. Burton, Yea;

Mr. Vincent, Yea

Executive Session

At 1:44 p.m., the Executive Session of the Sussex County Council reconvened in the Basement Caucus Room for the purpose of continuing the

discussion on land acquisition matters. The Executive Session concluded at

2:28 p.m.

M 121 20

At 2:31 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Burton, to Reconvene

come out of Executive Session and to reconvene the Regular Session.

Regular Session

Motion Adopted: 4 Yeas, 1 Absent.

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

Mr. Wilson, Absent; Mr. Burton, Yea;

Mr. Vincent, Yea

E/S Action

There was no action on Executive Session matters.

M 122 20 Adjourn

At 2:33 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson,

to adjourn.

Motion Adopted: 4 Yeas, 1 Absent.

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

Mr. Wilson, Absent; Mr. Burton, Yea;

Mr. Vincent. Yea

Respectfully submitted,

Robin A. Griffith Clerk of the Council

ADMINISTRATION

MICHAEL J. COSTELLO GOVERNMENT AFFAIRS MANAGER

(302) 854-5060 T (302) 855-7749 F michael.costello@sussexcountyde.gov





Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Douglas B. Hudson The Honorable John L. Rieley

The Honorable Samuel R. Wilson Jr.

FROM: Michael Costello

Government Affairs Manager

RE: <u>UPDATE-MOU WITH DOC AND DELDOT, LITTER COLLECTION</u>

DATE: March 2, 2020

During next Tuesdays meeting, I will provide an update on the litter collection that has taken place in Sussex County under the MOU between the D.O.C., DelDOT, and Sussex County. This MOU was approved by Council on June 5, 2018.



MEMORANDUM OF UNDERSTANDING Collection of Roadside Litter and Trash

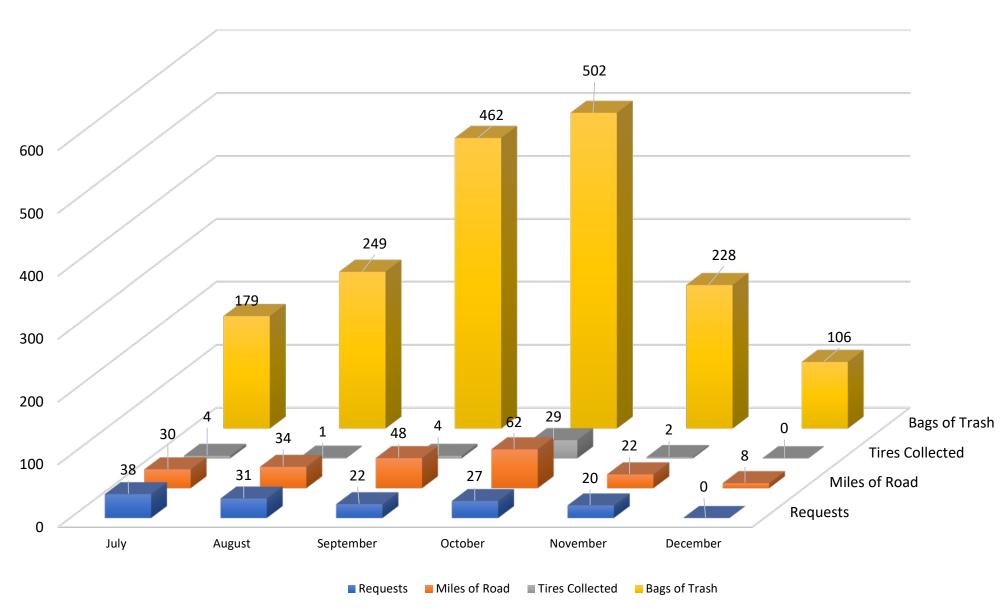
Activity Report July-December 2019



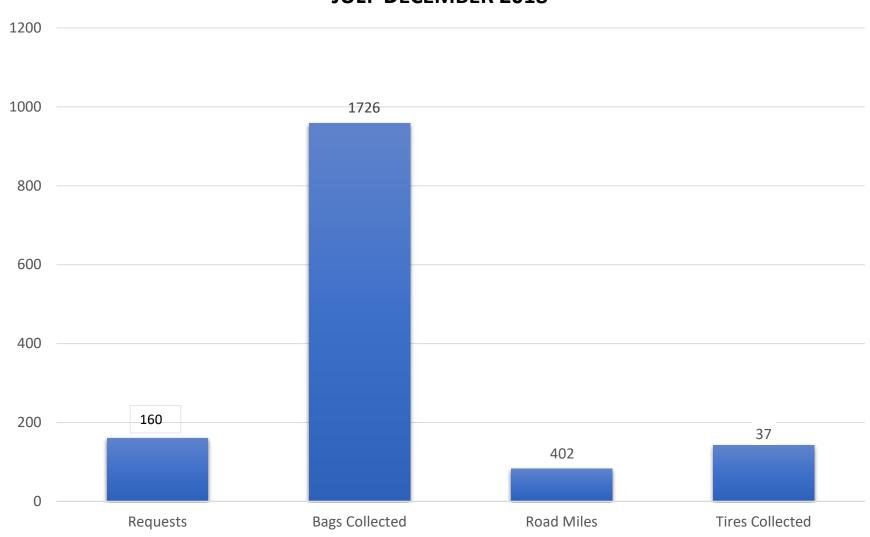




ACTIVITY BY MONTH



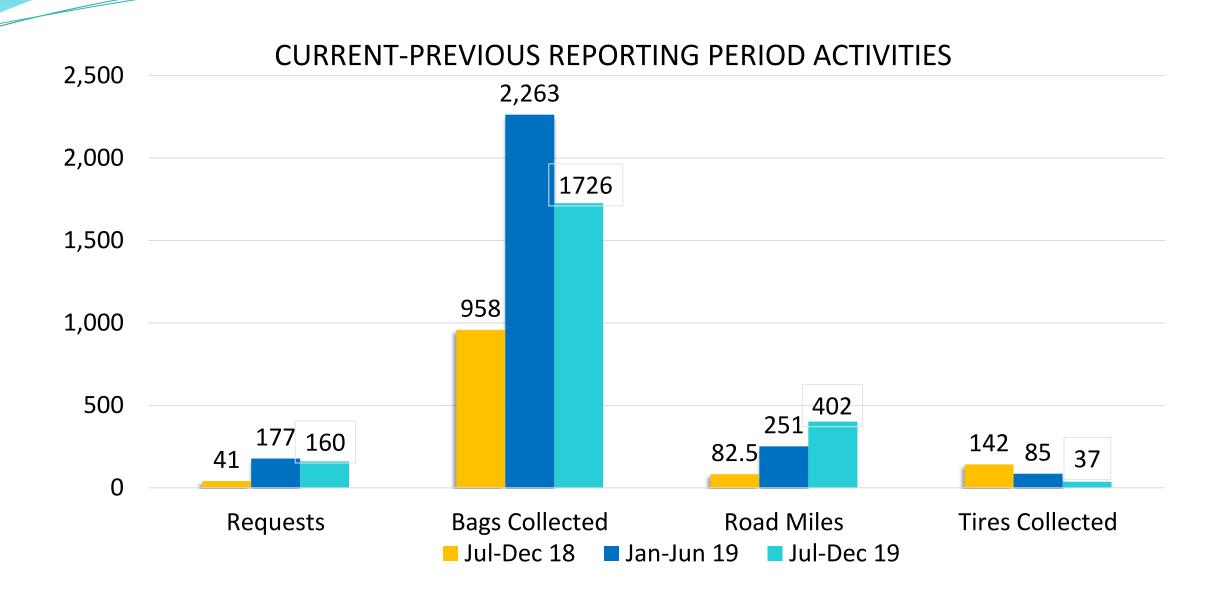
TOTAL ACTIVITY JULY-DECEMBER 2018

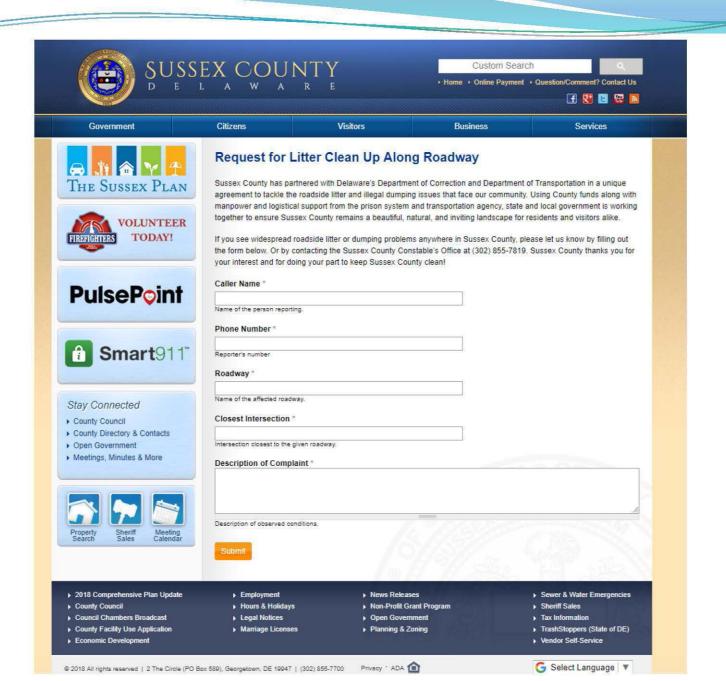




Total: \$19,495

Average: \$48 per road mile





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 (302) 855-7799 FAX





DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable I.G. Burton, III, Vice President

The Honorable Douglas B. Hudson The Honorable John L. Rieley

The Honorable Samuel R. Wilson, Jr.

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

RE: 2019 Delaware Coastal Airport & Business Park Property Maintenance RFP

A. Sussex Conservation District - Ditch Bank Clearing/Mowing Services

Renewal

DATE: March 17, 2020

Previously the Sussex County Engineering Department solicited on three (3) different occasions, proposals for annual site maintenance at the Delaware Coastal Airport and Business Park. Most of the maintenance contracts were awarded and they are effective through 2023.

Unfortunately, each of the three (3) times the company awarded the ditch bank clearing and mowing was unable to perform the services as required, and subsequently, the respective contracts were cancelled through Council action.

On March 26, 2019, the Engineering Department obtained Council's approval to utilize the Sussex Conservation District for the work through calendar year 2019 in the amount not to exceed \$6,800.00.

The Engineering Department now recommends continuation of the arrangement with the Sussex Conservation District for the remaining four (4) years of the existing Property Maintenance RFP, through 2023. We solicited the attached quotation and expect to limit the number of cuts to two per year in the not to exceed amount of \$4,600.00 per year.





Responsible Party Billing Info: Name:Delaware Coastal Airpark Attn: Hans Medlarz 21553 Rudder Lane

PO Box 589

Georgetown, DE 19947

Project Address:

Delaware Coastal Airport Industrial Park

Estimate

	1/28/2020		
Project Name:			
Delaware Coast Airpark Mowing			
20-024			
Watershed (CB, IB, DB)			
Legislative District			
County			
DE Rep	Senate		

ESTIMATE EXPIRES IN THREE MONTHS

Item	Quantity	Rate	Amount
Placement	1.00	\$ 200.00	\$ 200.00
Arm Mower	20.00	\$ 105.00	\$ 2,100.00
			\$ -
Total Per Mowing			\$ 2,300.00
4- Complete Mowings	4.00	\$ 2,300.00	\$ 9,200.00
			\$ -
			\$ -
Price is for ditch bank mowing in the industrial			\$ -
park as performed in previous years. Should			\$ -
additional areas be added due to new construction			\$ -
all extra work will be billed time and material.			\$ -
	TOTAL		\$ 9,200.00

Signaure of approval:	Date:
Please sign and return to	the Sussex Conservation District
Prepared by Stephen	
All work will be billed time and material	
SCD Employee Signature:	

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 (302) 855-7799 FAX





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HANS M. MEDLARZ, P.E. COUNTY ENGINEER

Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable I.G. Burton, III, Vice President

The Honorable Douglas B. Hudson The Honorable John L. Rieley

The Honorable Samuel R. Wilson, Jr.

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

RE: BULK DELIVERY OF SODIUM HYPOCHLORITE

PROJECT NO. M20-29

RECOMMENDATION TO AWARD

DATE: March 10, 2020

Sussex County contracts the Bulk Delivery of Sodium Hypochlorite to each of the four wastewater facilities and the Airpark for treatment of the wastewater. The current contract is due to expire on June 30, 2020. Bids were requested for the annual procurement of approximately 147,565 gallons, with an alternate bid for 7- 30 gallon drums per year, to begin on July 1, 2020.

Invitations to bid were advertised in two (2) newspapers, viewable on the Sussex County website, and directly sent to businesses on our supplier list. On March 6, 2020, bids for the Bulk Delivery of Sodium Hypochlorite were opened. Three (3) bids were received.

Univar Solutions bid the lowest price at \$0.981 per gallon. George S. Coyne Chemical Co. bid the lowest price for the 30-gallon drum at \$209.1778.

The Engineering Department recommends the first contract year award of the base bid for bulk delivery of sodium hypochlorite to Univar Solutions at the unit price of \$0.981 per gallon and award to George S. Coyne Chemical Co. for the alternate bid at the unit price of \$209.1778 per 30 gallon drum. If both suppliers perform satisfactorily, the contract allows a one year extension at the discretion of the Engineering Department.





Project: Bulk Delivery of Sodium Hypochlorite

Project No.: M20-29 Award Date: TBD

Awarded Bidder: TBD
Total Awarded Bid: TBD

Bidder	Bid Item 1	Alternate Bid Item 1
Univar Solutions	.981/gallon	No Bid
George S. Coyne Chemical Co.	1.9765/gallon	209.1778/container
Kuehne Chemical Co.	4.50/gallon	No Bid

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 (302) 855-7799 FAX





DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Douglas B. Hudson The Honorable John L. Rieley

The Honorable Samuel R. Wilson, Jr.

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

RE: North Coastal Planning Area,

IBRWF - Treatment & Disposal Expansion, Project 17-16

A. Approval, Agricultural Spray Agreement

B. Approval, WRA, Inc. - Contract Amendment No.15

DATE: March 17, 2020

Sussex County separately tracks its wastewater service needs in the North and South Planning Areas as per the attached 20-year system growth analysis. For the North Planning Area, the County is pursuing projects at both the Wolfe Neck & the Inland Bays Regional Wastewater Facilities. The latter is the subject of this memo Wolfe Neck will be addressed separately in the near future.

Sussex County's treatment capacity expansion plans for the Inland Bays Spray Irrigation Facility Phase 2 have been submitted mid-2019 but are on hold awaiting further input from the County with regards to alternative disposal options and their respective timelines. DNREC, Division of Water has expressed support for alternative disposal methodologies in lieu of requiring additional storage capacity. They furthermore signaled permitting of capacity increases would be in stages with the first stage not to exceed 3.0 million gallons per day (mgd). The County's Phase 2 design plans reflect this approach by keeping the location for a potential storage lagoon unencumbered while at the same time moving forward with developing all alternative outlets.

The Engineering Department requested Inland Bays' DNREC, Land Treatment System (LTS) permit renewal to be issued with disposal thresholds tied to actual operational performance of the permitted alternative disposal methods. The anticipated schedule incorporates DNREC comments received during our previous meetings/presentations as well as the current stages of the design and construction.



The following alternate outlets are being pursued.

1. Connection to Artesian's Stonewater Creek Facility:

The connection of the Inland Bays RWF's effluent piping to the Stonewater Creek facility has been completed and Artesian's raw wastewater sources have been transferred to the County's system. The intent is summarized in the attached MOU. Artesian will provide final effluent dosing and disinfection at the facility in accordance with their permit limits while the County treats Artesian's wastewater at the Inland Bays facility. DNREC has been notified and is evaluating whether any public notifications are required. In addition, the County has committed to pursue a permit for County land, pre-tested for rapid infiltration disposal allowing gradual increase of dosing under a DNREC approved predetermined testing schedule of the Stonewater facility.

2. Connection to Agricultural Spray Partners:

The County has four (4) agricultural spray partners, shown on the attached overview map, under two different agricultural distribution arrangements. The first one has the respective spray partner leasing County land while the second incentives the spray partner for using treated effluent application, at agronomic rates, on partner owned land. The master agreement for both options is attached. DNREC Regulations Governing the Design, Installation & Operation of On-site Wastewater Treatment & Disposal Systems Section 6.11.8 require these spray agreements. Both spray agreements have been developed by the County Attorney, in compliance with DNREC Regulations. The agreement for use with County owned land was first executed at settlement of the land purchase. The identical formats are intended to be used for the remaining agricultural spray partners.

The County's must provide effluent water quality consistent with DNREC Regulation Section 6.3.2.3.2 for unlimited public access. Therefore, all agricultural spray applications require the completion of the filtration upgrades included under Inland Bay's Phase 2 which will not be available until the fall of 2021. The effluent distribution loop will be available earlier at the beginning of the 2021 growing season and connections will be made and tested in anticipation of full utilization that fall.

3. Connection to Constructed Wetlands:

Constructed wetlands offer a viable disposal alternative at the end of 2020 because this disposal methodology does not require the completion of the Inland Bay's Phase 2 upgrades. They will consist of 12 acres of submerged gravel type wetland broken into 4 cells. We propose to locate the cells within the footprint of the North Burton field roughly center on the ridge to allow surface flow to go around the wetland. The width of the wetland will be 300 ft (east to west) and 1,750 ft long (north to south). We will bring inflow into each cell using perforated diffuser pipe placed above/within stone and perforated collector pipes. The remainder of the North Burton field will be converted to fixed head spray system and afforested. The initial design dosing flow to the proposed wetland will be 300,000 gpd. This system is under design by RK&K, Inc, the County's environmental consultant.

The County must submit the detailed support documentation for the alternate outlets to DNREC in support of the Phase 2 construction permit issuance without the storage lagoon and ultimately the Inland Bays RWF's operating permit.

In 2014 County Council awarded a five (5) year base contract for engineering services in the North Coastal Planning Area to Whitman, Requardt and Associates, LLP (WRA). Since then, Council utilized the contract by approving fourteen (14) amendments totaling \$8,660,528.43in value.

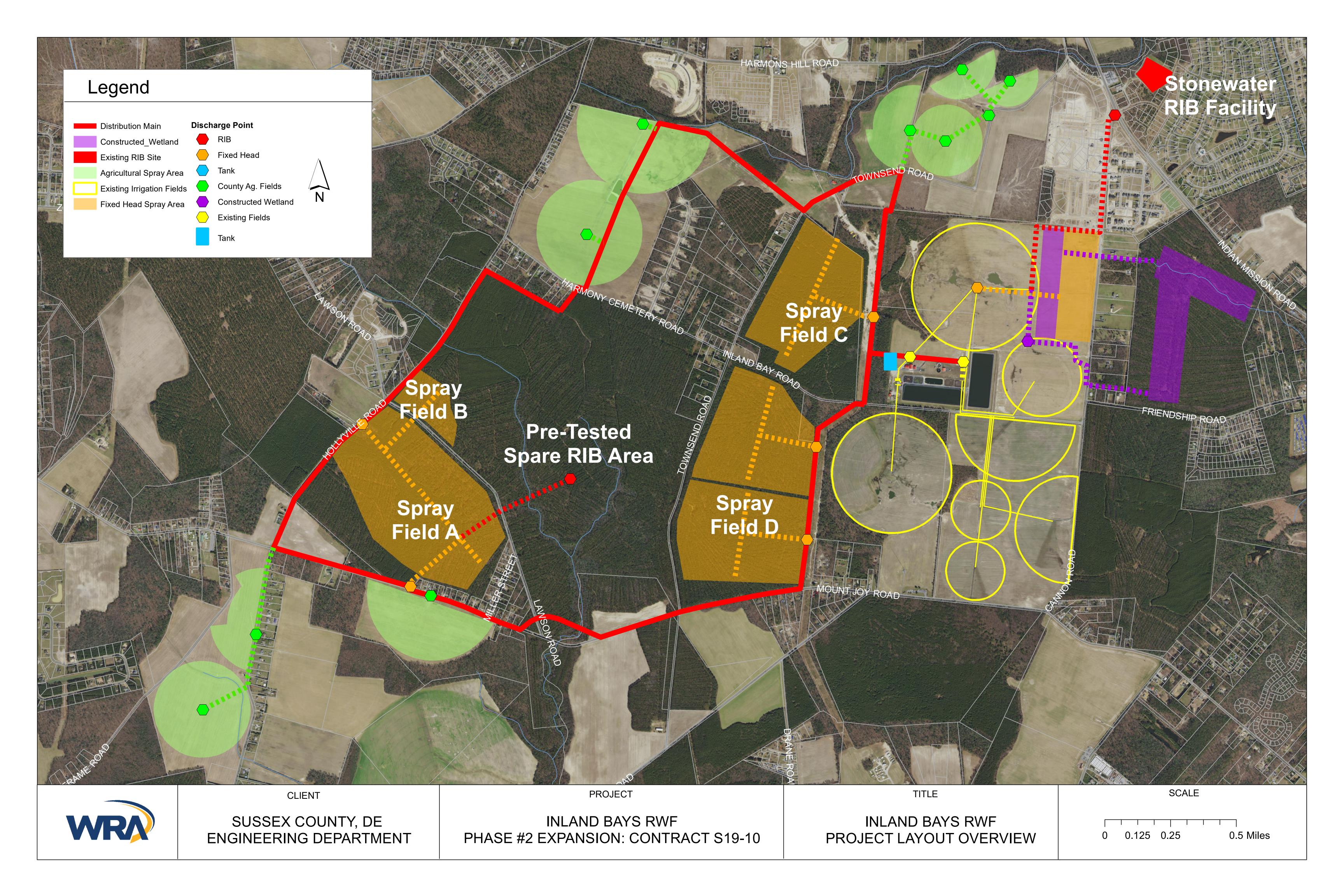
The following amendments were associated with the Inland Bays RWF. On June 2, 2015, County Council approved Amendment No.5 for the evaluation of Class A biosolids drying options. During the May 2, 2016 FY17 budget workshop, the Engineering Department presented drying alternatives and a list of potential municipal partners.

On July 19, 2016, Council approved Amendment No.6 for a 2.0 mgd expansion of treated wastewater <u>disposal</u> design. On that same day, Council authorized contract negotiations for design of a 2.0 mgd <u>treatment</u> capacity expansion as well as the regional biosolids and septage upgrades. These negotiations culminated on August 30, 2016, with Council's approval of Amendment No.7 in the amount of \$1,290,820.00 for design services through bid award excluding contract administration and on-site inspection.

On April 24, 2018 Council approved Amendment 7A for the drying system design changes associated with competitive bidding two optional systems side by side. On June 26, 2018 Council approved Amendment No. 7B for construction administration and inspection services associated with the biosolids and septage upgrades and Amendment No. 7C for control system coordination and programming in the amounts of \$638,532.00 and \$120,809.00 respectively. The completed biosolids and septage upgrade package was publicly advertised and on June 26, 2018, Council awarded the contract to Bearing Construction, Inc. in the amount of \$13,668,346.00.

On April 9, 2019 Council approved Amendment No. 14 associated with the effluent flow diversion to Artesian's Stonewater Facility and the addition of a pressure regulating standpipe serving the entire effluent water loop in an amount of \$175,000.00.

The Department is now requesting approval of both spray agreement formats in principle as well as WRA, Inc's Amendment No. 15 in the amount of \$131,806.00 covering the soils work required for each partner spray site as well as the permitting of the spare rapid infiltration facility previously identified.



	SUSS	SEX COUNTY 20-Year REGIO	NAL SEWER PLANNING		
		Jan-19			
Sussex County Treatment Facility	Actual Facility Capacity [MGD]	Annual Avr. Permitted/Design Capacity [MGD]	Future Permit/Design Capacity [MGD]	2018 Actual Annual Avr. Flow [MGD]	20-Year Add. Capacity Needs [MGD]*
South Coastal RWF	6.00	9.00	10.00	2.95	
Piney Neck RWF	0.20	0.20	0.00	0.17	
South Planning Area Subtotal			10.00	3.12	4.18
Inland Bays RWF***	1.50	2.00	5.00	1.36	
Wolfe Neck RWF	2.00	3.10	1.50	1.63	
City of RB WTF Diversion **	0.00	0.495	0.50	0.00	
LBPW Diversion	0.40	0.40	0.40	0.20	
Artesian RIB Diversion	0.00	0.45	0.45	0.00	
North Planning Area Subtotal			7.85	3.19	3.20
Totals	10.10	15.65	17.85	6.31	7.38
* 200 gpd per EDU		South Planning Area 20	-Year Capacity Allocation	73%	
** 42% capacity allocation of 3.0 mgd North Planning Area 20-		-Year Capacity Allocation	81%		
*** Incl. 2nd stage of disposal expa	nsion				

MEMORANDUM OF UNDERSTANTING

BETWEEN ARTESIAN WASTEWATER MANAGEMENT INC.

AND SUSSEX COUNTY DELAWARE

- 1. <u>Parties:</u> This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into by and between Artesian Wastewater Management Inc. (hereinafter referred to as "Artesian") and Sussex County, a political subdivision of the State of Delaware (hereinafter referred to as "Sussex County").
- 2. Nature of Relationship: On August 30, 2016, Artesian and Sussex County entered into a Bulk Wastewater Services Agreement regarding the exchange of Wastewater. Since that time, two amendments have been signed by the parties; Addendum No. 1 on February 7, 2019 and Addendum No. 2 on September 19, 2019. These documents establish a relationship between the two parties where wastewater and/or treated effluent can be transferred between each party's respective wastewater systems for treatment and/or disposal.
 - a. The implementation and pursuit of the goals, objectives, conditions and terms of the collaboration described in this MOU shall be carried out in accordance with the terms, conditions and requirements laid out in the Agreement and Amendments described above.
- 3. <u>Purpose:</u> The purpose of this MOU is to establish the terms, conditions and limits of a specific exchange of wastewater and treated effluent between Artesian and Sussex County: namely, the exchange between Artesian's Stonewater Creek Wastewater Treatment Plant and Sussex County's Inland Bays Wastewater Treatment Plant.
 - a. Artesian will send raw, untreated wastewater collected in its regional wastewater network to the Inland Bays Regional Wastewater Treatment Plant for treatment.
 - **b.** Sussex County will send treated effluent from the Inland Bays Regional Wastewater Treatment Facility to the Artesian's Stonewater Creek Wastewater Treatment and Disposal Facility for disposal.
- **4. Facilities:** The following facilities shall be involved in exchange defined by this MOU
 - a. Sussex County's Inland Bays Regional Wastewater Treatment Plant as defined in State Permit No. LTS 5004-90-12.
 - **b.** Artesian's Stonewater Creek Wastewater Treatment and Disposal Facility as defined in State Permit No. 202221-02.

- from the outside party to Sussex County at the same time that they are sent to Artesian.
- iii. Artesian's operators shall have the right, at any time, to collect samples at their expense of the t reated effluent from the Inland Bays Regional Wastewater Treatment Facility.
- iv. Sussex County operators shall have the right, at any time, to collect samples at their expense of the effluent being disposed of in the Stonewater Treatment and Disposal facility.
- 6. Execution: The Parties hereto have executed this MOU on the day stated below.

ARTESIAN	WASTEWATER	MANGEMENT INC.

Name and Title

Date: 2/20/2020

SUSSEX COUNTY

By: Sussex County Engineer

Date: 2/19/2020

AGRICULTURAL SPRAY AND LEASE AGREEMENT

THIS AGRICULTURAL SPRAY AND LEASE AGREEMENT ("Agreement") is made and entered into this ____ day of July, 2019, by and between Sussex County, a political subdivision of the State of Delaware, with an address of 2 The Circle, P.O. Box 589, Georgetown, DE 19947 (the "COUNTY"), and M & M FARMS, LLC, a Delaware limited liability company, with an address of 15046 Gravel Hill Road, P.O. Box 250, Milton, DE 19968 (the "TENANT").

WHEREAS, the COUNTY is constructing an effluent water loop system at its Inland Bays Regional Wastewater Facility ("the Facility") that will carry highly treated wastewater effluent to certain properties surrounding the Facility; and

WHEREAS, the effluent water loop system will provide treated wastewater to the Leased Land on-demand for crop application via center-pivot irrigation rigs; and

WHEREAS, the COUNTY owns the three (3) parcels of land referenced herein located near the Facility which will be connected to the effluent water loop system and which the COUNTY desires to lease to the TENANT for agricultural use subject to TENANT'S acceptance and exclusive use of the COUNTY'S treated wastewater effluent and the other terms and conditions stated in this Agreement; and

WHEREAS, the parties desire to enter into this Agreement as to their mutual obligations to each other.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and the terms, conditions, representations, warranties and covenants herein contained, the parties, intending to be legally bound, hereby covenant and agree as follows:

1. RECITALS.

The Recitals above are incorporated herein by reference and made a part of this Agreement.

2. COUNTY AND FACILITY.

The COUNTY is both the owner of the Leased Land, hereinafter defined in paragraph 2, and the operator of the Facility referenced herein. All references herein to "COUNTY" shall include its roles as the property owner/ Landlord and the operator of the Facility, as the case may be. As required by Section 6.11.8.2.2.2 of the Delaware Department of Natural Resources and Environmental Control Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems (the "DNREC Regulations"), the COUNTY shall execute this Agreement in its capacity as property owner/Landlord and as the operator of the Facility.

LEASED LAND.

The COUNTY leases and rents to the TENANT and the TENANT leases and rents from the COUNTY, all that certain cleared agricultural land portion of the 225

Tillable Acres +/- situated in Indian River Hundred, Sussex County, Delaware, and being further identified as Tax Map and Parcel Numbers (1) 234-16.00-28.00; (2) 234-16.00-26.03; and (3) 234-22.00-4.00, as outlined on the maps collectively attached hereto as Exhibit A which is incorporated herein by reference ("Leased Land"). As required by the DNREC Regulations, the Deed from MMW Investments, LLC to the COUNTY verifying ownership of the Leased Land, and the Leased Land's zoning verification are attached hereto as Exhibits B and C, respectively, and are incorporated herein by reference.

4. TERM OF AGREEMENT.

The initial term of this Agreement shall commence on the date of execution and shall terminate on December 31, 2024 This Agreement shall automatically renew on the same terms and conditions contained herein for additional one-year terms unless either party provides the other party with written notice of its intent not to renew on or before August 31, 2024, or August 31st of any given year thereafter, if applicable, in accordance with this Agreement and 25 <u>Del</u>. <u>C</u>. § 6703.

5. RENTAL FEE.

The TENANT shall pay the COUNTY a total annual rental fee of \$21,375.00. The annual rental fee is based on a \$95.00 per acre charge for approximately 225 tillable acres. The COUNTY does not guarantee the exact total acreage of Leased Land. Each year's annual rental fee shall be paid to the COUNTY on or before January 31st for that year.

6. USE OF LEASED LAND.

The COUNTY owns and operates the Inland Bays Regional Wastewater Facility that produces treated wastewater for agricultural uses (alternatively referred to herein as "effluent", "treated wastewater" or "reclaimed water"). The TENANT, herewith, agrees to accept all such effluent as deemed necessary by the TENANT for agricultural purposes and the and the TENANT shall use the COUNTY'S effluent exclusively for all agricultural irrigation needs unless TENANT'S farm special management practices require well water or if the COUNTY'S effluent is not available. As a condition of this Agreement, the TENANT reserves the unilateral right to direct the location of the discharge upon any or all portions of the Leased Land as deemed, in the opinion of the TENANT, best servicing the interest of the TENANT'S farming operations.

The COUNTY shall be responsible for the design and installation of the effluent water loop system, including the automated connection to the TENANT's existing irrigation systems. TENANT shall grant access to its existing irrigation system to the COUNTY for the purposes of connecting the effluent water loop system. COUNTY shall make every effort to schedule and coordinate the installation of the effluent water loop system so as not to affect the TENANT's farming operation.

The COUNTY reserves the right to spread aerobically digested Class A bio-solids, which is a non-hazardous decomposable waste, over the Leased Land as a soil amendment for the duration of the Agreement at a rate not to exceed 1-dryton per acre providing an

approximate nutrient content of 84 lbs N; 22 lbs P & 4 lbs K acre. Actual nutrient content to be confirmed by County at time of application.

The Leased Land may be used for producing agricultural commodities. The TENANT shall not plant any crops intended for direct human consumption. The TENANT agrees to follow good farm management practices and to farm the land in a good and husband-like manner to avoid degradation of the environment and further agrees to the following:

- a) The TENANT shall use and occupy the presently arable and tillable acres for farming and agricultural purposes only.
- b) A winter cover crop must be planted and established on the Leased Land by the TENANT. Unmanaged, volunteer vegetation is not an acceptable spray field cover.
- c) The TENANT shall plant all irrigated fields on an annual basis. An annual crop rotation of agricultural commodities is mandatory for the spring/summer growing season.
- d) The TENANT shall be responsible for the Nutrient Management Plan for the Leased Land, as required by the State of Delaware's 1999 Nutrient Management Act and the DNREC Regulations. The TENANT shall provide the COUNTY with a copy of the Nutrient Management Plan for the Leased Land. The COUNTY shall supply to the TENANT, for incorporation into said plan, flow and nutrient information of treated effluent as well as tonnage and nutrient information for the Class A biosolids as required by DNREC Regulations.
- e) The TENANT shall take all reasonable precautions to avoid the establishment of any noxious weeds, including Johnson grass, Canada thistle, bur cucumber, giant ragweed, and any additional noxious weeds as specified under Delaware State Law. If the TENANT fails to control said vegetation within fifteen (15) days of its receipt of written notice from the COUNTY, the COUNTY may, at its option, (1) contract with an independent vendor to apply appropriate control measures to eradicate said noxious weeds, the cost of which shall be the sole responsibility of the TENANT and shall be deemed additional rent; and (2) terminate this Agreement.
- f) All agricultural pesticides, herbicides and other chemical sprays used on the Leased Land shall meet Federal and State standards and, if required, be applied by certified applicators in the appropriate manner and rate as per label instructions. Violation of Federal, State or County pesticide, herbicide or other chemical spray laws, ordinances, rules and regulations shall be a considered a material breach of the terms of this Agreement which may result in termination of the Agreement.
- g) The TENANT shall be permitted to participate in Farm Service Agency programs.
- h) Excavation, digging, removing, or selling of loam, peat, gravel, soil, rock, sand, or any similar material by the TENANT is prohibited.

- i) The TENANT shall maintain all boundary lines, ditches, ditch banks, hedgerows and the like of the presently arable and tillable farmland.
- j) The COUNTY plans to establish an un-farmed pathway to allow the installation and sampling of monitor wells.
- k) Hunting is prohibited on any COUNTY-owned Leased Lands subject to this Agreement, and all COUNTY-owned lands adjacent to the Leased Land.
- The TENANT shall not construct or install any permanent structures on the Leased Land. An additional or modified irrigation system may be installed with the prior approval of the COUNTY.
- m) The COUNTY is not responsible for wildlife damages to agricultural commodities on the Leased Land.
- n) PURSUANT TO 3 <u>DEL</u>. <u>C</u>. § 2301, THE TENANT ACKNOWLEDGES THAT THE COUNTY HAS INFORMED TENANT OF THE POTENTIAL LIMITATON, RISK AND LOSS REGARDING THE USE OF EFFLUENT OR RECLAIMED WATER ON CONVENTIONAL CROPS INTENDED FOR DIRECT HUMAN CONSUMPTION. THE TENANT FURTHER ACKNOWLEDGES THAT THE EFFLUENT OR RECLAIMED WATER MAY ONLY BE APPLIED TO GROWING VEGETATION AND SHALL NOT BE APPLIED TO CONVENTIONAL CROPS INTENDED FOR DIRECT HUMAN CONSUMPTION.
- o) The TENANT shall pay for all existing on-site electric utilities necessary for the agricultural operations on the Leased Land.

7. RESERVED RIGHTS.

The COUNTY reserves the following rights related to the Leased Land:

- a) to construct improvements, grant easements and rights-of-way across or upon the Leased Land. The annual rental fee shall be reduced to reflect any Leased Land acreage taken out of production by such actions, including any Leased Land acreage to which reasonable access for agricultural use, specifically including irrigation, is defined by such actions.
- b) to create pathways, buffer strips, and monitor wells. The annual rental fee shall be reduced to reflect any Leased Land acreage taken out of production, including any Leased Land acreage to which reasonable access for agricultural use, specifically including irrigation, is defined by such actions.
- c) of ingress and egress onto and over the Leased Land at reasonable times for inspection purposes, and for the enforcement of all State and County laws, ordinances, rules, and regulations, and for any other lawful purpose. The TENANT shall not be entitled to abatement of the rent by reason thereof.

8. COORDINATION OF COUNTY USE.

The COUNTY shall coordinate with the TENANT as to any of the COUNTY'S use of the Leased Land in order to limit impact to normal farming operations.

9. HOLD HARMLESS.

To the fullest extent permitted by law, the TENANT shall indemnify, hold harmless and defend the COUNTY, its elected and appointed officials, officers, employees, servants, representatives, agents, guests, and invitees from and against any and all claims, damages, injuries and expenses (including related attorney's fees and other defense costs) arising out of or resulting from the TENANT's actions or inactions which are in any way related to its role hereunder 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, whether said property is real or personal, including the loss of use resulting therefrom, asserted by any person, persons or artificial entity, including, but not limited to the TENANT's employees, servants, representatives, guests, invitees, subcontractors, licensees, visitors, etc. regardless of whether or not such claims, damages, injuries and expenses are caused in part by a party indemnified hereunder. For purposes of this provision, "TENANT" shall include the TENANT's employees, servants, representatives, agents, guests, invitees, subcontractors, licensees, and the like. This provision shall survive the expiration or earlier termination of this Agreement.

MAINTENANCE OF EXISTING IRRIGATION SYSTEM & COUNTY PURCHASE.

The parties acknowledge that TENANT owns an existing irrigation system with two (2) center-pivot irrigation rigs located on the Leased Land (the "Irrigation System"). During the term of this Agreement, and any renewals thereof, TENANT shall maintain the Irrigation System in its existing condition, normal wear and tear excepted. TENANT shall be responsible for all maintenance and repair of the Irrigation System.

Upon expiration of the term of this Agreement, or any renewal thereof, or earlier termination hereunder, if the TENANT properly maintains and repairs the Irrigation System as required herein, and it is in good working order to the COUNTY's satisfaction, the COUNTY shall purchase the Irrigation System from the TENANT. The parties agree that, as of the date of this Agreement, the value of the existing Irrigation System is \$200,000 with a 15-year remaining life. The COUNTY shall pay a purchase price calculated with an associated straight-line depreciation. For example, if this Agreement is not renewed after December 31st, 2024, the COUNTY will pay a purchase price of \$133,333.00.

11. DAMAGE TO PROPERTY.

a) The TENANT agrees to be solely responsible for any and all injury, loss or damage to the TENANT'S person, crops, equipment, and property or to the person, equipment and property of others, which may be placed on the Leased Land, and the TENANT waives and releases any and all claims or rights against the COUNTY with respect thereto.

- b) Dumping, depositing, abandoning, discharging, releasing, or storing of any gaseous, liquid or solid hazardous wastes, substances, materials, or debris or whatever nature on, in, over, or under the ground or into surface or ground water is prohibited, except as expressly permitted by law. The TENANT shall be solely responsible for all damages resulting therefrom.
- c) The TENANT's liability under this provision shall be subject to paragraph 9 hereof and shall survive expiration or earlier termination of this Agreement.

12. INSURANCE.

The TENANT shall carry insurance with limits as required by the COUNTY evidencing the insurance specified below:

- (a) Workers' compensation insurance with statutory benefits as required by Delaware or Federal law, including standard "other states" coverage insurance and employer's' liability insurance with minimum limits of \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease; and \$500,000 policy limit for bodily injury by disease; and
- (b) Commercial general liability insurance that insures against bodily injury, property damage, personal and advertising injury claims arising out of or in connection with any operations or activities under the Agreement, whether such operations are by TENANT, its employees or subcontractors or their employees. The minimum limits of liability for this insurance are \$1,000,000 combined single limit each occurrence and \$2,000,000 combined single limit general aggregate.

The County, its elected and appointed officials, officers, employees, servants, representatives, agents, guests, and invitees shall be additional insureds on commercial general liability, on a primary and non-contributory basis, with respect to liability arising out of or in connection with any operations or activities under this Agreement with the COUNTY.

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

- (a) Agree to provide certificates of insurance to the COUNTY 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
- (b) 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.

All required insurance coverage must be underwritten by insurers allowed to do business in the State of Delaware and acceptable to the COUNTY. 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 the COUNTY grants specific written approval for an exception.

Prior to taking possession of the Leased Land, the TENANT shall provide to the COUNTY a certificate of insurance satisfactory to the COUNTY. TENANT's failure to provide the certificate or certificates shall constitute an act of default under this Agreement.

13. ASSIGNMENT.

The TENANT shall not assign, sublet, mortgage or pledge this Agreement, nor permit the whole or any part of the Leased Land to be occupied by others without the prior written consent of the COUNTY. The COUNTY'S consent to one or more assignments or subletting shall not operate as a waiver of the COUNTY'S rights pertaining to future assignments or sublettings.

14. DEFAULT.

The following events shall be deemed to be a default by the TENANT: 1) failure to pay any installment of rent, and such failure shall continue for five (5) days; 2) failure to comply with any provision of this Agreement, other than the payment of rent, and such failure to comply has not been cured within fifteen (15) days after written notice is sent to the TENANT; or 3) the TENANT becomes insolvent; makes a transfer in fraud to creditors; makes an assignment for the benefit of creditors; files a petition under any section of the Federal Bankruptcy Act; is adjudged bankrupt; has a receiver appointed, all of which shall result in the immediate termination of this Agreement; 4) the TENANT deserts, abandons or vacates any substantial portion of the Leased Land; or 5) TENANT does or permits any act which creates a lien on the Leased Land.

Upon the occurrence of any of the above, the COUNTY may without demand or notice, enter and take possession of the Leased Land, expel or remove all occupants and property found thereon without being liable for damages; may elect to terminate this Agreement or relet the Leased Land on such terms as the COUNTY deems advisable and receive the rent therefor, and the TENANT agrees to pay the COUNTY on demand any deficiency and costs incurred. Upon TENANT'S default and without prior notice to TENANT, the COUNTY shall be entitled to pursue any and all remedies available to it as more fully set forth in paragraphs 21 and 24 hereof.

15.TERMINATION OF AGREEMENT.

The TENANT agrees that, if it fails to observe or perform any of the terms, conditions or covenants herein, or if TENANT knowingly permits any unlawful acts to be carried out upon the Leased Land, then the COUNTY shall have the right to terminate the Agreement and to re-enter and repossess the Leased Land in the manner provided for by the laws of the State of Delaware. If the COUNTY terminates this Agreement while the TENANT has crops growing in the fields, then the COUNTY agrees not to take possession of the Leased Land until after the TENANT has harvested the crop during the normal harvest period or, at the COUNTY'S option, the COUNTY will reimburse the TENANT at the fair market value for crops destroyed. The TENANT shall yield peaceable possession of the Leased Land at the termination of the Agreement.

16. SIGNS.

The TENANT shall not place any signs, fences or objects on the Leased Land without the COUNTY'S prior written approval. All approved signs must be removed by the TENANT at the TENANT's expense at the expiration or earlier termination of this Agreement. The COUNTY shall be permitted to place any signs required by DNREC on the Leased Land without TENANT's prior approval. All fences TENANT places on the Leased Land shall be maintained by TENANT at TENANT's expense and shall be deemed fixtures which shall remain on the Leased Land at the expiration or earlier termination of this Agreement.

17. NOTICES. Any notice under this Agreement shall be in writing and shall be deemed to have been given when (i) delivered in person, (ii) sent by facsimile to the fax number listed below (if any) (provided that such notice is also sent the same day by U.S. first class mail, postage prepaid, addressed to the parties as set forth below), (iii) delivered by Federal Express or other reputable overnight courier service, or (iv) Three (3) days after same is deposited in the United States registered or certified mail, return receipt requested, postage prepaid, addressed to the parties as follows:

To the COUNTY:

Hans Medlarz, County Engineer Sussex County Administration Building 2 The Circle P.O. Box 589 Georgetown, DE 19947 Fax (302) 855-7799

with a copy to:

J. Everett Moore, Jr., Esquire Moore & Rutt, P.A. 122 West Market Street P.O. Box 554 Georgetown, DE 19947 Fax (302) 855-9803

To the TENANT:

Mr. Matthew Baker M & M Farms, LLC 15046 Gravel Hill Road P.O. Box 250 Milton, DE 19968 With a copy to:

Robert G. Gibbs, Esquire Morris James LLP 107 W. Market Street Georgetown, DE 19947 18. WAIVER OF BREACH.

The COUNTY's waiver or acceptance of the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any continuing or subsequent breach of the same or any other term, covenant or condition herein contained. All waivers or acceptances must be in writing. The subsequent acceptance of rent hereunder by the COUNTY shall not be deemed to be a waiver or acceptance of any preceding breach by the TENANT of any term, covenant or condition of this Agreement, other than the failure of the TENANT to pay the particular rental fee so accepted, regardless of the COUNTY'S knowledge of such preceding breach at the time of acceptance of such rental fee.

19. LEGAL COSTS AND EXPENSES.

The TENANT shall pay and discharge all costs, attorneys' fees and expenses incurred by the COUNTY arising from a Tenant default hereunder.

20. RULES AND REGULATIONS.

The rules and regulations contained in this Agreement, as well as such reasonable rules and regulations as may be hereafter adopted by the COUNTY for the safety, care and protection of its Leased Lands and the preservation of good order thereon, are hereby expressly made a part hereof, and the TENANT agrees to adhere to all such rules and regulations, after notice of same.

21. REMEDIES.

In the event of TENANT's default or other dispute between the parties, the parties shall be entitled to all remedies available, in law or in equity, including, but not limited to, those set forth in Title 25, Chapter 67 of the Delaware Code, and the COUNTY's right to seek injunctive relief and a writ of possession. It is understood and agreed that the remedies herein given to the COUNTY shall be cumulative, and the exercise of any one remedy by the COUNTY shall not be to the exclusion of any other remedy. All past due rental fees shall bear interest at the highest rate permitted by Delaware law.

22. BINDING AGREEMENT.

The covenants and conditions herein contained shall apply to and bind the heirs, executors, administrators, successors, and assigns of all of the Parties hereto; and all of the Parties hereto shall be jointly and severally liable hereunder. Nothing contained in this Agreement shall be interpreted as a waiver of the sovereign immunity of COUNTY.

23. TIME.

Time is of the essence of this Agreement.

24. LAW.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Delaware, and any action brought to enforce any right or obligation under this Agreement may only be brought in the courts of the State of Delaware with venue lying in Sussex County, Delaware.

ENTIRE CONTRACT.

This instrument contains the entire agreement of the parties and supersedes, cancels, and revokes any and all other agreements between the parties relating to the subject matter of this Agreement. There are no representations or warranties, either oral or written, except those contained in this Agreement.

26. AMENDMENT.

This Agreement may not otherwise be amended, modified, rescinded or supplemented orally, and no amendment, modification, waiver, recession or supplementation shall be valid unless in writing and signed by all of the parties hereto.

27. SEVERABILITY.

If any portion of this Agreement shall be held invalid or unenforceable, the validity of the remaining portion shall be unaffected, and this Agreement shall remain in full force and effect as if it has been executed with the invalid portion omitted.

28. NO CONCLUSION AS TO DRAFTER.

This Agreement is the product of the parties hereto and no conclusion shall be drawn as to its drafter in the event of any dispute.

29. HEADINGS.

The headings of the paragraphs are for convenience only and are not part of this Agreement.

30. WAIVER OF JURY TRIAL.

The parties to this Agreement agree to waive their rights to demand a jury trial in any action which may be brought to enforce any portion of this Agreement.

31. COUNTERPARTS; ELECTRONIC SIGNATURES.

This Agreement may be executed in two counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.

32. AGRICULTURAL LEASE.

The parties acknowledge that this is an agricultural lease defined under and governed by 25 <u>Del</u>. C. §6701 et. seq., and that the Residential Landlord-Tenant Code, 25 <u>Del</u>. C. §5101, et. seq. does not apply to this Agreement.

33. NO PARTNERSHIP.

The relationship created by this Agreement is that of landlord and tenant, and nothing herein contained shall be construed as creating a partnership between the parties, or any other relationship.

IN WITNESS WHEREOF, the parties hereto have hereunto executed or caused this Agreement to be executed by their duly authorized officials, in duplicate each of which shall be deemed an original on the date first above written.

	COUNTY AS PROPERTY OWNER AND LANDLORD:
	SUSSEX COUNTY, a political subdivision of the State of Delaware
	By: Michael H. Vincent, President of the Sussex County Council
	Attest:Robin Griffith, Clerk of the Sussex County Council
Date	
	COUNTY AS OPERATOR OF INLAND BAYS REGIONAL WASTEWATER FACILITY:
	SUSSEX COUNTY, a political subdivision of the State of Delaware
	By: Michael H. Vincent, President of the Sussex County Council
	Attest: Robin Griffith, Clerk of the Sussex County Council
Date	

	TENANT:	
	M & M FARMS, LLC, a Delaware limited liability company	
Witness	By:(SI	EAL)
Withess	Print Name of Authorized Member	
Date		

EXHIBIT A

Maps of Leased Land

EXHIBIT B

Deeds for Sussex County Tax Parcel Nos. 234-16.00-28.00; 234-16.00-26.03; and 234-22.00-4.00

EXHIBIT C

Zoning Verification for Leased Land

AGRICULTURAL SPRAY AGREEMENT

THIS AGRICULTURAL SPRAY AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2020, by and between Sussex County, a political subdivision of the State of Delaware, with an address of 2 The Circle, P.O. Box 589, Georgetown, DE 19947 (the "COUNTY"), and M&M Farms, LLC, a Delaware limited liability company ("M&M") of 15046 Gravel Hill Road, Milton, DE 19968, and agricultural tenant in possession of certain lands of Hollyville Farms, LLC, a Delaware limited liability company ("Hollyville Farms"), with an address of 17420 Minos Conaway Road, Lewes DE 19958

WHEREAS, the COUNTY is constructing an effluent water loop system at its Inland Bays Regional Wastewater Facility ("the Facility") that will carry highly treated wastewater effluent to certain properties surrounding the Facility; and

WHEREAS, Hollyville Farms owns the parcel of land to which this Agreement pertains (Sussex County Tax Parcel No. 234-21.00-171.00), located near the Facility on Mount Joy Road, which will be connected to the effluent water loop system and to which the COUNTY desires to provide treated wastewater effluent for agricultural use. M&M Farms is a related entity to Hollyville Farms, and the agricultural tenant under a long-term agricultural lease with Hollyville Farms ("Agricultural Lease"). Hollyville Farms desires to confirm M&M's authority under the Agricultural Lease, to accept and exclusively use the County's treated wastewater effluent upon the terms and conditions stated in this Agreement, and desires that for all purposes, M&M be considered the property owner hereunder ("PROPERTY OWNER").

WHEREAS, the COUNTY and the PROPERTY OWNER ("Parties") desire that the COUNTY'S effluent water loop system provide treated wastewater to the PROPERTY OWNER'S Land on-demand for crop application via center-pivot irrigation rigs; and

WHEREAS, the Parties desire to enter into this Agreement as to their mutual obligations to each other.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and the terms, conditions, representations, warranties and covenants herein contained, the parties, intending to be legally bound, hereby covenant and agree as follows:

- 1. RECITALS. The Recitals above are incorporated herein by reference and made a part of this Agreement.
- 2. COUNTY AND FACILITY. The COUNTY is the operator of the Facility referenced herein. As required by Section 6.11.8.2.2.2 of the Delaware Department of Natural Resources and Environmental Control Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems (the "DNREC Regulations"), the COUNTY shall execute this Agreement in its capacity as the operator of the Facility.

- 3. LAND. Hollyville Farms owns all that certain cleared agricultural land, being 73 Tillable Acres +/- with 65 Acres under spray +/- situated in Indian River Hundred, Sussex County, Delaware, and being further identified as Tax Map and Parcel Number 234-21.00-171.00, as outlined on the maps attached hereto as Exhibit A which is incorporated herein by reference ("Land"). As required by the DNREC Regulations, the Deed to Hollyville Farms verifying ownership of the Land, and the Land's zoning verification are attached hereto as Exhibits B and C, respectively, and are incorporated herein by reference. As stated above, M&M Farms is the agricultural tenant under the Agricultural Lease with Hollyville Farms, with authority to enter into this Agreement under the Agricultural Lease, and for all purposes herein, is the Property Owner hereunder.
- 4. TERM OF AGREEMENT. The initial term of this Agreement shall be for a five (5) year term commencing on the date of execution and terminating on _____. This Agreement shall automatically renew on the same terms and conditions contained herein for additional one-year terms unless either party provides the other party with written notice of its intent not to renew at least One Hundred Twenty (120) days prior to the end of the applicable term.

5. FEES.

- a). Agricultural Availability Fee. The COUNTY shall pay the PROPERTY OWNER a total annual availability fee of \$650.00 to allow the COUNTY to spray the treated wastewater or effluent on the PROPERTY OWNER'S Land ("Availability Fee"). The annual Fee is based on a \$10.00 per acre charge for 65 tillable acres under spray. The COUNTY'S obligation to pay the PROPERTY OWNER the Availability Fee referenced herein is expressly contingent upon PROPERTY OWNER farming the Land. The pro-rated Availability Fee for the first year shall be due and payable upon the Parties' execution of this Agreement. Each year's annual Fee shall be paid to the PROPERTY OWNER by the COUNTY on or before January 1st for that year.
- b). Usage Fee. The COUNTY shall pay PROPERTY OWNER compensation for its actual metered usage of treated wastewater sprayed on PROPERTY OWNER'S Land ("Usage Fee"). The Usage Fee will be calculated at \$0.50 per 1,000 gallons of sprayed treated wastewater. The COUNTY'S obligation to pay the PROPERTY OWNER the Usage Fee referenced herein is expressly contingent upon PROPERTY OWNER farming the Land. The Usage Fee shall be paid to the PROPERTY OWNER by the COUNTY on a monthly basis no later than the 15th day of each month.
- c) Fees Contingent Upon Crops Being Harvested. PROPERTY OWNER acknowledges that the fees being paid by the COUNTY are contingent upon the PROPERTY OWNER harvesting the crops from the Land. If PROPERTY OWNER fails or refuses to harvest its crops as required herein, PROPERTY OWNER shall be required to repay all Availability Fees and Usage Fees it received from the COUNTY under this Agreement. This provision shall survive expiration or earlier termination of this Agreement.

6. USE OF LAND. The COUNTY owns and operates the Inland Bays Regional Wastewater Facility that produces treated wastewater for agricultural uses (alternatively referred to herein as "effluent", "treated wastewater" or "reclaimed water"). The PROPERTY OWNER, herewith agrees to accept all such effluent as deemed necessary by the PROPERTY OWNER for agricultural purposes and the PROPERTY OWNER shall use the COUNTY'S effluent exclusively for all agricultural irrigation needs as long as the COUNTY's treated wastewater is available. As a condition of this Agreement, the PROPERTY OWNER reserves the unilateral right to direct the location of the discharge upon any or all portions of the Land as deemed, in the opinion of the PROPERTY OWNER, best servicing the interest of the PROPERTY OWNER'S farming operations.

The COUNTY shall be responsible for the design and installation of the effluent water loop system, including the automated connection to the PROPERTY OWNER'S existing irrigation systems. PROPERTY OWNER shall grant access to its existing irrigation system to the COUNTY for the purposes of connecting the effluent water loop system. COUNTY shall make every effort to schedule and coordinate the installation of the effluent water loop system so as not to affect the PROPERTY OWNER'S farming operation.

The Land may be used for producing agricultural commodities. The PROPERTY OWNER shall not plant any crops intended for direct human consumption. The PROPERTY OWNER agrees to follow good farm management practices and to farm the land in a good and husband-like manner to avoid degradation of the environment and further agrees to the following:

- a) The PROPERTY OWNER shall till all irrigated fields on an annual basis. An annual crop harvest of agricultural commodities is mandatory for the spring/summer growing season.
- b) The PROPERTY OWNER shall be responsible for the Nutrient Management Plan for the Land, as required by the State of Delaware's 1999 Nutrient Management Act and the DNREC Regulations. The PROPERTY OWNER shall provide the COUNTY with a copy of the Nutrient Management Plan for the Land. The COUNTY shall supply to the PROPERTY OWNER, for incorporation into said plan, flow and nutrient information of treated effluent as required by DNREC Regulations.
- c) To ensure that the COUNTY'S effluent water loop system is compatible and can be properly connected, the PROPERTY OWNER shall notify the COUNTY if it installs an additional or modified irrigation system.
- d) The COUNTY is not responsible for wildlife damages to agricultural commodities on the Land.
- e) PURSUANT TO 3 <u>DEL</u>. <u>C</u>. § 2301, THE PROPERTY OWNER ACKNOWLEDGES THAT THE COUNTY HAS INFORMED PROPERTY OWNER OF THE POTENTIAL LIMITATON, RISK AND LOSS REGARDING THE USE OF

EFFLUENT OR RECLAIMED WATER ON CONVENTIONAL CROPS INTENDED FOR DIRECT HUMAN CONSUMPTION. THE PROPERTY OWNER FURTHER ACKNOWLEDGES THAT THE EFFLUENT OR RECLAIMED WATER MAY ONLY BE APPLIED TO GROWING VEGETATION AND SHALL NOT BE APPLIED TO CONVENTIONAL CROPS INTENDED FOR DIRECT HUMAN CONSUMPTION.

- f) The PROPERTY OWNER shall pay for all utilities necessary for its operations on the Land.
 - 7. HOLD HARMLESS.
- a) BY PROPERTY OWNER. To the fullest extent permitted by law, the PROPERTY OWNER shall indemnify, hold harmless and defend the COUNTY, its elected and appointed officials, officers, employees, servants, representatives, agents, guests, and invitees from and against any and all claims, damages, injuries and expenses (including related attorney's fees and other defense costs) arising out of or resulting from the PROPERTY OWNER's uses of and operations upon the Land, including all aspects of farming operations thereon, and expressly including its application of the COUNTY'S treated wastewater in any manner inconsistent with the terms of this Agreement, 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, whether said property is real or personal, including the loss of use resulting therefrom, asserted by any person, persons or artificial entity, including, but not limited to the PROPERTY OWNER's members, officers, directors, employees, servants, representatives, guests, invitees, subcontractors, licensees, visitors, etc.
- b) BY COUNTY. To the fullest extent permitted by law, the COUNTY shall indemnify, hold harmless and defend the PROPERTY OWNER, its members, officers, directors, employees, servants, representatives, agents, guests, and invitees from and against any and all claims, damages, injuries and expenses (including related attorney's fees and other defense costs) arising out of, or resulting from claims attributable to, the quality of the treated wastewater provided by the COUNTY, whether or not the COUNTY has complied with DNREC's Permit LTS 5004-90-12; 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, whether said property is real or personal, including the loss of use resulting therefrom, asserted by any person, persons or artificial entity. By way of clarification, notwithstanding PROPERTY OWNER'S application of COUNTY-supplied treated wastewater to the Land, the COUNTY maintains full responsibility for, and liability for claims attributable to the quality of the treated wastewater supplied by it to PROPERTY OWNER under the terms of this Agreement.
- 8. MAINTENANCE AND/OR REPLACEMENT OF EXISTING IRRIGATION SYSTEM. The parties acknowledge that PROPERTY OWNER owns an existing irrigation

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system with one (1) center-pivot irrigation rigs located on the Land (the "Irrigation System"). During the term of this Agreement, and any renewals thereof, PROPERTY OWNER shall maintain the Irrigation System in its existing condition, normal wear and tear excepted. PROPERTY OWNER shall be responsible for all maintenance and repair of the Irrigation System. In the event the PROPERTY OWNER'S irrigation system fails completely and cannot be repaired as contemplated herein, PROPERTY OWNER shall provide the COUNTY with written notice thereof and shall promptly replace the irrigation system in order to accept the COUNTY'S treated wastewater. Replacement shall take place in a timely manner from the date PROPERTY OWNER determines that replacement will be necessary, and which shall not extend beyond or exceed the current availability year.

CONDITIONS OF SERVICE

- a) The COUNTY agrees to be solely responsible for the connection to the PROPERTY OWNER'S irrigation system including valving, metering and automatic control tie-ins as well as the removal of the improvements in case of an agreement termination. The County agrees to provide 70 psi at the connection point to the effluent water loop.
- b) The COUNTY operates under DNREC Permit LTS 5004-90-12 ("DNREC Permit"), incorporated by reference herein. Throughout the term of this Agreement, the COUNTY shall meet all terms and conditions of the DNREC Permit. The COUNTY shall provide the PROPERTY OWNER a copy of the DNREC Permit, and shall promptly notify and provide PROPERTY OWNER copies of any changes to the terms and conditions of, or substitutions or replacements thereof.
- c) The COUNTY will provide all test results required by the permit to the PROPERTY OWNER at the same time as they are submitted to the State.
- 10. INSURANCE. During the term of this Agreement and any renewals hereof, the PROPERTY OWNER shall, at its sole cost and expense, maintain commercial general liability insurance, and other insurance coverage, in such coverage amounts as is standard for the agricultural activities being performed on the Land. Prior to the effective date of this Agreement, the PROPERTY OWNER shall provide to the COUNTY a certificate or certificates of insurance evidencing all insurance coverage in a form that is satisfactory to the COUNTY. PROPERTY OWNER's failure to provide the certificate or certificates shall constitute an act of default under this Agreement.
- 11. ASSIGNMENT. The PROPERTY OWNER shall not assign this Agreement, nor lease the Land or otherwise permit the whole or any part of the Land to be occupied by others without the prior written consent of the COUNTY which consent shall not be unreasonably withheld. The COUNTY'S consent to one or more assignments or leases shall not operate as a waiver of the COUNTY'S rights pertaining to future assignments or leases.
- 12. COUNTY'S DEFAULT. The following events shall be deemed to be a default by the COUNTY: 1) failure to pay any fee installment and such failure shall continue for fifteen

(15) days after the PROPERT OWNER sends written notice to the COUNTY; 2) failure to comply with any provision of this Agreement, other than the failure to pay any Fee installment, and such failure to comply has not been cured within fifteen (15) days after the PROPERTY OWNER sends written notice to the COUNTY; or 3) the COUNTY: (a) becomes insolvent; (b) makes a transfer in fraud to creditors; (c) makes an assignment for the benefit of creditors; (d) files a petition under any section of the Federal Bankruptcy Act; (e) is adjudged bankrupt; or (f) has a receiver appointed, all of which shall result in the immediate termination of this Agreement.

Upon the occurrence of any of the above, upon providing written notice to the COUNTY, the PROPERTY OWNER may elect to terminate this Agreement. If this Agreement is terminated, PROPERTY OWNER shall thereafter be solely responsible for the provision of irrigation water to the Land. Upon the COUNTY's default, the PROPERTY OWNER shall be entitled to pursue any and all remedies available to it as more fully set forth in paragraph 17 hereof.

13. PROPERTY OWNER'S DEFAULT. The following events shall be deemed to be a default by the PROPERTY OWNER: 1) failure to comply with any provision of this Agreement, and such failure to comply has not been cured within fifteen (15) days after the COUNTY sends written notice to the PROPERTY OWNER; 2) the PROPERTY OWNER: (a) becomes insolvent; (b) makes a transfer in fraud to creditors; (c) makes an assignment for the benefit of creditors; (d) files a petition under any section of the Federal Bankruptcy Act; (e) is adjudged bankrupt; or (f) has a receiver appointed, all of which shall result in the immediate termination of this Agreement; or 3) the PROPERTY OWNER deserts, abandons or vacates any substantial portion of the Land.

Upon the occurrence of any of the above, upon providing written notice to the PROPERTY OWNER, the COUNTY may elect to terminate this Agreement. If this Agreement is so terminated, PROPERTY OWNER shall thereafter be solely responsible for the provision of irrigation water to the Land. Upon PROPERTY OWNER'S default, the COUNTY shall be entitled to pursue any and all remedies available to it as more fully set forth in paragraph 17 hereof.

14. NOTICES. Any notice under this Agreement shall be in writing and shall be deemed to have been given when (i) delivered in person, (ii) sent by facsimile to the fax number listed below (if any) (provided that such notice is also sent the same day by U.S. first class mail, postage prepaid, addressed to the parties as set forth below), (iii) delivered by Federal Express or other reputable overnight courier service, or (iv) Three (3) days after same is deposited in the United States registered or certified mail, return receipt requested, postage prepaid, addressed to the parties as follows:

To the COUNTY:

Hans Medlarz, County Engineer Sussex County Administration Building 2 The Circle

P.O. Box 589 Georgetown, DE 19947 Fax: (302) 855-7799

with a copy to:

J. Everett Moore, Jr., Esquire Moore & Rutt, P.A. 122 West Market Street P.O. Box 554 Georgetown, DE 19947 Fax (302) 855-9803

To the PROPERTY OWNER:

M&M Farms, LLC 15046 Gravel Hill Road Milton, DE 19968

Attn: Wayne Baker Fax:

with a copy to:

Robert G. Gibbs, Esquire Morris James, LLP 107 W. Market Street Georgetown, DE 19947 Fax: (302) 856-7217

- 15. WAIVER OF BREACH. Either party's waiver of any right or remedy available to it in the event of any default or breach of any term, covenant or condition of this Agreement shall not constitute a waiver of any succeeding default or breach of the same or other terms and conditions of this Agreement. Either party's waiver or acceptance of the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any continuing or subsequent breach of the same or any other term, covenant or condition herein contained. All waivers or acceptances must be in writing.
- 16. ATTORNEYS' FEES AND EXPENSES. If either party institutes litigation against the other relating to this Agreement or any default hereunder, each party shall be responsible for their respective expenses of prosecuting or defending such action, including without limitation, attorneys' fees, expenses, and court costs. The obligations under this section shall survive the expiration or earlier termination of this Agreement.

- 17. REMEDIES. In the event of a default or dispute between the parties, each party shall be entitled to all remedies available, in law or in equity, including the right to seek injunctive relief, if applicable. The remedies herein contained shall be cumulative, and the exercise of any one remedy by a party shall not be to the exclusion of any other remedy.
- 18. BINDING AGREEMENT. The covenants and conditions herein contained shall apply to and bind the heirs, executors, administrators, successors, and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder. Nothing contained in this Agreement shall be interpreted as a waiver of the sovereign immunity of COUNTY.
 - 19. TIME. Time is of the essence of this Agreement.
- 20. LAW. This Agreement shall be construed and interpreted in accordance with the laws of the State of Delaware, and any action brought to enforce any right or obligation under this Agreement may only be brought in the courts of the State of Delaware with venue lying in Sussex County, Delaware.
- 21. ENTIRE CONTRACT. This instrument contains the entire agreement of the parties and supersedes, cancels, and revokes any and all other agreements between the parties relating to the subject matter of this Agreement. There are no representations or warranties, either oral or written, except those contained in this Agreement.
- 22. AMENDMENT. This Agreement may not otherwise be amended, modified, rescinded or supplemented orally, and no amendment, modification, waiver, recession or supplementation shall be valid unless in writing and signed by all of the parties hereto.
- 23. SEVERABILITY. If any portion of this Agreement shall be held invalid or unenforceable, the validity of the remaining portion shall be unaffected, and this Agreement shall remain in full force and effect as if it has been executed with the invalid portion omitted.
- 24. NO CONCLUSION AS TO DRAFTER. This Agreement is the product of the parties hereto and no conclusion shall be drawn as to its drafter in the event of any dispute.
- 25. HEADINGS. The headings of the paragraphs are for convenience only and are not part of this Agreement.
- 26. WAIVER OF JURY TRIAL. The parties to this Agreement agree to waive their rights to demand a jury trial in any action which may be brought to enforce any portion of this Agreement.
- 27. COUNTERPARTS; ELECTRONIC SIGNATURES. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and photocopies

or facsimile copies of signatures shall be deemed to have the same force and effect as originals.

28. NO PARTNERSHIP OR AUTHORITY TO BIND. Nothing herein contained shall be construed as creating a partnership, or any other relationship, between the parties other than as specifically outlined in this Agreement. Neither party shall have any authority to enter into any contract or agreement for, on behalf of or in the name of the other party, or to legally bind the other party to any commitment or obligation.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.
SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have hereunto executed or caused this Agreement to be executed by their duly authorized officials, in duplicate each of which shall be deemed an original on the date first above written.

	COUNTY AS OPERATOR OF INLAND BAYS REGIONAL WASTEWATER FACILITY: SUSSEX COUNTY, a political subdivision of the State of Delaware)
	By: Michael H. Vincent, President of the Sussex County Council	
	Attest:Robin Griffith, Clerk of the Sussex County Council	
Date		
	PROPERTY OWNER:	
	M&M Farms, LLC a Delaware Limited Liability Company	
Witness	By: Print Name of Authorized Member	(SEAL)
Date	*	

Acknowledgment of Hollyville Farms, LLC

Hollyville Farms, LLC, owner of the parcel of land to which this Agreement pertains (Sussex County Tax Parcel No. 234-21.00-171.00), hereby confirms M&M Farms, LLC's standing, as long-term agricultural tenant of the property under the Agricultural Lease, with authority enter into this Agreement, and for all purposes under the Agreement, to be considered the property owner.

	Hollyville Farms, LLC a Delaware Limited Liability Compa	ny
Witness	By: Print Name of Authorized Meml	(SEAL) ber
Date		

EXHIBIT A

Sussex County Tax Map of Parcel No. 234-21.00-171.00

11570954/1 12

EXHIBIT B

Deed for Sussex County Tax Parcel No. 234-21.00-171.00

11570954/1 13

33860

BK: 4043

Sussex County Tax Map: 2-34 21.00, Parcels: 171.00 (Open Spaces and Stormwater Management); 215.00 (Streets); 216.00 through 393.00, inclusive.

> PREPARED BY AND RETURN TO: Robert G. Gibbs, Esq. Wilson, Halbrook & Bayard, P.A. P.O. Box 690, Georgetown, DE 19947

THIS DEED, is made this 181 day of September, A.D., 2012,

BETWEEN,

CNB, a Maryland Bank Corporation, party of the first part, of Kent County, Delaware, Grantor ("Grantor"),

AND

Hollyville Farms, LLC, a Delaware Limited Liability Company, party of the second part, of Sussex County, Delaware, Grantee ("Grantee"), 17420 Minos Conaway Road, Lawes, De 19758

WITNESSETH:

Grantor, for and in consideration of the sum of One Dollar (\$1.00), and other valuable and lawful considerations, currently lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the Grantee, its heirs, successors and assigns forever, in fee simple the following described lands, situate, lying and being in Sussex County, State of Delaware;

ALL OF: The Open Spaces and Stormwater Management areas, as depicted and described upon a plot prepared by Vista Design, Inc. (Larry L. Mann, P.L.S.) entitled "Whittington Estates-Record Plat", recorded November 30, 2009, in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, in Plot Book 139, Page 72 & c. (hereafter, the "Subdivision Plat"), consisting of +/- 55.18 acres, being further identified as Sussex County Tax Map Parcel 2-34 21.00 171.00;

1



BK = 4043

ALL OF: The Streets in Whittington Estates, as depicted and described on the aforesaid Subdivision Plat, consisting of +/- 17.93 acres, being further identified as Sussex County Tax Map Parcel Map Parcel 2-34 21.00 215.00;

ALL OF THE FOLLOWING LOTS IN WHITTINGTON ESTATES: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177 and 178, as depicted and described on the aforesaid Subdivision Plat, identified by the Sussex County Tax Map Parcel Numbers, shown above.

BEING the same lands and premises heretofore conveyed unto this Grantor by Deed in Lieu of Foreclosure from P&H Harmon Properties, LLC, a Delaware limited liability company, dated April 20, 2012, and now of record in the Office of the Recorder of Deeds, aforesaid, in Deed Book 3992, Page 286, &c., the above properties collectively previously described in total as follows:

COMMENCING at an iron pipe found on the southerly right of way for Road 297, being 40 feet wide and approximately 1,480 feet easterly from its intersection with Road 305, said iron pipe being a corner for lands N/F of Sharon M. Elzey and a corner for lands N/F of Preston T. Hopkins, et al; thence South 73 degrees 45 minutes 08 seconds East, by and with the southerly right of way for Road 297 and lands N/F of Preston T. Hopkins, et al., a distance of 210.00 feet to an iron pipe found at the point of beginning; thence (1) South 73 degrees 47 minutes 17 seconds East, by and with the southerly right of way for Road 297, a distance of 1,984.73 feet to a point for corner; thence (2) along a curve to the right, having a radius of 2,980.00 feet, a central angle of 07 degrees 38 minutes 52 seconds, an arc length 397.77 feet, and a chord which bears South 69 degrees 57 minutes 51 seconds East a distance of 397.48 feet to a point for corner, thence (3) South 66 degrees 08 minutes 24 seconds East, by and with the southerly right of way for Road 297, a distance of 665.20 feet to a point for corner; thence (4) along a curve to the left, having a radius of 4,720.00 feet, a central angle of 00 degrees 18 minutes 39 seconds, an arc length of 25.61 feet, and a chord which bears South 66 degrees 17 minutes 44 seconds East a distance of 25.61 feet to an iron rod and cap set; thence (5) South 23 degrees 43 minutes 13 seconds West, by and with lands N/F of James F. Finney, Sr., et al., a distance of 415.00 feet to an iron rod and cap set; thence (6) South 67 degrees 05 minutes 18 seconds East, by and with lands N/F of James F. Finney, Sr., et al., a distance of 105.00 feet to an

BK: 4043 PG: 10

iron rod and cap set; thence (7) North 23 degrees 43 minutes 13 seconds East, by and with lands N/F of James F. Finney, Sr., et al., a distance of 205.00 feet to an iron rod and cap set; thence (8) South 68 degrees 59 minutes 47 seconds East, by and with other lands N/F of James F. Finney, Sr., et al., a distance of 210.00 feet to an iron rod and cap set; thence (9) North 23 degrees 43 minutes 13 seconds East, by and with other lands of N/F of James F. Finney, Sr., et al., a distance of 15.00 feet to an iron rod and cap set; thence (10) South 67 degrees 11 minutes 13 seconds East by and with lands N/F of Charles N. Johnson, et ux., a distance of 334.00 feet to an iron rod and cap set; thence (11) South 04 degrees 17 minutes 47 seconds East, by and with lands N/F of Glatfelter Pulp Wood Company, a distance of 943.78 feet to an iron rod and cap set; thence (12) North 73 degrees 08 minutes 45 seconds West, by and with lands N/F of Mountaire Farms of Delaware, Inc., a distance of 907.09 feet to an iron rod and cap to be set; thence (13) South 83 degrees 06 minutes 15 seconds West, by and with lands N/F of Mountaire Farms of Delaware, Inc., a distance of 1,237.50 feet to an iron pipe found; thence (14) North 45 degrees 36 minutes 14 seconds West, by and with other lands N/F of Mountaire Farms of Delaware, Inc., a distance of 1,067.55 feet to an iron rod and cap set; thence (15) North 73 degrees 21 minutes 14 seconds West, by and with other lands N.F of Mountaire Farms of Delaware, Inc., a distance of 1,581.86 feet to an iron rod and cap to be set; thence (16) North 08 degrees 33 minutes 02 seconds East, by and with other lands N/F of Mountaire Farms of Delaware, Inc., a distance of 812.00 feet to a concrete monument found; thence (17) South 73 degrees 47 minutes 08 seconds East, by and with lands N/F of Sylvester Rickards, et ux. and lands N/F of Sharon M. Elzey, a distance of 415.00 feet to an iron pipe found; thence (18) North 20 degrees 57 minutes 52 seconds East, by and with other lands N/F of Sharon M. Elzey, a distance of 210.00 feet to an iron pipe found; thence (19) South 73 degrees 45 minutes 09 seconds East, by and with lands N/F of Preston T. Hopkins, et al., a distance of 210.00 feet to an iron pipe found; thence (20) North 20 degrees 57 minutes 52 seconds East, by and with lands N/F of Preston T. Hopkins, et al., a distance of 210.00 feet to the Point of Beginning, said parcel contains 125.91 acres of land as shown on a Boundary Survey by Cornerstone Surveying, Inc., dated April 10, 2003.

SUBJECT to any and all restrictions, reservations, conditions, easements and agreements of record in the Office of the Recorder of Deeds in and for Sussex County, Delaware.

BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE(S) FOLLOW.

K: 4043 FG: 11

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal, the day and year first above-written.

WITNESS:

GRANTOR:

CNB, A Maryland Bank Corporation

STATE OF

Delaware

COUNTY OF

Vant

BE IT REMEMBERED, That on this 18 day of September, A.D., 2012, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Charlie Ruch , Senior Vice Resident of CNB, a Maryland Bank Corporation, party to the foregoing Indenture, known to me personally to be such, and acknowledged said Indenture to be his/her/their act and deed.

GIVEN under my hand and seal of office, the day and year aforesaid.

RECEIVED

SEP 2 0 2012

Assessment division of sussex colinty JOHN W. AUGUSTUS III Notary Public - State of Delaware My Comm. Expires May 20, 2014

Consideration:

625,000.00

County State 9,375.00 9,375.00

Town Total 18,750.00 Received: Marsaret P Sep 20,2012

> Recorder of Deeds Scott Dailes Sep 20,2012 03:49P Sussex Counts Doc. Surcharse Paid

EXHIBIT C

Zoning Verification for Land

PARID: 234-21-00-171.00 ROLL: RP HOLLYVILLE FARMS LLC Property Information Property Location: Unit: City: State: Zip: Class: EXM-Exempt Use Code (LUC): MX-MISCELLANEOUS Tax District: 234 - INDIAN RIVER School District: 1 - INDIAN RIVER Council District: 5-Rieley Fire District: 83-Millsboro Deeded Acres 55.1800 0 Frontage: Depth: Zoning 1: AR-1-AGRICULTURAL/RESIDEINTIAL Zoning 2: Plot Book Page: 139 72/PB 100% Land Value \$3,500 100% Improvement Value \$9.100 100% Total Value \$12,600 Legal Legal Description WHITTINGTON ESTATES OPEN SPACES SWM Owners Co-owner City State Zip HOLLYVILLE FARMS LLC 17420 MINOS CONAWAY RD LEWES 19958 DE Sales Sale Date Book/Page Sale Price Stamp Value Parcels Sold Grantee/Buyer 09/20/2012 4043/8 \$625,000.00 \$9,375.00 177 **Owner History** Tax Year: Owner: Co-owner Address: City: State: Zip: Deed Book/Page 2019 HOLLYVILLE FARMS LLC 17420 MINOS CONAWAY RD LEWES DE 19958 4043/8 2018 HOLLYVILLE FARMS LLC 17420 MINOS CONAWAY RD LEWES DE 19958 4043/8 HOLLYVILLE FARMS LLC 17420 MINOS CONAWAY RD LEWES 19958 4043/8 2013 HOLLYVILLE FARMS LLC 17420 MINOS CONAWAY RD LEWES DE 19958 2013 120 W MAIN ST **FELTON** DE 19943 3992/288 P H HARMON PROPERTIES LLC 1130 ROUTE 83 # MAY CH 2011 CAPE MAY COURT NJ 8210 2842/167 2010 P H HARMON PROPERTIES LLC 1130 ROUTE 83 # MAY CH CAPE MAY COURT NJ 8210 2842/167 2842/167 2010 P H HARMON PROPERTIES LLC 1130 ROUTE 83 # MAY CH CAPE MAY COURT NJ 8210 2010 P H HARMON PROPERTIES LLC 1130 ROUTE 83 # MAY CH CAPE MAY COURT NJ 8210 2842/167 2004 P H HARMON PROPERTIES LLC 1130 RT 83 CAPE MAY CH CAPE MAY COURT NJ 8210 2842/167 2003 P H HARMON PROPERTIES LLC 1130 RT 83 CAPE MAY CH CAPE MAY COURT NJ 8210 2842/167 CAPE MAY COURT NJ 2842/167 P H HARMON PROPERTIES LLC 8210 2003 THOMAS BRENDA L TYRON A HARMON C/O FAYE G BLANKS 1130 RT 83 CAPE MAY CH CAPE MAY COURT NJ 8210 1625/36 2003 THOMAS BRENDA L TYRON A HARMON C/O FAYE G BLANKS 1130 RT 83 CAPE MAY CH CAPE MAY COURT NJ 8210 0/0 1625/36 THOMASTYRON A HARMON 0 1900 0 664/307 1900 HARMON CURTIS ALSTON 0 664/307 1900 HARMON CURTIS ALSTON HELEN J 1625/36 1900 BARRY N HARMON FAYE G 0

1900	HARMON CUS	TIS ALSTONBRENDA L				0	1547/51
1900	THOMASTYRON A HARMON				0	1547/47	
1900	BLANKS CO-TE	RUSTEES				0	0/0
1900	BARRY N HAR	MON FAYE G					0/0
Land							
Line	Class	Land Use Code	Act Front	Depth	Deeded Acres		Ag
1	EXM	MX	0	0	55.1800		
_and S	ummary						
.lne			1				
00% Lar	nd Value		3,500				
100% V	alues						
100% Lar	nd Value		100% improv Value		100% Total Value		
3,500	0		\$9,100		\$12,600		
50% Va	lues						
50% Land	d Value		50% Improv Value		50% Total Value		
1,750			\$4,550		\$6,300		
Permit	Details						
Permit Da	ate:	Permit #:	Amount:	Note 1			
4-MAR-	MAR-1987		\$200	SHED-S/2971500' E/	305		
13-JUN-1	UN-1984 43945-2		\$25,000	ARF-S/297 1500' W/3	305		

NORTH COASTAL PLANNING AREA

SUSSEX COUNTY, DELAWARE

CONTRACT AMENDMENT NO. 15

This contract amendment, Contract Amendment No. 15 dated ______, 2020 amends our original contract dated January 14, 2014 between Sussex County, a political subdivision of the State of Delaware, as First Party, hereinafter referred to as the COUNTY and Whitman, Requardt and Associates, LLP, a State of Maryland Limited Liability Partnership, hereinafter referred to as CONSULTANT, whose address is 801 South Caroline Street, Baltimore, Maryland 21231 (Original Contract). Except as specifically amended herein, the provisions of the Original Contract dated January 14, 2014, as thereafter amended, remain in effect and fully valid.

By execution of this Amendment, the following sections are hereby added as new sections to the Original Contract, as respectfully numbered below.

ARTICLE FOUR

FEE STRUCTURE

- 4.4.1 The previous versions of Section 4.4 as set forth in **Contract Amendment Nos. 1 to 14** are hereby incorporated by reference. Notwithstanding any language to the contrary in such Amendments, the parties agree that those Amendments are intended to be additions to the Original Contract between the parties dated January 14, 2014.
- 4.4.2 In accordance with the method of fee determination described in Articles 4.3.1, 4.3.2, 4.3.3, and 4.3.4 of this Agreement, the total compensation and reimbursement obligated and to be paid the CONSULTANT by the COUNTY for the CONSULTANT's Scope of Services for Inland Bays RWF Agricultural Effluent Distribution and RIBs Permitting as set forth in Attachment A, which is attached hereto and incorporated by reference, shall not exceed One Hundred Thirty-One Thousand Eight Hundred Six Dollars (\$131,806.00). In the event of any discrepancy or inconsistency between the amounts set forth in this Article 4.4.2 and any appendices, exhibits, attachments or other sections of this Agreement, the amounts set forth in this Article 4.4.2 shall govern.

ARTICLE FOURTEEN

INCORPORATED DOCUMENTS

14.1.2 Attachment A: Consultant's Scope of Services, Inland Bays RWF Agricultural Effluent Distribution and RIBs Permitting with Man-hour Spreadsheets. (Contract Amendment No.15).

By execution of this Agreement, the following sections are amended as set forth below:

- 2.4 The CONSULTANT shall perform the Scope of Services attached hereto as Attachment A and all additional Scopes of Services as may be set forth in consecutively numbered subsets of Attachment A.
- 4.3 The COUNTY shall pay the CONSULTANT for the satisfactory completion of the Scope of Services specified herein before in Attachment A <u>and all additional Scopes of Services as may be set forth in consecutively numbered subsets of Attachment,</u> based on and limited to the following method of determination...."

IN WITNESS WHEREOF, the parties hereunto have caused this Amendment No. 15 to this Agreement to be executed on the day and year first written hereof by their duly authorized officers. **SEAL** FOR THE COUNTY: SUSSEX COUNTY President, Sussex County Council APPROVED AS TO FORM: Date Assistant Sussex County Attorney ATTEST: Clerk of the Sussex County Council FOR THE CONSULTANT: WHITMAN, REQUARDT and ASSOCIATES, LLP

WITNESS:

Dennis J. Hasson, P.E., Partner



SCOPE OF SERVICES

INLAND BAYS RWF AGRICULTURAL EFFLUENT DISTRIBUTION AND RIBS PERMITTING

This attachment outlines the required Scope of Services for various tasks related to the Soil Investigation and Permitting for the agricultural effluent distribution sites as well as permitting for a new RIBs facility associated with Inland Bays Regional Wastewater Facilities. A spreadsheet detailing labor, subcontract, and expense costs is included as an attachment to this scope of work.

A. SOIL INVESTIGATION AT TREATED EFFLUENT AGRICULTURAL DISTRIBUTION AREAS

1.) WRA will subcontract a Soil Scientist to conduct soil profiles, borings, and soil sample chemical analysis for the identified Inland Bays agricultural distribution sites.

B. SUBMIT DNREC TREATED EFFLUENT DISTRIBUTION PERMIT APPLICATION

- 1.) Application package will include the following:
 - i.) Requirements as listed in DNREC regulatory requirements Section 6.11.4
 - ii.) Summary and conclusions of the soil investigations.

C. RIBS FACILITY PERMITTING EFFORTS

- 1.) Data Examination Including domestic water well data; water level measurements in wells; groundwater quality data from well sampling; water quality data for effluent; influent rates; fertilizer application rates; water quality data from lysimeters; and precipitation data.
- 2.) Basin Infiltration Testing WRA will subcontract a subconsultant to perform a basin test in a 10-ft by 10-ft area.
- 3.) Numerical Modeling WRA will perform numerical groundwater modeling to complete the study. Model input data will originate from information in previous WRA reports, the basin test, published geologic reports, and data from Sussex County.
- 4.) Revise Hydrogeologic Report WRA will revise the 2017 RIB hydrogeologic report using data to be provided by Sussex County. The additional site data and modeling are required to enlarge the report to support a permit application.
- 5.) Revise Surface Water Report WRA will revise the 2019 Surface Water Report using data to be provided by Sussex County. The report will be revised to include the RIB system.
- 6.) Design Engineering Report WRA will develop a DER to include in the application package.

D. MEETINGS

- 1.) WRA will coordinate and attend the following meetings:
 - i.) Progress Meeting with Sussex County
 - ii.) Meeting with Sussex County and DNREC

WRA assumes the following:

- Sussex County will provide location maps with all abandoned wells as well as all active wells within 1,000 feet of the spray fields.
- Sussex County will provide spray agreements for all spray partners.
- Water quality monitoring of any streams that could be located on the irrigation sites is not included.
- No survey is included for located drainage structures.

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 (302) 855-7799 FAX





DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable John L. Rieley
The Honorable Douglas B. Hudson
The Honorable Samuel R. Wilson, Jr.

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

RE: Black Creek Cove Road Subdivision - Swale Remediation

A. Melvin L. Joseph Construction Co., Inc. - Assumption of Select Contract

Items

DATE: March 17, 2020

Black Creek Cove is a "by right" 68 lot, single family subdivision located southeast of Georgetown, on the east side of Peterkins Road. The subdivision drainage consists of open swales consistent with the minimum slopes required under the County's subdivision Code at that time. It received final approval by the Planning & Zoning Department on August 25, 2005 and the plat was recorded on September 26, 2005.

In November of 2005, after receipt of a Wilmington Trust LOC performance security, the Notice to Proceed was issued to the developer; Barry Joseph operating under Offshore Ventures, LLC. In 2006 the swales were constructed, and the roads were base paved.

On November 2, 2008, the Wilmington Trust Letter of Credit was allowed to expire and the subdivision started to linger in an unbonded period. Due to the lack of financial security, the County stopped issuance of building permits for Offshore Ventures, LLC, which declared bankruptcy shortly thereafter. As of that time, 21 lots or 30.8%, were sold. No subsequent progress was made, and the subdivision fell in disrepair until August 2013 when M&T Bank, successor of Wilmington Trust, received Court ordered relief from Offshore Ventures' bankruptcy.

On October 27, 2014, a new developer, Parkada Investments, LLC acquired the asset and provided a performance security for the remaining road construction work. It did not cover existing swale sections with improperly installed driveway culverts as well as amenities. Nevertheless, Parkada Investments, LLC maintained common areas and their contractor Melvin L. Joseph Construction Co., Inc. completed the improvements including landscaping,



wooden guard rails, and final road pavement by the fall of 2018. The Engineering Department granted substantial completion on February 26, 2019 under a warranty bond arrangement. The bond excluded a number of swale issues throughout the entire subdivision, including the original section developed by Offshore Ventures, LLC, which were documented by the Engineering Department. In an effort to complete all drainage related issues the County Engineer approached Mr. Ken Adams, owner of Melvin L. Joseph Construction Co., Inc. who also happens to be a part owner of Parkada Investments, LLC, in an effort to resolve the issues.

We agreed to address all swale locations holding water between 24 to 48 hours after a rain event, regardless whether these were preexisting conditions prior to purchase by Parkada Investments, LLC or not based on a 2 to 1 cost split reflecting the percentage of build out at the time of acquisition. Based on that approach, Melvin L. Joseph Construction Co., Inc. developed the attached proposal which will cover the County's share of the remediation expense. The Engineering Department requests approval of the proposal in the not to exceed amount of \$24,550.00. Most likely the amount will be lower since one or two driveway culverts may not need to be reset. The Engineering Department's inspectors will work with Melvin L. Joseph Construction Co., Inc. in refining the scope during construction.



GEORGETOWN, DELAWARE 19947 PHONE (302) 856-7396 FAX (302) 856-1725

Date: March 6, 2020

To: Sussex County Council

2 The Circle / PO Box 589 Georgetown, DE. 19947

ATTN: Hans Medlarz

County Engineer

RE: Black Creek Cove Swale Correction

Dear Hans;

We propose to re-grade the swales for drainage improvement on lots #4, #24, #25, #35, #42. The scope of work is outlined below;

QTY	UNIT	DESCRIPTION	PRICE	AMOUNT
1	LS	Mobilization	\$345.00	\$380.00
1	LS	Stakeout	\$1,725.00	\$1,725.00
5	EA	Reset Driveway Pipes & Repave	\$2,372.00	\$11,860.00
870	LF	Regrade Roadside Swales	\$7.60	\$6,612.00
1450	SY	Seeding & Matting	\$2.74	\$3,973.00
		TOTAL		\$24,550.00

The above pricing assumes that all 5 driveway pipes will need to be reset to achieve proper drainage. Supplying new pipes is not included.

MELVIN JOSEPH CONSTRUCTION CO. ACCEPTANCE

Submitted By: Charles Eng Accepted By:

Date: 03/06/2020 Date:

	MANHOUR ESTIMATE AND PROPOSAL						TAIDO I	ermitting							3/4/2020 RHM/DRN			
TASK	Distribution and RIBS Permitting		Civil Assoc./ Proj. Engr.	Civil Engineer	Civil Designer / CADD	Assoc. Hydro- geologist	Geotech Engineer	Mech. Assoc. / Proj. Engr.	Mech. Engineer	Mech. Designer / CADD	SCADA Engineer	SCADA Designer/ CADD	WR&A TOTALS	WR&A EXPENSES	Subcontractor	Subcontractor Payroll		Subcontractor Expenses
Phase A - Permit Application Package														T, R,E			T, R,E	
Use Labor Cost Rates for year: 2020		\$77	\$77	\$59	\$43	\$78	\$61	\$75	\$60	\$50	\$72	\$48		S,or L (See Legend)			S,or L	(See Legend)
A1 Ag Field Soil Investigations													0	- \$	-	-	S	\$33,000
A2 DNREC Ag Distribution Application Package with Report		16		24				40	16				96	- \$				
A3	Site Visit					10							10	- \$				
A4	Data Examination					24							24	- \$				
A5	Perform RIBS basin infiltration test	2				10							12	- \$			S	\$10,000
A6	Numerical Modeling					80							80	- \$				
A 7	Revise Hydrogeo Report			8		40							48	- \$				
A 8	Revise SWAR			8		40							48	- \$				
А9	Prepare RIBS DER	16		8		8		40					72	- \$				
A10	Meet with DNREC and the County	24				30		24					78	T \$140				
A11	Finalize Application Package and Submit to DNREC	8		4				8					20	R \$350				
A12													0	- \$0				
A13													0	- \$				
													0	- \$				
													0	- \$			-	\$
	PHASE A SUBTOTALS =	66	0	52	0	242	0	112	16	0	0	0	488	\$490	Subcontracto	or Total	\$	43,000
	PHASE A SUB-TOTAL DOLLARS (INCLUDING O&P)=	\$12,389	\$0	\$7,455	\$0	\$45,869	\$0	\$20,276	\$2,327	\$0	\$0	\$0	\$88,316		Profit on S	Sub		0.0%
			52	Civil	\$7,455	242	Geotech	128	Mech.	\$22,603	0	\$0			WR&A To			88,806 131,806

		Project Manager	Civil Associate / Project Engineer	Civil Engineer	Civil Designer / CADD	Geotech. Assoc./ Proj. Engr.	Geotech Engineer	Mech. Assoc. / Proj. Engr.	Mech. Engineer	Mech. Designer / CADD	SCADA Engineer	SCADA Designer/ CADD
Bare Labor Cost rates for year	2020	\$77.25	\$77.25	\$59.00	\$43.00	\$78.00	\$60.80	\$74.50	\$59.85	\$50.00	\$71.71	\$48.25
Contract Rates - LOADED LABOR AT A FACTOR OF:	2.43	\$187.72	\$187.72	\$143.37	\$104.49	\$189.54	\$147.74	\$181.04	\$145.44	\$121.50	\$174.26	\$117.25
Bare Labor Cost rates for year	2021											
Contract Rates - LOADED LABOR AT A FACTOR OF:	2.43	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Bare Labor Cost rates for year	2022											
Contract Rates - LOADED LABOR AT A FACTOR OF:	2.43	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00



T = Travel @.48 mile

R = Reproduction

E = Equipment Rental

S = Subcontractor

L= laboratory Cost



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 (302) 855-7799 FAX





DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Douglas B. Hudson The Honorable John L. Rieley

The Honorable Samuel R. Wilson, Jr.

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

RE: Piney Neck Regional Wastewater Facility (Project S20-31)

A. Diversion Transmission System - Standalone EJCDC Engineering Agreement

DATE: March 17, 2020

The Piney Neck Regional Wastewater Facility (PNRWF) began operation in 1993 providing the Dagsboro and Frankford areas with public wastewater treatment via a 200,000 GPD facultative lagoon system, that includes a 12 MG storage lagoon and effluent land application on approximately 55 acres of farmland and pine trees. Like other County treatment locations with sprayed effluent, groundwater monitoring wells are regularly sampled along with area soils to comply with the DNREC Land Treatment System Permit requirements that outline facility operation and performance. The current permit will expire in December 2020.

On October 18, 2018 the DNREC Groundwater Discharges Section (GWDS) performed a Compliance Inspection at the PNRWF. An inspection report was provided in January 2019 which documented several "areas of non-compliance." Groundwater monitoring data collected from area wells was cited as exceeding the annual Federal and State primary drinking water nitrate standard of 10 mg/L. DNREC instructed Sussex County to perform an investigation to determine the cause of high-nitrates in monitoring wells, noting the elevated levels could be influenced by PNRWF sprayed effluent, as well as neighboring farming operations and commercial fertilizer applications in the surrounding area.

Several factors were reviewed by the Engineering Department prior to presenting the conclusion in the FY 2020 Budget Process. Facility age and condition would require various capital improvements to upgrade treatment levels beyond the nitrate requirements prescribed by the current permit. These physical considerations, along with an acknowledgment that weather, farming and maintenance challenges exist with all spray irrigation facilities, led to the alternative improvements outlined in the approved FY 2020 Capital Projects Budget.

Subsequently the Engineering Department provided DNREC written commitment to decommission the plant and end sprayed effluent operations at the PNRWF by diverting all flow



to the South Coastal Regional Wastewater Facility (SCRWF). Construction at SCRWF recently commenced. The 3-year improvement project includes an expansion of operations capable of accepting and treating flow from the PNRWF. A schedule was communicated to DNREC on April 15, 2019, outlining County goals to design, permit and construct a flow diversion transmission system over a 3-year period, followed by a 2-year plant decommissioning effort. This proposed timeline is suitable for coordination of a 5-year NPDES permit renewal by DNREC.

The Engineering Department's procurement process for 5-year Professional Service Contracts began in January 2019 with issuance of RFP 19-22, Miscellaneous Engineering Services. An explanation of the selection process and a Selection Committee recommendation were presented to Council on May 14, 2019. Council approved the selection of three (3) consulting engineering firms to provide professional services: Davis, Bowen & Friedel (DBF); George Miles and Buhr (GMB); and KCI Technologies, Inc. (KCI). Additionally, the motion authorized the Engineering Department to negotiate Base Professional Service Agreements for a five-year period of July 1, 2019 through June 30, 2024. Project-based contract amendments under the base agreements, or individual project-specific agreements if required by a funding source or as determined necessary were to be brought to Council for authorization.

With all three consultant firms actively working on various projects, the Engineering Department identified KCI as best-suited to engage with County staff to confirm project planning and complete design documents that will direct existing and future flows from the PNRWF to SCRWF, allowing the facility to be decommissioned and/or repurposed. KCI was requested to submit a scope of services with fee estimate for three phases of work: preliminary design (including easement acquisition assistance), final design and bidding. Additionally, a standalone project-based agreement for professional services in form to the existing base agreement was considered appropriate for the project scale. The latter work phases are to be reviewed and reaffirmed by the County Engineer's written authorization upon each milestone.

As requested, KCI provided an Owner-Engineer Professional Services Agreement in EJCDC format for the proposed efforts with a total estimated fee of \$480,000, distributed as \$80,000.00, \$375,000.00 and \$15,000 for preliminary design phase, final design phase, and bidding services, respectively.

The Engineering Department has reviewed the scope of services and estimated fee provided by KCI, and recommends Council authorize the Agreement with not-to-exceed value of \$480,000 for professional services related to the Piney Neck Regional Wastewater Facility – Diversion Transmission System, Project S20-31.

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of	[March 17, 2020]	("Effective Date") between
[Sussex County]			("Owner") and
KCI Technologies, Inc.			("Engineer").
Owner's Project, of which Engineer's services under Piney Neck Regional Wastewater Facility (PNRWF) Other terms used in this Agreement are defined in a	– Diversion Transmiss		
Engineer's services under this Agreement are gener	rally identified as follow	vs:	
Consulting engineering services associated with the new conveyance to the South Coastal Regional Was	-		

Owner and Engineer further agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.
- B. Each Amendment shall include a description of the scope of the services to be provided, time for performance of such services, compensation for the services, and any other terms or conditions specific to that Project. Unless otherwise expressly authorized therein, the compensation for any Amendment shall not be used for any other service other than the services under the associated Amendment.
- C. In the event of a direct conflict between the terms of an Amendment and the other terms of this Agreement, the terms of the Amendment shall govern.
- D. This Agreement is intended for use on all County funded project. In the event of an agency funded project, a new Agreement, complete with the agency's required terms and conditions will be negotiated for each project. Engineers agrees to negotiate project specific contracts for agency funded projects.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.

- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work,
 (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 - SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

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

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services under an Amendment, then the time for completion of Engineer's services shall be adjusted equitably.
- D. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

ARTICLE 4 - INVOICES AND PAYMENTS

4.01 Invoices

A. Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Invoices must include a breakdown of services provided. Engineer shall submit its invoices to Owner on a monthly

basis. Invoices shall bear the written approval of the Owner before being paid. The Owner will approve or disapprove said invoices in a timely fashion and will make payments within 30 days of receipt of an invoice that is determined by Owner as accurate and correct.

4.02 Non-Payment of Undisputed Invoices

A. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then Engineer may, after giving seven (7) days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due or undisputed services, expenses, and other related charges. Engineer otherwise does not have the right to suspend services under this Agreement, except as set forth in Section 6.06.

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

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

5.02 Designing to Construction Cost Limit

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

5.03 Opinions of Total Project Costs

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

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. Standard of Care: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
- B. *Technical Accuracy:* Notwithstanding any other provision, Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall

- correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* All subcontracts proposed to be entered into by the Engineer pursuant to this Agreement shall be subject to the prior written approval of the Owner.
- D. Reliance on Others: Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Compliance with Laws and Regulations, and Policies and Procedures:
- 1. Engineer and Owner shall comply with applicable Laws and Regulations.
- Engineer shall comply with any and all policies, procedures, and instructions of Owner that
 are applicable to Engineer's performance of services under this Agreement and that
 Owner provides to Engineer in writing, subject to the standard of care set forth in
 Paragraph 6.01.A, and to the extent compliance is not inconsistent with engineering
 professional rules.
- 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations

- applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.
- O. If at any point, Engineer becomes aware of any violation of law or regulations by Constructor or sub constructor, they have an affirmation duty to notify Owner. As their obligation to see that work is done in a safe manner and to protect the public.

6.02 Design Without Construction Phase Services

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

6.03 Use of Documents

A. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of

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

6.04 Electronic Transmittals

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

6.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer. Engineer shall not commence services or work until Engineer has obtained, at Engineer's own expense, all of the insurance as required hereunder and such insurance has been approved by the Owner; nor shall Engineer allow any Consultant to commence services on any subcontract until all insurance required of the subcontractor has been so obtained and approved by Engineer. Approval of insurance required by Engineer will be granted only after submission to Owner of original certificates of insurance, in the most current ACORD format, evidencing the required liability insurance, signed by authorized representatives of the insurers, or at Owner's request certified copies of the required liability insurance policies.
- B. Liability insurance as required hereunder shall be in force throughout the term of the of Agreement and for three (3) years after the date of final payment by the Owner for coverage or self-insurance arrangements. If Owner denies the request, Engineer or Consultant must comply with the insurance requirements specified in Exhibit G. Nothing in this provision shall be construed to allow Engineer or Consultant to permit the required insurance coverage to lapse during this Agreement.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, and employers' liability, commercial general liability, business auto liability, and other insurance necessary to protect Owner's and Engineer's interests in the

Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project. Engineer shall require all Consultants to maintain during the term of this Agreement, commercial general liability insurance, business auto liability insurance, workers' compensation and employers' liability insurance, umbrella excess liability insurance and professional liability insurance to the same extend required of Engineer in Exhibit G. Engineer shall furnish Consultants certificates of insurance to Owner.

- D. All insurers underwriting Engineer's or Consultant's insurance must be allowed to do business in the state of Delaware and acceptable to the Owner. The insurers must have a Financial Strength Rating of A- or better, and a Financial Size Category of VII or higher in the latest evaluation by A.M. Best Company, unless Other grants specific approval for an exception.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All insurance required herein shall be endorsed to provide that the policy is not subject to cancellation, non-renewal, or any material change or reduction in coverage until thirty (30) days prior to notice has been given to Owner (not less than ten (10) days' notice is required for non-payment of premium). Therefore, a copy of the endorsements to the required policies that confirm the insurer is obligated to send notice to Owner as required herein, must accompany all certificates of insurance.
- G. No acceptance and/or approval of any insurance by Owner shall be construed as relieving or excusing Engineer from any liability or obligation imposed upon them by the provisions of this Agreement.
- H. If Engineer or Consultant does not meet the insurance requirements of this Agreement, the Engineer shall forward a written request to Owner for a waiver in writing of the insurance requirement(s) not met or approval in writing of alternate insurance coverage or self-insurance arrangements. If Owner denies the request, the Engineer or Consultant must comply with the insurance requirements specified in Exhibit G. Nothing in this provision shall be construed to allow Engineer or Consultant to permit the required insurance coverage to lapse during this Agreement.
- I. Any deductibles or retentions of \$25,000 or greater shall be disclosed by Engineer and are subject to Owner's written approval. Any deductible or retention amounts elected by Engineer or its Consultant or imposed by Engineer's or Consultant's insurer(s) shall be the sole responsibility of the Engineer and are not chargeable as expenses.

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

O. If and when required based on the decision of the Owner, Engineer will purchase the necessary pollution liability insurance with limits as required by Owner.

6.06 Suspension and Termination

A. Suspension:

- 1. *By Owner*: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.
- B. *Termination*: The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. by Engineer:

- upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
- 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- By Owner: If for any reason or cause, conditions are encountered by the Owner which
 require termination of the Agreement and any modifications hereof, such determination
 to rest solely in the judgment of the Owner, this Agreement and any modifications hereof

may be terminated in whole or in part upon thirty (30) days written notice to the Engineer. Upon such termination, the Engineer shall render a final terminal report and shall be due only the payment of fees specified in Exhibit C of this Agreement. The Engineer shall immediately transfer to the Owner in a neat or orderly manner the ownership of all documents relating to the Project as specified in Article 6.03.C or this Agreement. In the case of receipt of a notice of termination of this Agreement and any modifications hereof, the Engineer shall take all reasonable steps to minimize the further incurring of fees under this Agreement.

C. Effective Date of Termination: The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. Payments Upon Termination:

 In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

6.07 Controlling Law

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

6.08 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

- 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
- 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 Dispute Resolution

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

6.10 Environmental Condition of Site

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days' notice. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of the Engineer's services under this Agreement, then the Engineer may apply to Owner for an equitable3 adjustment in its compensation or in the time of completion, or both.

F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 Indemnification and Mutual Waiver

- A. Indemnification by Engineer: To the fullest extent permitted by Laws and Regulations, the Engineer shall be responsible for its own acts and those of its subordinates, employees, Consultants and subcontractors performing all work required under this Agreement, it being expressly understood that to the fullest extent permitted by law, the Engineer shall indemnify and hold harmless Owner, and its appointed and elected officials, employees, agents, directors, and officers, from and against any and/or all claims, suits, judgments, expense, actions, damages, and cost of every name and description, arising out of and/or resulting from the negligent performance of the Engineer's Scope of Services under this Agreement.
- B. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- C. Percentage Share of Negligence: To the fullest extent permitted by 10 Del. C. Section 8132, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

6.12 Records Retention

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

6.13 Miscellaneous Provisions

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement

- shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. Accrual of Claims: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 - DEFINITIONS

7.01 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
- Addenda—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
- 2. Additional Services—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
- Agreement—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
- 4. Amendment The Document, Exhibit K whenever possible, that supplements the total Agreement in accordance with Paragraph 8.02 for services, compensation, times for performance of services and other relevant information to a Project.
- 5. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
- 6. Basic Services—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
- 7. Change Order—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
- 8. Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both;

- contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
- 9. Constituent of Concern—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq.; (f) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
- 10. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
- 11. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.
- 12. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
- 13. Construction Contract Times—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
- 14. Construction Cost—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
- 15. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- 16. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

- 17. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
- 18. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
- 19. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
- 20. Effective Date—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
- 21. Engineer—The individual or entity named as such in this Agreement.
- 22. Field Order—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
- 23. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
- 24. Owner—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
- 25. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
- 26. Record Drawings—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
- 27. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
- 28. Resident Project Representative—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

- 29. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
- 30. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
- 31. Site—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
- 32. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
- 33. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
- 34. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- 35. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
- 36. Total Project Costs—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
- 37. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, startup, and commissioning, all as required by the Construction Contract Documents.

- 38. Work Change Directive—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
- B. Day:
 - 1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included:

- A. Exhibit A, Engineer's Services.
- Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit. NOT USED
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions. TBD
- K. Exhibit K, Amendment to Owner-Engineer Agreement. RESERVED FOR FUTURE USE

8.02 Total Agreement

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

8.03 Designated Representatives

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

render decisions relative to this Agreement on behalf of the respective party whom the individual represents. An Amendment may also designate a specific representative for that Project, which shall supersede the representative designated on the signature page of this Agreement.

8.04 Engineer's Certifications

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

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

Owner: [Sussex County]	Engineer: [KCI Technologies, Inc.]
By: [] Print name: [] Title: [] Date Signed: []	By: [] Print name: [] Title: [] Date Signed: []
	Engineer License or Firm's Certificate No. (if required): [
Address for Owner's receipt of notices:	Address for Engineer's receipt of notices: [614 N. Dupont Highway Dover, DE 19901]
Designated Representative (Paragraph 8.03.A): [Designated Representative (Paragraph 8.03.A): [Daniel R. String, PE] Title: [Sr. Associate / Sr. Project Manager]
Phone Number: [] E-Mail Address: []	Phone Number: [302-318-1124] E-Mail Address: [Daniel.string@kci.com]

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Engineer's Services

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

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

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase – Sussex County shall perform all tasks associated with the Study and Report Phase as necessary to provide the Engineer a Basis of Design. Scope of work description left below for reference purposes only.

A. Engineer shall:

- Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: Owner has identified several possible solutions including:
 - Construction of a new Regional PS at the site of the existing PNRWF and new forcemain to the SCRWF.
 - 2) Modifications to existing pump stations tributary to PNRWF.
 - 3) Forcemain routing options may include following existing Delmarva Power Utility Easement or a more westerly route from PS 8.
 - b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.
 - c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify N/A alternative solutions or variations potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.
- 2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
- 3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.

- 4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
- 5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.
- 6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
- Identify, consult with, and analyze requirements of governmental authorities having
 jurisdiction to approve the portions of the Project to be designed or specified by Engineer,
 including but not limited to mitigating measures identified in an environmental
 assessment for the Project.
- 8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
- 9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
- 10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
- 11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
- 12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
- 13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
- 14. Perform or provide the following other Study and Report Phase tasks or deliverables:

- a. County personnel shall define project capacity requirements for service goals and capacity needs including average daily flow and peak flow.
- b. Develop conceptual forcemain routing for discussion with Engineer of factors that may impact final selection
- 15. Furnish [N/A] review copies of the Report and any other Study and Report Phase deliverables to Owner within [N/A] days of the Effective Date and review it with Owner. Within [N/A] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
- 16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish N/A copies of the revised Report and any other Study and Report Phase deliverables to the Owner within [N/A] days of receipt of Owner's comments.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.
- A1.02 Preliminary Design Phase Preliminary Design Phase shall not proceed without written authorization of the Owner and receipt of a Basis of Design from Owner. As noted below, detailed scope, schedule and budget shall be documented and approved by all parties prior to start of work. Compensation values noted in Exhibit C are for budgetary purposes.
 - A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
 - 1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 - In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
 - 3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then

- at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
- 4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
- 5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
- 6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
- 7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
- 8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
- 9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
 - a. Field Survey to include location of existing utilities, crossings, steams, pump station location, etc pertinent to the pump station and pipeline installation. (it is anticipated to utilize readily available aerial topography suitable for the forcemain construction documents)
 - b. Act in a leadership role for Easement Coordination of required easements and produce supporting documents for execution and recordation.
 - c. Preliminary Pump Station Design and Forcemain Design to verify the results of the Study Phase effort performed by the Owner.
 - d. Preliminary Forcemain Design
 - e. Provide List of anticipated permitting requirements for the full scope of work
 - f. Provide initial power requirements and assess feasibility with utility providers.

- g. Consult with DelDOT regarding proposed forcemain and pump station permitting and construction requirements to assess feasibility of alternatives.
- h. If necessary, consult with local municipalities regarding proposed forcemain permitting and construction requirements to assess feasibility of alternatives.
- 10. Furnish three (3) review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within [TBD] days of authorization to proceed with this phase, and review them with Owner. Within [TBD] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
- 11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner three (3) copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within [TBD] days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.
- A1.03 Final Design Phase Final Design Phase shall not proceed without written authorization of the Owner. As noted below, detailed scope, schedule and budget shall be documented and approved by all parties prior to start of work. Compensation values noted in Exhibit C are for budgetary purposes.
 - A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
 - 1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 - 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 - 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 - 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 - 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text,

data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.

- 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
- In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
- Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurementrelated instructions and forms, text, or content received from Owner.
- 9. Perform or provide the following other Final Design Phase tasks or deliverables:
 - a. Support the Owner in required easement acquisition including identification, easement document preparation, and public outreach assistance
 - b. Final Design of Pump Stations and Forcemains
 - c. Submit to DNREC for Sewerage Construction Permit and NOI Permit
 - d. Submit to SCD for Sediment and Erosion Control Permit and Stormwater Management Permit
 - e. Support the Owner with DelDOT application materials and approvals
- 10. Furnish for review by Owner, its legal counsel, and other advisors, three (3) copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within TBD days of authorization to proceed with the Final Design Phase, and review them with Owner. Within TBD days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
- 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit three (3) final copies of such documents to Owner within [TBD] days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled

- Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is []. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.
- A1.04 Bidding or Negotiating Phase Bidding and Negotiating Phase shall not proceed without written authorization of the Owner. As noted below, detailed scope, schedule and budget shall be documented and approved by all parties prior to start of work. Compensation values noted in Exhibit C are for budgetary purposes.
 - A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
 - Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner
 in issuing assembled design, contract, and bidding-related documents (or requests for
 proposals or other construction procurement documents) to prospective contractors,
 and, where applicable, maintain a record of prospective contractors to which documents
 have been issued, attend pre-bid conferences, if any, and receive and process contractor
 deposits or charges for the issued documents.
 - 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 - 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 - 4. Consult with Owner as to the qualifications of prospective contractors.
 - 5. Consult with Owner as to the qualifications of Subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 - 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by

prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

- Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
- 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).
- A1.05 Construction Phase TBD If requested Engineer shall provide the following services as an amendment to the Contract including specific scope and compensation.
 - A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
 - 1. General Administration of Construction Contract: Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 - Resident Project Representative (RPR): Provide the services of an RPR at the Site to assist
 the Engineer and to provide more extensive observation of Contractor's work. Duties,
 responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of
 such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority
 except as expressly set forth in Exhibit D.
 - Selection of Independent Testing Laboratory: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
 - 4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.

- 5. Electronic Transmittal Protocols: If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
- 6. Original Documents: If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
- Schedules: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
- 8. Baselines and Benchmarks: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
- 9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for

the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

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

- 17. Shop Drawings, Samples, and Other Submittals: Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
- 18. Substitutes and "Or-equal": Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

19. *Inspections and Tests:*

- Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
- c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- 20. Change Proposals and Claims: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
- 21. Applications for Payment: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief,

Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
- 22. Contractor's Completion Documents: Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
- 23. Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

- 24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: N/A [List any such tasks or deliverables here.]
- 25. Final Notice of Acceptability of the Work: Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
- 26. Standards for Certain Construction-Phase Decisions: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. Duration of Construction Phase: The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- A1.06 Post-Construction Phase TBD If requested Engineer shall provide the following services as an amendment to the Contract including specific scope and compensation.
 - A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
 - Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 - Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 - 3. Perform or provide the following other Post-Construction Phase tasks or deliverables: [N/A]

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

- A2.01 Additional Services Requiring Owner's Written Authorization
 - A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
 - Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 - Services to make measured drawings of existing conditions or facilities, to conduct tests
 or investigations of existing conditions or facilities, or to verify the accuracy of drawings
 or other information furnished by Owner or others.
 - 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 - 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
 - 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 - 6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
 - 7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;

- c. preparation of appraisals;
- d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
- e. detailed quantity surveys of materials, equipment, and labor; and
- f. audits or inventories required in connection with construction performed or furnished by Owner.
- 8. Furnishing services of Consultants for other than Basic Services.
- 9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
- 10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor and administering Owner's contract for such services.
- 11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
- 12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
- 13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
- 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
- 15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
- 16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
- 17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.

- 18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
- 19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
- 20. Preparation of operation, maintenance, and staffing manuals.
- 21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
- 22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
- 23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
- 24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
- 25. Overtime work requiring higher than regular rates.
- 26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
- 27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
- 28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
- 29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

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

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 - Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.

- 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
- 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
- 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
- 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
- Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
- 7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
- 8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

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Owner's Responsibilities

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

- B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:
 - A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
 - Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
 - C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site. This information shall include the results of all Planning and Study Phase activities resulting in a Basis of Design document on which the Engineer can rely for design.
 - D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.

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

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

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Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-5: Basic Services – Direct Labor Costs Plus Overhead
Plus a Fixed Fee

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

ARTICLE 2 – OWNER'S RESPONSIBILITIES

- C2.01 Compensation for Basic Services (other than Resident Project Representative) Direct Labor Costs Plus Overhead Plus a Fixed Fee Method of Payment
 - A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer's Resident Project Representative, if any, as follows:
 - An amount equal to Engineer's Direct Labor Costs plus overhead for the services of Engineer's personnel engaged directly on the Project, plus Reimbursable Expenses estimated to be \$5,000 plus Engineer's Consultant's charges, if any, plus a fixed fee of 10%.
 - 2. Engineer's Reimbursable Expenses Schedule is attached to this Exhibit C as Appendix 1.
 - 3. The total compensation for services under Paragraph C2.01 is estimated to be \$480,000.00 based on the following estimated distribution of compensation:

a.	Study and Report Phase	BY OWNER
b.	Preliminary Design Phase	\$80,000.00
c.	Final Design Phase	\$375,000.00
d.	Bidding or Negotiating Phase	\$15,000.00
e.	Construction Phase	\$[]
f.	Post-Construction Phase	\$[]

4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See Paragraph C2.03.C.2 below.

- 5. The total estimated compensation for Engineer's services, included in the breakdown by phases as noted in Paragraph C2.01.A.3, incorporates all labor, overhead, fixed fees, Reimbursable Expenses, and Engineer's Consultant's charges.
- 6. The portion of the amounts billed for Engineer's services will be based on the applicable Direct Labor Costs for the cumulative hours charged to the Project during the billing period by Engineer's employees plus overhead, Reimbursable Expenses, Engineer's Consultant's charges, and the proportionate portion of the fixed fee.
- 7. Direct Labor Costs means salaries and wages paid to Engineer's employees but does not include payroll-related costs or benefits.
- 8. Overhead shall be computed as a percentage of Direct Labor Costs. The Overhead factor to be applied to Direct Labor Costs shall be: **1.4.** Such Overhead factor shall include or otherwise account for the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto; the cost of general and administrative overhead which includes salaries and wages of employees engaged in business operations not directly chargeable to projects, plus non-Project operating costs, including but not limited to, business taxes, legal, rent, utilities, office supplies, insurance, and other operating costs. Fixed fee is the lump sum amount paid to Engineer by Owner as margin or profit and will only be adjusted by an amendment to this agreement.
- 9. Direct Labor Costs and Overhead applied to Direct Labor Costs will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

C2.02 Compensation for Reimbursable Expenses

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

C2.03 Other Provisions Concerning Payment

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.0.
- B. Factors: The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. Estimated Compensation Amounts:
 - 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

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

This is **Appendix 1 to EXHIBIT C**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [March 17, 2020].

Reimbursable Expenses Schedule

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

8"x11" Copies/Impressions	\$ 0.10 /Black and White page
	\$ 0.50 /Color page
Copies of Drawings	\$ 0.50 /sq. ft.
Mileage (auto)	\$ 0.58 per mile
Air Transportation	at cost
Meals and Lodging	at cost
Laboratory Testing	at cost



NOTICE OF ACCEPTABILITY OF WORK

	PROJECT	T:			
	OWNER	:			
	CONTRA	CTOR:			
	OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:				
	EFFECTIV	/E DATE OF THE CONSTRUCTION CONTRACT:			
	ENGINE	ER:			
NOTICE DATE:					
	То:				
		Owner			
	And To:				
		Contractor			
	From:				
		Engineer			
payment of Contracto	or, and th	e to the above Owner and Contractor that Engineer has recommended final nat the Work furnished and performed by Contractor under the above able, expressly subject to the provisions of the related Contract Documents,			

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

the Agreement between Owner and Engineer for Professional Services dated _____, and the following

terms and conditions of this Notice:

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

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

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

ву:			
Title:			
Dated:			

This is EX	KHIBI	T (3 , co	nsistir	ng c	of [3] pag	ges,
referred	to i	n	and	part	of	the	Ag	reem	ent
_	_						_		
between	Owr	ıer	and	Engin	eer	tor	Pro	tessio	nal

Insurance

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

G6.05 Insurance

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

1. By Engineer:

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

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

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

b. Commercial general liability insurance which insures against claims for bodily injury and property damage including loss of use arising out of or in connection with services under this Agreement. The minimum limits of liability for this insurance are as follows:\$1,000,000 combined single limit – each occurrence

\$1,000,000 combined single limit – personal and advertising injury

\$2,000,000 combined single limit – general aggregate

\$2,000,000 combined single limit – products/completed operations aggregate

This insurance shall include coverage for all of the following:

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

b. Excess or Umbrella Liability with minimum limits of:

\$5,000,000 each occurrence;

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

\$5,000,000 completed operations aggregate.

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

- 1) Commercial general liability;
- 2) Business auto liability; and
- 3) Employers' liability.

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

- On-going operations;
- Bodily injury or property damage claims related to the Owner's general supervision of services as provided by the Engineer under this Agreement; and
- 3) Completed operations.
- c. Business Automobile Liability Insurance: --

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

This insurance shall include coverage for all of the following:

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

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

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

e. Other (specify	\$[N/A]
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This is EXHIBIT H , consisting of [1] pages,
referred to in and part of the	Agreement
between Owner and Engineer for I	Professional
Services dated [March 17, 2020].

Dispute Resolution

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

H6.08 Dispute Resolution

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

	This is EXHIBIT J , consisting of [1] pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated [March 17, 2020].	
Special Provisions		
Paragraph(s) [] of the Agreem	nent is/are amended to include the following agreement(s) of the parties:	

This is EX	KHIB	IT I	K , co	nsistir	ng o	of [2] ;	oages,
referred	to	in	and	part	of	the	A٤	gree	ement
between	Ow	ner	and	Engin	eer	for	Pro	fes	sional

AMENDMENT TO OWNER-ENGINEER AGREEMENT Amendment No. _____

The Effective Date of this Amendment is:
Background Data
Effective Date of Owner-Engineer Agreement:
Owner:
Engineer:
Project:
Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]
Additional Services to be performed by Engineer
Modifications to services of Engineer
Modifications to responsibilities of Owner
Modifications of payment to Engineer
Modifications to time(s) for rendering services
Modifications to other terms and conditions of the Agreement
Description of Modifications:
Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.
Agreement Summary:
Original agreement amount: \$ Net change for prior amendments: \$ This amendment amount: \$ Adjusted Agreement amount: \$ Change in time for services (days or date, as applicable):
change in time for services (days or date, as applicable).

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

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

OWNER:	ENGINEER:
By:Print	By: Print
name:	name:
Title:	Title:
Date Signed:	Date Signed:

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 (302) 855-7799 FAX





DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Samuel R. Wilson, Jr.

The Honorable John L. Rieley
The Honorable Douglas B. Hudson

FROM: Eric Littleton, C.M., Manager Delaware Coastal Airport and Business Park

Patrick Brown, P.E. Project Engineer III

RE: Professional Aeronautical Consultant Services, RFQ 20-27

RECOMMENDATION TO AWARD PROFESSIONAL SERVICES CONTRACT

DATE: March 17, 2020

The Delaware Coastal Airport maintains an Airport Capital Improvement Plan (ACIP) for compliance with Federal Aviation Administration (FAA) practice. The ACIP is updated annually by the Engineering Department and utilized by the FAA in review and allocation of project funding. Several projects make up the current ACIP including Apron Expansions, Taxiways and Runway Extensions. Federal funding has been approved and is in place to proceed with an immediate apron improvements project identified by the existing ACIP. Professional consultant services are needed to support the design, bid, build process.

The Engineering Department received County Administrator approval to procure a Professional Aeronautical Consultant to implement projects under the Airport Master Plan in accordance with the ACIP during a 5-year period. A consultant selection committee comprised of Hans Medlarz, Rick Garner, Patrick Brown and Eric Littleton was approved to evaluate consultant responses to a Request for Qualifications (RFQ). Professional Aeronautical Consultant Services, RFQ 20-27, was publicly advertised on February 13, 2020 in accordance with FAA Advisory Circulars and federal, state and local guidelines. Three (3) firms responded by the February 28, 2020 deadline.

Each selection committee member received a copy of the proposals received along with a scoring sheet for their use in evaluating and individually ranking firms. As per the County Consultant Selection Policy, Delaware Code and FAA guidance, proposals are evaluated



based on approved Consultant Rating Criteria. The Criteria was weighted by distributing percentage points as published in the RFP: 25% Experience and Reputation; 25% Capacity to meet Requirements; 20% Demonstrated Ability; 15% Expertise; and 15% Familiarity with Public Work and its Requirements.

The selection committee met on Wednesday, March 4, 2020 to discuss the proposals, rating criteria and whether in their discretion oral presentations are needed to supplement the evaluation process. It was agreed that interviews were not necessary given the high level of qualifications apparent in responding firms. Committee evaluation sheets were later assembled and checked. The Selection Committee results are summarized as follows:

Firm	Avg. Committee Rank	Overall Ranking
Delta Airport Consultants	1.00 / 3	1
AECOM	2.25 / 3	2
Urban Engineers	2.75 / 3	3

It is the recommendation of the Selection Committee that Council awards a professional service agreement to Delta Airport Consultants, for Aeronautical Consultant Services at the Delaware Coastal Airport, to implement projects under the Airport Master Plan in accordance with the Airport Capital Improvement Plan over a 5-year period; and further recommend Council direct the Engineering Department to negotiate an agreement with Delta Airport Consultants for project scope, schedule and fee that receives FAA concurrence, and submit to Council for authorization.

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

Memorandum

TO:

Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Samuel R. Wilson, Jr.

The Honorable John L. Rieley . The Honorable Douglas B. Hudson

FROM:

Patrick Brown, P.E., Project Engineer III

RE:

NEW ROAD ESTATES, CHAPTER 96 SUSSEX COMMUNITY IMPROVEMENTS

PROJECT REFERENDUM RESOLUTION

DATE:

March 17, 2020

New Road Estates is a small subdivision of 9 residential parcels located along New Lane, a private street and cul-de-sac owned and maintained by the community Homeowners Association (HOA). The community is accessed from New Road, a DelDOT roadway. The Lewes area subdivision contains approximately 685 LF of paved roadway in fair condition.

The community by letter dated July 30, 2019, requested assistance from the County to repair and resurface their existing roads through the Sussex Community Improvement Program as provided under Chapter 96 of Sussex County Code. Following provisions of the Code, the Engineering Department to date has determined the community meets eligibility criteria defined in the Code; has petitioned all assessable property owners within the Community; has provided a cost estimate for a 2" hot-mix pavement overlay project; has provided the approximate costs to property owners in both lump sum and 10-year repayment options; and has provided notification and held a public meeting within the community to discuss the Chapter 96 program, estimated project costs borne by each owner, and election process necessary for a project to advance.

The Engineering Department recommends approval of the Resolution provided, establishing a date, time, place and judge for an election to be held to consider the proposed Chapter 96 Sussex Community Improvement Project for New Road Estates.

Enclosures:

Resolution

Community & Project Boundary Map

Cost Estimate Assessment Roll



RESOLUTION NO.	

A RESOLUTION ESTABLISHING A DATE, TIME, PLACE AND JUDGE FOR AN ELECTION TO BE HELD TO CONSIDER THE <u>NEW ROAD ESTATES CHAPTER 96</u> <u>SUSSEX COMMUNITY IMPROVEMENT PROJECT</u>

WHEREAS, Chapter 96 of the Sussex County Code, Sussex Community Improvements, provides for a Sussex County Program to facilitate the improvements of streets, roadways, and other construction designated by the County Engineer that will, upon completion, benefit or serve the entire community and which are controlled by a private subdivision Property Owners Association, to be implemented by the Sussex County Engineering Department; and

WHEREAS, the subdivision known as New Road Estates, as represented on Sussex County Tax Map 335 - 8.00 Parcels 589 - 597, and on Recorder of Deeds Plot Book 43 - Page 174; located south of New Road (#266), just west of the intersection with Lynn Road (#266A), near Lewes, DE, within the Lewes & Rehoboth Hundred, requested petition forms be provided from Sussex County Engineering Department to determine if there was enough interest in their community to obtain an estimate of costs and charges for proposed improvements, and if so, to submit the question of establishing a Chapter 96 Sussex Community Improvement project for the community of New Road Estates to an election, in accordance with the provisions of Sussex County Code, Chapter 96, Sussex Community Improvements; and

WHEREAS, it was determined by the Sussex County Engineering Department that New Road Estates meets all criteria as defined by Sussex County Code Chapter 96 and thereby provided by direct mail the requested petition form to each property owner of record within New Road Estates on October 4, 2019, in accordance with the Sussex County Code, along with a project boundary map and project cost estimate, with estimated charges to each property owner; and

WHEREAS, 6 valid petition forms were returned to Sussex County Engineering Department and verified to represent approximately 66% of the 9 assessable properties in the proposed project, thereby exceeding the fifty percent (50%) or more representation requirement in § 96-5 of the Sussex County Code; and

WHEREAS, on November 21, 2019 and on January 14, 2020, the Sussex County Engineering Department mailed to all New Road Estates property owners of record within the proposed project area a Notice of a Public Meeting to be held in the community on February 13, 2020; as required by §96-5 of the Sussex County Code; and

WHEREAS, Sussex County Engineering Department held the Public Meeting to discuss the Chapter 96 community improvements proposal on Thursday, February 13, 2020, at 5 New Lane, Lewes, in the community with New Road Estates property owners, affirming the project boundary and estimated charges to each property owner in accordance with Sussex County Code.

NOW, THEREFORE,

BE IT RESOLVED, Sussex County Council hereby formally accepts the community of New Road Estates into the Sussex County Chapter 96 Sussex Community Improvement Program; and

BE IT FURTHER RESOLVED, that Sussex County Council approves for New Road Estates proposed Chapter 96 Sussex Community Improvement project, an estimated annual billing rate of \$831.21 for a ten (10) year time period, or an estimated lump sum payment cost of \$6,826.58 for each assessable property located within the boundary of the New Road Estates proposed Chapter 96 project, as determined by the Sussex County Engineering and Finance Departments; and

BE IT FURTHER RESOLVED, that the Sussex County Council does establish Tuesday, April 21, 2020, during the hours of 3:30 p.m. – 6:30 p.m., at the Lewes Public Library located at 111 Adams Avenue, Lewes, Delaware, as the date, time, and place for the Election to determine if the property owners of New Road Estates are in favor of proceeding with improvements under the proposed Chapter 96 Project, as presented at the February 13, 2020 Public Meeting. A provision for Absentee Ballots will be provided; and

BE IT FURTHER RESOLVED, Sussex County Council appoints Patrick J. Brown, PE, of the Sussex County Engineering Department, or his designee, to be the judge of the April 21, 2020 Election; and

BE IT FURTHER RESOLVED, that Sussex County Council directs the Sussex County Engineering Department to provide notice to all assessable property owners of record in the New Road Estates proposed Chapter 96 Project, of the date, time, and place of the Election, including estimated costs and charges to property owners, as required by §96-5 of the Sussex County Code.

Patrick Brown, P.E. Project Engineer III Presented on: March 17, 2020

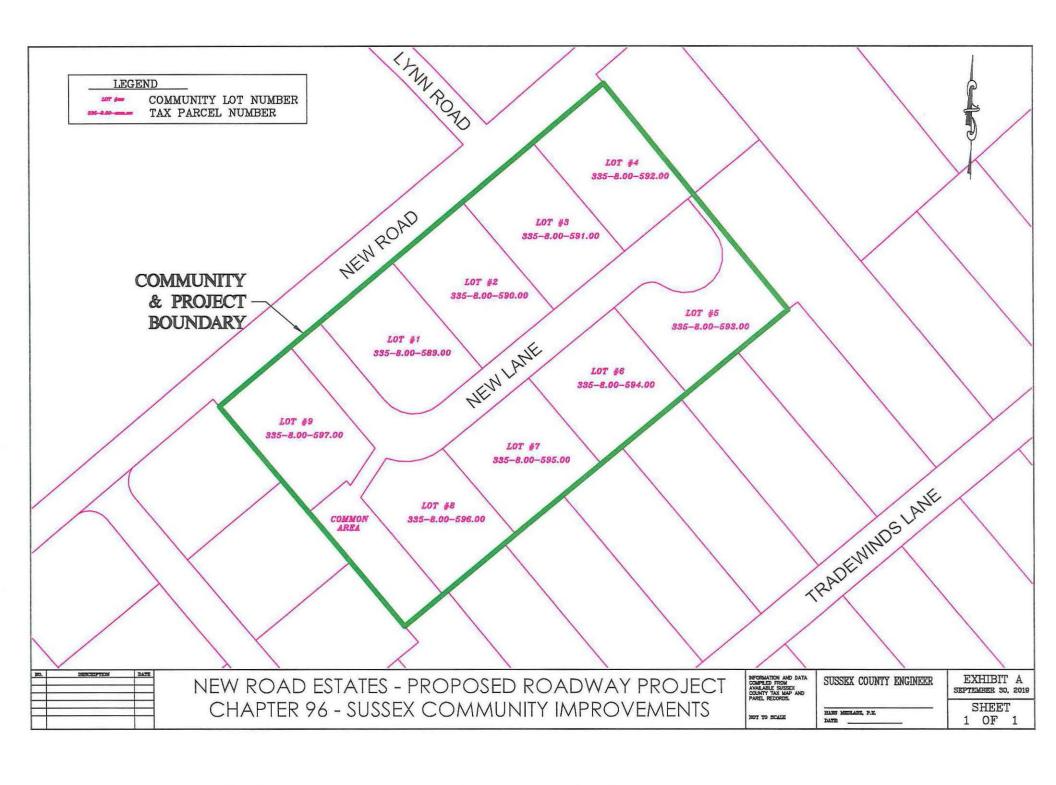


EXHIBIT B - PRELIMINARY COST ESTIMATE

March 1, 2020

New Road Estates

ITEM	ITEM DESCRIPTION UNITS		QTY	UNIT COST		TOTAL ITEM COST		TOTAL ITEM COST	
1	PRELIMINARY DESIGN COSTS:							\$	500.00
1.1	PERMITS							1100	4508,490
1.2	DNREC NOI	LS	n/a	\$	8 4	\$	-		
1.3	SCD DESIGN REVIEW/INSPECTION FEES	LS	n/a	\$	-	\$			
1.4	DEL DOT Entrance/Safety Permit	LS	1	\$	500.00	\$	500.00		
1.5	DESIGN SURVEY	LF	n/a	\$		\$	-	\$	
2	PRELIMINARY CONSTRUCTION COSTS:							\$	50,276.25
	PREPARATION							\$	13,500.00
2.1	Existing Hot Mix Preparation	LS	1	\$	5,500.00	\$	5,500.00		
2.2	Manhole Frame and Cover Adjustment	EA	0	\$	1,000.00	\$	Fe.		
2.3	Valve Box Adjustment	EA	0	\$	300.00	\$			
2.4	Crusher Run (Type B)	TON	10	\$	100.00	\$	1,000.00		
2.5	Type B Hot Mix Patching	TON	25	\$	280.00	\$	7,000.00		
	PAVING							\$	26,775.00
2.5	Type C Hot Mix Wedge / Level	TON	40	\$	100.00	\$	4,000.00		
2.6	Type C Hot Mix Paving	TON	210	\$	90.00	\$	18,900.00		
2.7	Driveway Tie-in	EA	9	\$	175.00	\$	1,575.00		
2.8	Independent Density Testing	HR	20	\$	115.00	\$	2,300.00		
	RESTORATION							\$	5,850.00
2.9	Restoration	LS	1	\$	5,850.00	\$	5,850.00		
	CONTRACTOR INITIAL EXPENSE							\$	4,151.25
2.10	Mobilization	LS	1	\$	4,151.25	\$	4,151.25		

Project Engineer: Patrick Brown

Approved by County Engineer:

Approved by Finance Director:

Date: 3/3/20

__{Date:} 3(3)20

COST ESTIMATE SUMMARY	
Subtotal Prelim Design & Construction	\$ 50,776.25
10% Project Contingency	\$5,077.63
SubTotal Construction Estimate	\$ 55,853.88
10% Administration Fee (as % of const. subtotal)	\$ 5,585.39
HOA Contributed Funds	\$ -
Total Project Cost	\$ 61,439.26

Interest Rate

Lump Sum Repayment Cost §

10 Year Repayment Period Cost

Total Parcels

6,826.58 \$831.21 Per Parcel Per Parcel

3.75%

Page 1 of 1

NEW ROAD ESTATES PROPOSED CHAPTER 96 PROJECT - ASSESSABLE PROPERTIES ESTIMATED ANNUAL ASSESSMENT

TAX MAP PARCEL NO.		LOT NO.	OWNER	EST. ANNUAL S		
335-8.00	589.00	1	Ronald and Marian Bowersock	\$831.21		
335-8.00	590.00	2	Jason and Irene Cusimano	\$831.21		
335-8.00	591.00	3	Sean Merlonghi and Michelle Plourde	\$831.21		
335-8.00	592.00	4	John and Katherine Malloy	\$831.21		
335-8.00	593.00	5	Cynthia S Albright Trustee	\$831.21		
335-8.00	594.00	6	Cynthia S Albright Trustee	\$831.21		
335-8.00	595.00	7	Amanda Armstrong	\$831.21		
335-8.00	596.00	8	William and Natalie Cizek	\$831.21		
335-8.00	597.00	9	Deborah Clements	\$831.21		

NOTES:

Nine (9) Assessable Parcels as per Community & Project Boundary Map dated September 30, 2019 Estimated Annual Assessment as per 10-Year Repayment Period Cost provided on Preliminary Cost Estimate dated March 1, 2020

Approved by County Engineer:

Approved by Finance Director:

Date:

Data: 3/3/20

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Memorandum

TO:

Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Samuel R. Wilson, Jr. The Honorable Douglas B. Hudson The Honorable John L. Rieley

FROM:

John J. Ashman

Director of Utility Planning

RE:

Use of Existing Infrastructure Agreement

Coastal Tide File: OM 9.01

DATE:

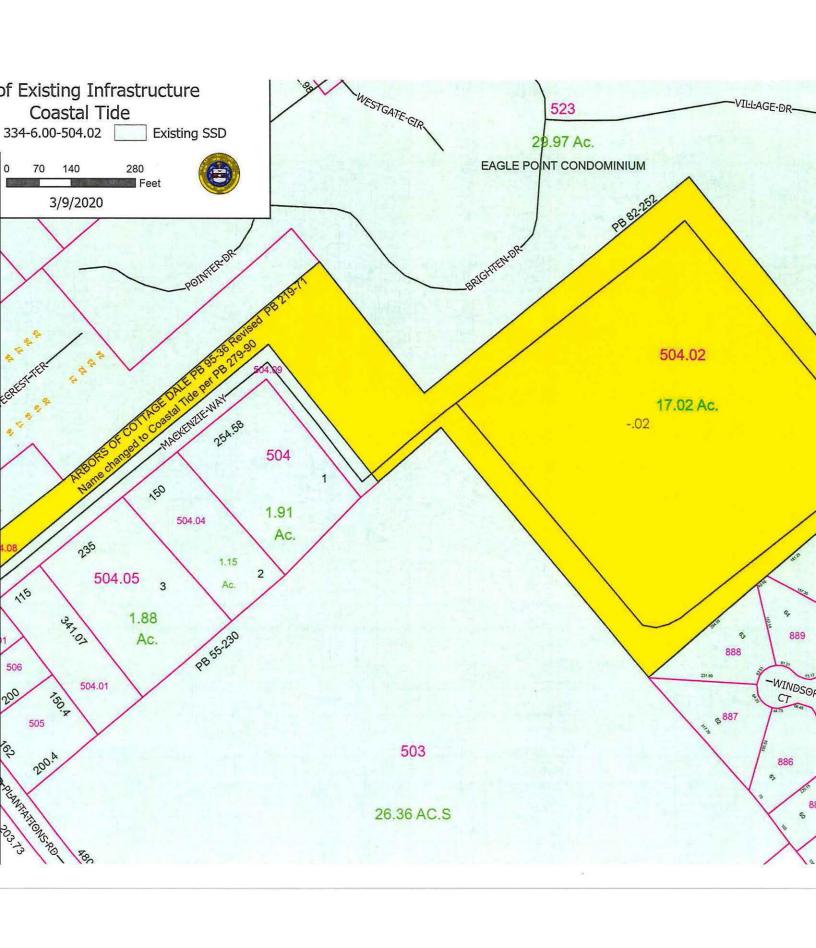
March 17, 2020

Th Use of Existing Infrastructure Agreement is an arrangement that collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

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

Under the proposed arrangement, the **Coastal Tide** project will connect to the existing County owned infrastructure. In return for utilization of said infrastructure **Coastal Tide Partners, LLC** will contribute **\$84,884.00** for the financial catch-up contribution of the existing infrastructure to serve **159** Equivalent Dwelling Units. Payment will be required prior to substantial completion of the on-site pumpstation. System Connection Charges in place at the time of building permit request will still apply.





USE OF EXISTING INFRASTRUCTURE AGREEMENT

Infrastructure Use Agreement IUA-389-2

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

COASTAL TIDE PARTNERS, LLC, a Limited Liability Corporation and developer of a project known as Coastal Tide, hereinafter called the "Developer."

WITNESSETH:

WHEREAS, Developer is developing several tracts of land identified as Tax Map parcel 334-6.00-504.02 to be known as Coastal Tide ("Project") and;

WHEREAS, the Project is located in the Sussex County Unified Sanitary Sewer District (West Rehoboth Area) and;

WHEREAS, the parcels are capable of being served by Sussex County regional infrastructure and;

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

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

- (1) Developer is proposing to utilize County's existing transmission capacity by connecting to an existing regional pipeline used by multiple pump stations.
- (2) In exchange for permission to connect up to <u>159</u> equivalent dwelling units to County's existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of <u>\$84,884.00</u> for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) Payment of the contribution will be required prior to substantial completion of the on-site pump station.

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

- of this Agreement, including but not limited to damage to the County's infrastructure in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.
- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is 20408 Silver Lake Dr. Unit 1, Rehoboth Beach DE 19971.

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

FOR THE COUNTY:

{Seal}	By: (President - Sussex County Council)
	(DATE)
ATTEST:	
Robin A. Griffith	
Clerk of the County Council	
	FOR COASTAL TIDE PARTNERS, LLC
	By: (Seal)
WITNESS: They 1) Klend	orde-

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

JOHN J. ASHMAN DIRECTOR OF UTILITY PLANNING

Memorandum

TO:

Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Samuel R. Wilson, Jr. The Honorable Douglas B. Hudson The Honorable John L. Rieley

FROM:

John J. Ashman

Director of Utility Planning

RE:

Use of Existing Infrastructure Agreement

Sycamore Chase File: OM 9.01

DATE:

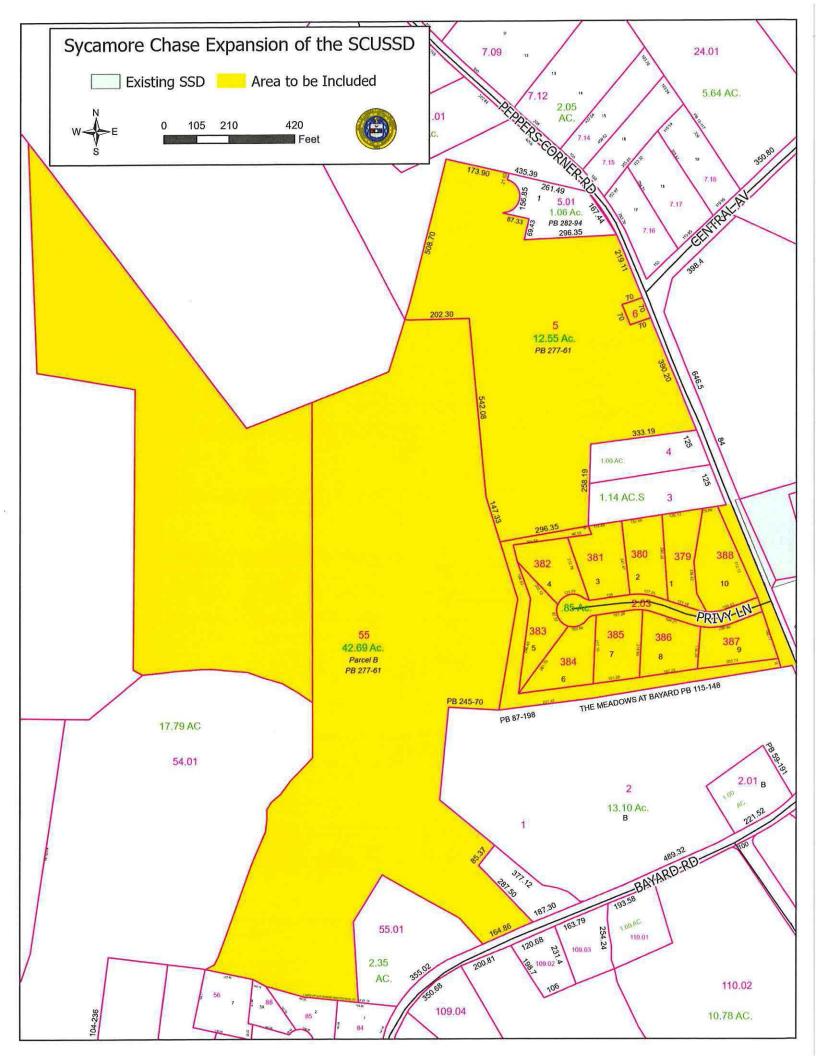
March 17, 2020

Th Use of Existing Infrastructure Agreement is an arrangement that collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the Use of Existing Infrastructure with **Charter Oak Development, LLC** for the **Sycamore Chase** project in the Miller Creek Area. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, the **Sycamore Chase** project will connect to the existing County owned infrastructure. In return for utilization of said infrastructure **Charter Oak Development, LLC** will contribute \$46,595.00 for the financial catch-up contribution of the existing infrastructure to serve **107** Equivalent Dwelling Units. Payment will be required prior to substantial completion of the on-site pumpstation. System Connection Charges in place at the time of building permit request will still apply.





USE OF EXISTING INFRASTRUCTURE AGREEMENT

SYCAMORE CHASE – IUA1110

THIS AGREEN	MENT ("Agreement"), made this _	970	_ day of
VONULTRY	2020, by and between:		

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

CHARTER OAK DEVELOPMENT, LLC. a Limited Liability Corporation and developer of a project known as **Sycamore Chase**, hereinafter called the "Developer."

WITNESSETH:

WHEREAS, Developer is developing a tract of land identified as Tax Map parcels 134-18.00-55.00 & 134-19.00-5.00 & 6.00 to be known as **Sycamore Chase** ("Project") and;

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

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

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

- Developer is proposing to utilize County's existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to <u>107.00</u> additional equivalent dwelling units to County's existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of <u>\$46,595.00</u> for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) Payment of the contribution must be submitted prior to substantial completion of the on-site pumpstation.

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

- of this Agreement, including but not limited to damage to the County's infrastructure in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.
- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is 929 Mallard Circle, Arnold MD 21012.

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

FOR THE COUNTY:

	{Seal}	By:
		(President - Sussex County Council)
		(DATE)
ATTEST:		
Robin A. Gr Clerk of the	iffith County Council	
		FOR CHARTER OAK DEVELOPMENT, LLC
		By: (Seal J. Hutchins Haese Authorized Signatory
		912020 (DATE)
WITNESS:	Wilma S) Haese

JAMIE WHITEHOUSE, AICP DIRECTOR OF PLANNING & ZONING (302) 855-7878 T (302) 854-5079 F jamie.whitehouse@sussexcountyde.gov





Memorandum

To: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Douglas B. Hudson The Honorable John L. Rieley The Honorable Samuel R. Wilson, Jr.

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: March 13, 2020

RE: County Council Old Business Report for CU 2203 Christopher F. Booth

The Planning and Zoning Department received an application (CU 2203 Christopher F. Booth) for a Conditional Use for parcel 433-7.00-13.01 to allow for a tree and landscaping business to be located at 30725 Omar Rd, Frankford. The Planning and Zoning Commission held a public hearing on December 19, 2019.

At the meeting of January 9, 2020, the Commission recommended that the application be denied for the 8 reasons outlined below.

County Council held a public hearing on February 4, 2020. At that meeting, the application was deferred for further consideration.

The following are the minutes for the Conditional Use from the Planning and Zoning Commission meetings.

C/U 2203 Christopher F. Booth

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a tree and landscaping business to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 1.227 acres, more or less. The property is lying on the north side of Omar Rd., approximately 0.36 mile west of Armory Rd. 911 Address: 30725 Omar Rd., Frankford. Tax Parcel: 433-7.00-13.01.

Ms. Cornwell outlined that, submitted into the record for this application, is a Staff analysis, comments from the Sussex Conservation District; and comments from the Sussex County Engineering Department – Utility Planning Division.



The Commission found that Mr. Christopher Booth was present on behalf of the application; that he was asked to make an application for a Conditional Use as the use is already operating; that the use is a small landscape business; that the business is for 2 people, but sometimes 3 people; that his business does provide snow removal services; that he also stores firewood on site; that he lives at the property with his wife and does sometimes have bonfires; that his wife's family have owned the property for many years; that he does not currently wish to expand his business at this time; that the hours are 7:00 am to 5:00 pm Monday through Saturday, but some Sundays do occur; that vehicles are maintained on site for the business; that a small dump truck is stored on site; that wood chopping occurs on site; that Mr. Booth would like a small sign.

Mr. Hopkins asked about the use of the property. The Commission found that Mrs. Crystal Booth was present in support of the application; that she is the Applicant's wife and lives at the property; that he family used to own the property to the north but it was sold to a third-party; that the house to the west is used for a landscaping business also. Mr. Booth submitted letters of support from some of the adjoining occupiers.

Mrs. Stevenson asked whether the trucks were worked on inside or outside. Mr. Booth stated that trucks are worked on outside at the moment. Mr. Booth confirmed that no chemicals are stored outside but there is an outside dirt pile 10' high and 10' wide; that some of the tree bark/wood is burned and that there is a firepit. Mr. Whitehouse asked where the firepit is located and Mr. Booth stated that it is located in the northwesternmost part of the site.

Mr. Wheatley asked about potential noise from the activities on site. Mr. Booth stated that there is a wood splitter on site and that this is typically used during normal business hours, but that he does sometimes use this at weekends; that he is considerate of his neighbors; that his neighbor to the east also has a large woodpile.

The Commission found that no one wished to speak in favor to the application. The Commission found that Mr. Steve Harding was present in opposition to the application; that Mr. Harding lives in Omar Rd behind the property; that he has lived there for 18 years and that the application site was just a dwelling when he moved in; that the firepit is 60' from his windows and that he cannot open doors or windows when the fire is in operation; that he submitted aerial photos, taken on 12.18.2019 showing the condition of the rear of the application site; that what the applicant considers to be his back yard is actually Mr. Harding's front yard; that the garbage includes washing machines and refrigerators scattered over the entire property and that all the waste is a breeding ground for mice/rats; that the adjoining use has devalued his property; that he has confirmed this with a realtor; that there are feral cats on the property; that he would have no objection to the Applicant parking trucks in the front of his property instead of the rear.

Ms. Stevenson stated that DNREC has rules about when trash can be burned. Chairman Wheatley asked the Applicant to explain the purpose of the fire pit. Mr. Booth outlines that the fire pit serves to burn tree bark and that he does not burn this during the summer time except for parties such as 4th July, and that the fires are for recreational purposes only. Mr. Booth also stated that he does not keep any feral cats on the property.

Upon there being no one else wishing to speak, Chairman Wheatley closed the public hearing for this application.

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

Mr. Robertson noted that there were a number of factors raised in the public hearing that the Commission may wish to further consider. Mr. Hopkins asked about the County's rules for accumulation of trash/garbage. Ms. Cornwell noted that the Constable's office is aware of this matter and has the power to investigate and take action.

Ms. Wingate stated that she is concerned about the accumulation of trash on the property. Ms. Stevenson stated that, if the Commission were minded to recommend approval of this application, this might be a case where the Commission might want to consider a forested/landscaped buffer to the rear of the property.

Motion by Ms. Wingate, and seconded by Ms. Stevenson to defer Conditional Use Application 2203 for further consideration. Motion carried 5-0.

January 9, 2020 Planning & Zoning Commission Draft Minutes

The Commission discussed application CU 2203, which had been deferred since December 19, 2019.

Ms. Wingate moved that the Commission recommend denial of Conditional Use # 2203 for **Christopher F. Booth** for a tree and landscaping business based upon the record made during the public hearing and for the following reasons:

- 1. This Application is for a landscaping business on a residential 1.227-acre lot in an area immediately adjacent to other residential properties.
- 2. The record indicates that the Applicant has been operating his small landscaping business from this property for some time without the proper approvals.
- 3. There was opposition to the Application from a neighboring property owner describing the current bad condition of the Property, and the neighbor expressed concerns that this would only get worse if the use is allowed to continue with a Conditional Use approval.
- 4. Photographs entered into the record show that there is a large accumulation of trash and junk throughout the rear area of the property and along the boundary with neighboring properties. There was also testimony that this area has attracted feral cats, rats and other vermin. Under these conditions, it is not appropriate to grant a Conditional Use on this property.
- 5. There is evidence in the record that the existing trash and junk and the proposed use and the materials, equipment and vehicles associated with it, adversely affects the neighboring and adjacent properties.
- 6. The current condition of the property and the proposed Conditional Use does not promote the health, safety and welfare of Sussex County and its residents.
- 7. The proposed use in this location does not satisfy the purpose of a Conditional Use under the Sussex County Zoning Code because it is not well-adjusted to its environment with full protection of the neighboring properties, and because the proposed use is not desirable in this location for the general convenience and welfare of Sussex County residents and businesses.

8. For all of these reasons, I move that the Commission recommend a denial of this Conditional Use.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend denial of C/U #2203 Christopher F. Booth for the reasons stated in the motion. Motion carried 5-0.

PLANNING & ZONING

JANELLE M. CORNWELL, AICP DIRECTOR

> (302) 855-7878 T (302) 854-5079 F





Memorandum

To: Sussex County Planning Commission Members

From: Janelle Cornwell, AICP, Planning & Zoning Director CC: Vince Robertson, Assistant County Attorney and applicant

Date: December 12, 2019

RE: Staff Analysis for CU 2203 Christopher F. Booth

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2203 Christopher F. Booth to be reviewed during the December 19, 2019 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for parcel 433-7.00-13.01 to allow for a tree and landscaping business to be located on the north side of Omar Rd. The size of the properties is 1.227 ac. +/-.

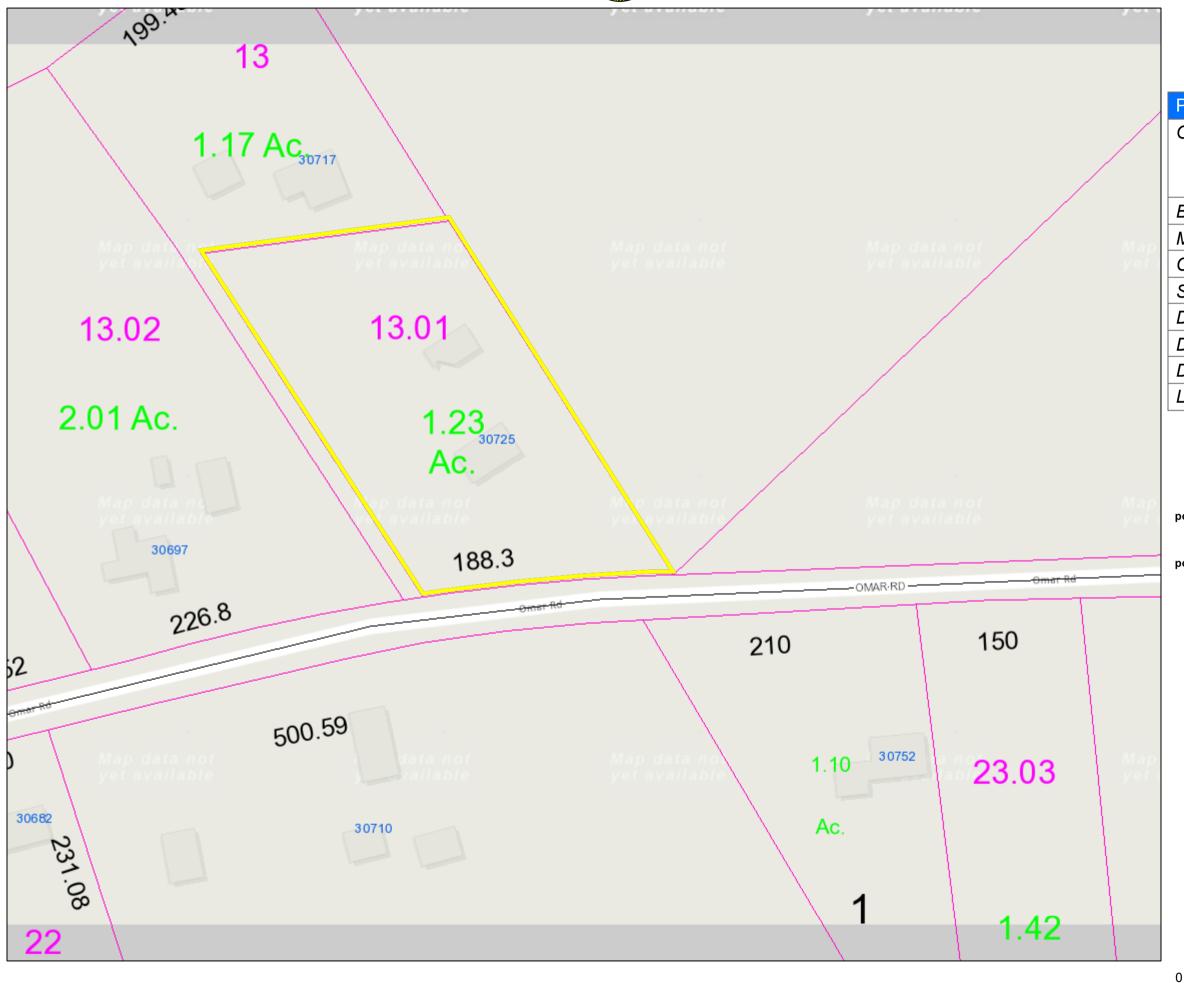
The 2008 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map indicates that the properties have the land use designation of Coastal Area.

The surrounding lands located to the north, south, east and west of the application site are designated as being in Coastal Area. The Coastal Areas land use designation recognizes that a range of housing types should be permitted in Coastal Area, including single-family homes, townhouses, and multifamily units. Retail and office uses are appropriate but larger shopping centers and office parks should be confined to selected locations with access along arterial roads Appropriate mixed-use development should be allowed. It also recognizes a careful mixture of homes with light commercial, office and institutional uses can be appropriate to provide convenient services and to allow people to work close to home.

The property is zoned AR-1 (Agricultural Residential Zoning District). The properties to the north, south, east and west are also zoned AR-1 (Agricultural Residential Zoning District). There are no known Conditional Uses in the area that have been approved since 2011.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use for a tree and landscaping business could be considered consistent with the land use, area zoning and nearby uses.





PIN:	433-7.00-13.01
Owner Name	BOOTH
	CHRISTOPHER F
Book	3950
Mailing Address	30725 OMAR RD
City	FRANKFORD
State	DE
Description	FRANKFORDOMAR
Description 2	N/A
Description 3	N/A
Land Code	

polygonLayer
Override 1

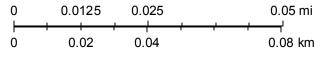
polygonLayer

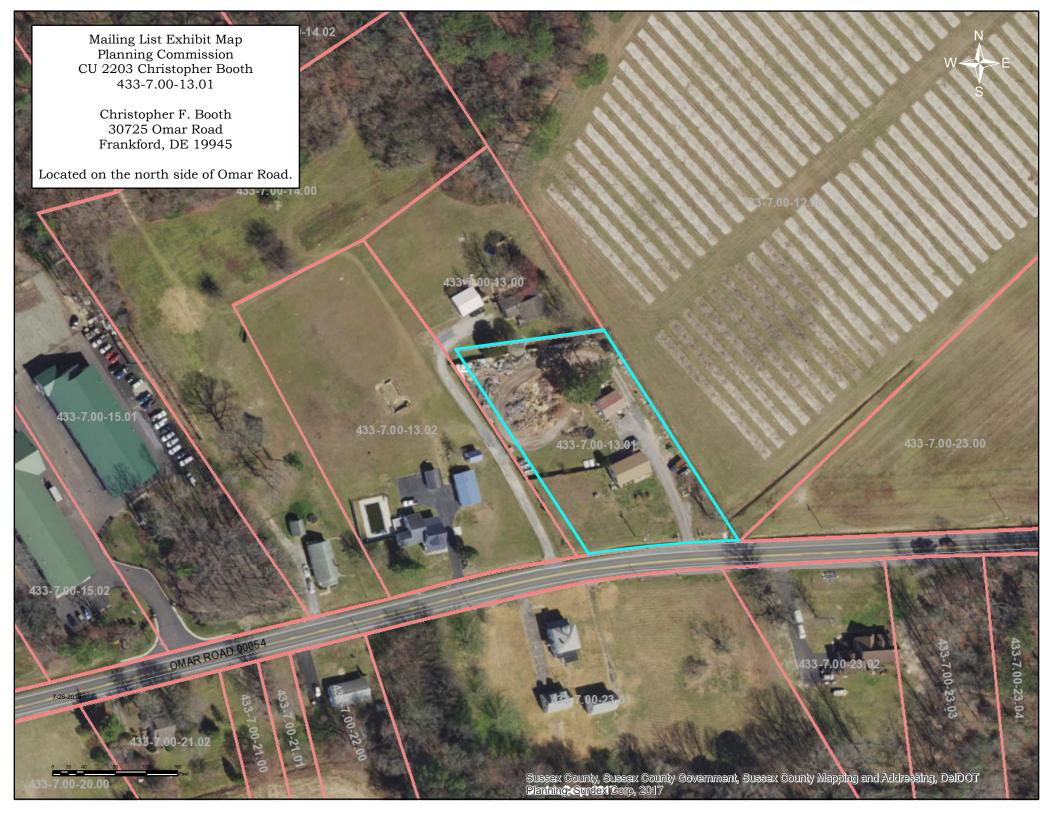
Override 1

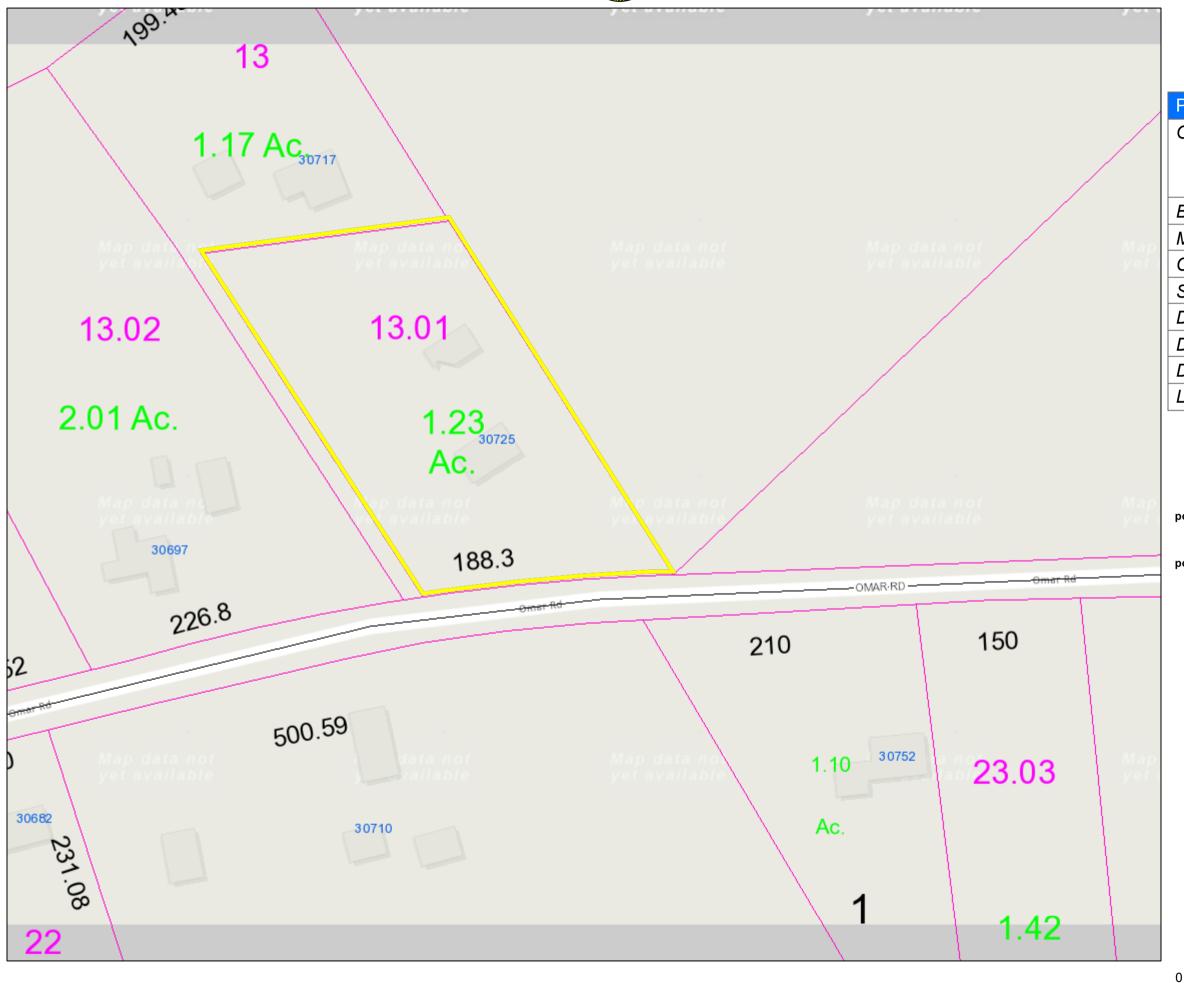
Tax Parcels
911 Address

Streets

1:1,128







PIN:	433-7.00-13.01
Owner Name	BOOTH
	CHRISTOPHER F
Book	3950
Mailing Address	30725 OMAR RD
City	FRANKFORD
State	DE
Description	FRANKFORDOMAR
Description 2	N/A
Description 3	N/A
Land Code	

polygonLayer
Override 1

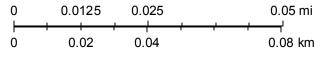
polygonLayer

Override 1

Tax Parcels
911 Address

Streets

1:1,128



We Chris and Krystal Booth are trying to get a permit for conditional use of property from the Sussex county council, to be able to keep my equipment for my business on the property. None of my business is conducted here and is all off site. These are the signatures of my neighbors below that they have no issues with this taking place.

× MVal × MIKE VANGHAN

× MIKE VANGHAN

× MIKE VANGHAN

× MIKE VANGHAN

× MICH HUDSON

× MICH GENER

Applicant Exhibit

FILE COPY

CU 2203













Introduced 09/17/19

Council District No. 5 – Rieley

Tax I.D. No. 433-7.00-13.01

911 Address: 30725 Omar Road, Frankford

ORDINANCE NO. ___

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE AND LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.227 ACRES, MORE OR LESS

denominated Conditional Use No. 2203, was filed on behalf of Christopher Booth; and

denominated Conditional Csc 110. 2203, was fred on behan of Christopher Booth, and

WHEREAS, on the _____ day of ______ 2020, a public hearing was held, after

WHEREAS, on the 6th day of September 2019, a conditional use application,

notice, before the Planning and Zoning Commission of Sussex County and said Planning and

Zoning Commission recommended that Conditional Use No. 2203 be _____; and

WHEREAS, on the _____ day of ______ 2020, a public hearing was held, after

notice, before the County Council of Sussex County and the County Council of Sussex County

determined, based on the findings of facts, that said conditional use is in accordance with the

Comprehensive Development Plan and promotes the health, safety, morals, convenience,

order, prosperity and welfare of the present and future inhabitants of Sussex County, and that

the conditional use is for the general convenience and welfare of the inhabitants of Sussex

County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be

amended by adding the designation of Conditional Use No. 2203 as it applies to the property

hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in

Dagsboro Hundred, Sussex County, Delaware, and lying on the north side of Omar Road,

approximately 0.36 mile west of Armory Road, and being more particularly described in the

attached legal description prepared by Brennan Title Company, said parcel containing 1.227

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.

JAMIE WHITEHOUSE, AICP DIRECTOR OF PLANNING & ZONING (302) 855-7878 T (302) 854-5079 F jamie.whitehouse@sussexcountyde.gov





<u>Memorandum</u>

To: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Douglas B. Hudson The Honorable John L. Rieley The Honorable Samuel R. Wilson, Jr.

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: March 13, 2020

RE: County Council Old Business Report for CZ 1900 Michael P. Justice, Trustee

The Planning and Zoning Department received an application (CZ 1900 filed on behalf of Michael P. Justice, Trustee) to amend the Comprehensive Zoning Map for parcel 134-16.00-51.00 from a GR General Residential District to a General Residential District – Residential Planned Community (GR-RPC). The Parcel is located on a certain parcel of land lying west of Parker House Road, approximately 0.35 mile south of Beaver Dam Road.

The Planning and Zoning Commission held a public hearing on December 12, 2019. At its meeting of January 9, 2020, the Commission recommended that the application be approved for the 8 reasons and subject to the 15 recommended conditions outlined below.

County Council held a public hearing on January 28, 2020. At that meeting action was deferred for further consideration.

The following are the minutes for the Change of Zone from the Planning and Zoning Commission meetings.

C/Z 1900 Michael P. Justice, Trustee

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a GR General Residential District to a GR-RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 16.1 acres, more or less. The property is lying on the west side of Parker House Rd., approximately 0.35 mile south of Beaver Dam Rd. 911 Address: N/A. Tax Parcel: 134-16.00-51.00.



Ms. Cornwell advised the Commission that submitted into the record were a Site Plan, an exhibit booklet, comments from DelDOT, comments from Sussex Conservation District and one letter in opposition to the Application.

That the Commission found that Mr. John Sergovic, Esquire, was present on behalf of the Application and was representing the Applicant Michael P. Justice, Trustee, that present are Michael Justice and Ken Christenbury, P. E. with Axiom Engineering

Mr. Sergovic stated that although this is a Change of Zone application, it really is a design application because it is zoned GR. That one of the means to achieve enhanced design is to go with a Residential Planned Community (RPC) because there isn't a cluster option in GR as there is with AR-1. This Application is of the cluster subdivision and overlay with the RPC.

A Booklet was distributed. Tab 4 of the Booklet outlines Chapter 4 of Coastal Areas. Mr. Sergovic stated that permitted uses must address special development concerns including single family townhouses, multi-family units. The criteria are central water and central sewer. The Comprehensive Plan specifically addresses a mixture of housing types, enhancing preservation open spaces, natural area resources and infrastructure; that there are to be some restricted covenants to which Mr. Justice is committed such as having no manufactured homes in the development. Per the restrictions, only stick-built or modular homes will be permitted. There are some areas of the site that may be reduced a little as the design process continues. Currently, the Applicant is in negotiations with a builder about the 1,800 sq. ft. minimum size for a single-family dwelling. Potentially, they could drop that down to 1,600 sq. ft. because of the nature of the housing market which is mostly a retirement age area.

Mr. Christenbury, of Axiom Engineering, explained that Evergreen RPC is a single-family, 45-unit development. In Tab 1 of the Exhibit Booklet, the summary includes a context of the project. Mr. Christenbury cited other developments in the surrounding area such as the expansion of Silver Wood Phase I with 2.264 units per acre, Ocean Air is 2.74, Plantation 2.97 and Kensington 3.0. Across the street there is state land that is being preserved. He believes that Evergreen is in character with what is currently in the surrounding area. He referred to the Zoning Map, noting that before the nearby sites were annexed into the city, the land was zoned GR. In fact, there was a plan for a trailer park that was never constructed. There is a commercial property on the corner that is also owned by Mr. Justice, but most of the area is GR except for the land being preserved by the State of Delaware.

Tab 3 shows the Actual Site Plan. The project has a single access from Parker House Rd. and tees off into two roads with turnarounds. There are walking trails around the open spaces and a sidewalk on one side. The stormwater waste management area buffer in several areas has been increased 20'; that there would be a strip woods that is 40-50' wide instead of 20'; that there were 2 letters in the file from neighbors that were concerned about drainage. He pointed to an existing ditch that doesn't seem to be maintained. The plans that were brought to the Corps of Engineers for now include the ditch on the Applicant's property to the extent that it can be; that the Applicant would prefer that the neighbors would be open to granting an easement to improve the existing ditch and allow temporary access which could possibly enhance the drainage; that the Applicant can't assume that they would want that to happen on their land: that the Applicant is going to do the best he can.

Mr. Christenbury outlined that the development will have a gazebo, some park benches, and some modest passive type of amenities because it is not a large project. It is 45 units in total. When you

have a modest project, the amenities are kept in line with that. Minimal use of wetlands is limited based on what investigation in the area and in and around the ditch on the southern end of the property. 1.45 acres of forest will be preserved along with .62 acres for buffers. 39% site will be owned by the HOA as open space at the end of this project. The actual breakout is listed in Tab 3. Tidewater Utilities will be located, at the developer's expense, a quarter mile north of the property. County already has a sewer manhole at the front of the property. Mr. Christenbury thinks that the modular or stick built houses would pull up the property values.

Regarding the preservation of farmland, he asked that they look back at the photo in Tab 1 of the Exhibit Booklet. There is no farmland left in this area. It has slowly become residential since the 1970's when the map was drawn up. Impact on schools is expected to be positive because the market for this area is for retirees and the number of students living in these 45 homes is expected to be minimal. At the property line there is an existing ditch which is well defined and could use some maintenance. The Applicant will go as far down stream as is as allowed to the outfall for the property. Mr. Christenbury pointed to where the outfall has been historically. Any improvements will be submitted to Army Corps of Engineers as required. The Applicant should have a more detailed report by the time they go to County Council next month. The intent is to clean out this ditch parallel to the Applicant's property with an expansion of the ditch. Mr. Christenbury thinks from an engineering standpoint that the drainage improvements would be significant if there were an interest by other property owners to cooperate by granting an easement of some kind. The Applicant understands that you can't compel anyone to participate in those kinds of improvements. This plan has been submitted to the Army Corps of Engineers. There were a lot of questions about the wetlands in the PLUS comments. The State maps show about 80% of the property as wetlands. State maps are notoriously inaccurate. They are based on a State-wide flyover, satellite imagery and things of that nature. No one from the State has set foot on this property to determine if there are wetlands there. PLUS comments are non-site-specific, and based on State-wide data. Tab 13 shows actual information about investigating the soils of vegetation and hydrology on the property with what criteria were met.

The State spending strategies put this site in Level 3 (yellow on the map). The reviewer at the State planning office noted that is surrounded by Level 2 but that it is Level 3 most likely because of the wetlands on the site that were derived from a state-wide satellite image that wasn't verified. So, when the ground indicated that the wetlands were limited to less than an acre the reality is probably, in Mr. Christenbury's view, should have been mapped as Level 2 (orange on the map).

The Future Land Use Map references that the site is near major sources of commercial development and major intersections and the town center adjoining the site.

Referring to the Town of Ocean View the nearby lands that front onto Beaver Dam Rd. do include commercial zoning and multifamily zoning; the area closer to the application site is the single-family area of the mixed-use planned community. When Mr. Christenbury pulled the record plan, commercial and multifamily were not planned yet. They were blocked out in acreage and the land use defined; that this is all that has been recorded to date and there is a developer currently selling single-family homes, or at least working on the infrastructure for this for quite a while; that there is a mix of commercial uses in the area but predominantly medium density residential. Due to the County's Zoning, the entire area was zoned GR when the zoned maps were first published in the 1970s. Water, sewer, utilities are laid out in Tab 8 and include a soil map. The public map that shows the wetlands

was mapped by the State. A study letter from the wetland's scientist, along with covenants and proposed restrictions are published in the back of the Exhibit Book in Tab 15.

Mr. Sergovic commented that the Commission might wish to explore a minimum housing size of 1,600 sq. ft. which would be compatible with the market anticipated by the Applicant. Mr. Robertson commented that the Commission does not typically impose those types of conditions. This is because it is difficult for the County to police. Mr. Sergovic noted that other suggested conditions include proposed sidewalks on one side of the street and overhead street lighting. The Applicant has a list of suggested conditions of approval and suggested that the Commission can look over to see if they would wish to add anything.

Mr. Christenbury noted that, in a GR-RPC you can reduce setbacks and minimum lot areas, so we are essentially mimicking what the AR-1 cluster tends to look like. We can't do that as a cluster subdivision because property is not zoned AR-1. It does have a density similar to GR zoning for property of this size.

Michael Justice, Applicant, was asked if he concurred with the statements made by Mr. Sergovic and Mr. Christenbury. He replied in the affirmative.

The Commission found that no one spoke in favor to and three parties spoke in opposition to the Application.

Norman Welsch stated that he is not completely opposed to the Application but has concerns about stormwater management, the elevation of the subject property, and clearing the trees.

Steve Maternick stated that he is not opposed to the development of the subject property but has concerns about drainage, flooding potential and the lack of a buffer on the property line. He has photographs of the flooding issues. He was advised that he could submit them for the record.

Mr. Christenbury responded that there is approximately 20 ft. buffer area that includes a drainage ditch, that improving the draining ditch would be a benefit to the residents in Silver Woods and the new development.

Eric Forell stated that there is a flooding issue and that he has concerns that the development of the Applicant's property will increase flooding.

At the conclusion of the public hearings, the Commission discussed this Application.

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

Planning and Zoning Commission Meeting – January 9, 2020

The Commission discussed the application which has been deferred since December 12, 2019.

Mr. Mears moved that the Commission recommend approval of C/Z 1900 for **MICHAEL P. JUSTICE** for a change in zoning from GR-General Residential to a GR-RPC based upon the record and for the following reasons:

1. The property is currently zoned GR – General Residential.

- 2. The proposed development will not have more than 45 single-family units on 16.1 acres. This proposed density is 2.82 units per acre, which is less than the maximum density permitted by GR zoning. This density is also similar to other nearby developments.
- 3. The applicant has stated that he is essentially requesting approval for what would be a cluster subdivision in the AR-1 Zone. But, since clustering is not available in the GR District, he is seeking approval of a similar design through an RPC.
- 4. The County Engineering Department has indicated that adequate wastewater capacity is available for the development. Central water will also be provided.
- 5. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will maintain 39%, or almost 6 acres of the site, as open space. This includes nearly 1.5 acres of existing forest that will be retained.
- 6. The project will not adversely affect the neighborhood or surrounding communities. There are existing developments in the immediate area with similar characteristics.
- 7. According to the County's current Comprehensive Plan, the project is in the Coastal Area. Development such as this GR-RPC is appropriate in this Area according to the Plan.
- 8. While there were concerns expressed during the public hearing about drainage, the Sussex Conservation District will perform a thorough review of the project with the project's engineers to address stormwater and drainage on the site and how it leaves the site. This should result in a drainage improvement for the area from what currently occurs on the undeveloped land that does not have any stormwater system in place.
- 9. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
- 10. This recommendation is subject to the following conditions:
 - A. The maximum number of dwelling units shall not exceed 45 single family units.
 - B. A homeowners association shall be formed to provide for the perpetual maintenance, repair and replacement of buffers, stormwater management facilities, streets, amenities and other common areas.
 - C. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements or in accordance with any further modifications required by DelDOT based on its review of the Traffic Impact Study.
 - D. The RPC shall be served by Sussex County sewer. The Developer shall comply with all requirements and specifications of the County Engineering Department.
 - E. The RPC shall be served by central water for drinking water and fire protection, as required by applicable regulations.
 - F. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
 - G. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be street lighting and sidewalks on at least one side of the streets within the RPC.
 - H. A 20-foot-wide vegetated or forested buffer shall be established along the

- perimeter of the site. This may include the existing trees. There was testimony during the hearing about the need to improve the drainage along the northwest boundary of the site in an area that is currently wooded. In this area, the buffer shall be located outside of the area needed for these drainage improvements.
- I. If requested by the local school district, a school bus stop shall be provided by the entrance to the development, with the location and any related parking to be approved by the school district's transportation supervisor. The location of the bus stop area shall be shown on the Final Site Plan.
- J. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Departments.
- K. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- L. The Final Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas. The landscape plan shall also include the existing forested areas that will be maintained.
- M. The Final Site Plan shall include a grading plan that shall be submitted to County Staff for review and approval.
- N. Construction, site work, grading, and deliveries of construction materials shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.
- O. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears and seconded by Ms. Wingate to recommend approval of C/Z 1900 Michael P. Justice, Trustee for the reasons and conditions as stated in the motion. Motion carried 5-0.

PLANNING & ZONING

JANELLE M. CORNWELL, AICP DIRECTOR

> (302) 855-7878 T (302) 854-5079 F





Memorandum

To: Sussex County Planning Commission Members From: Jamie Whitehouse, Planning & Zoning Manager

CC: Vince Robertson, Assistant County Attorney and Applicant

Date: December 5, 2019

RE: Staff Analysis for CZ 1900 Michael P. Justice

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1900 Michael P. Justice to be reviewed during the December 12, 2019 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for parcel 134-16.00-51.00 to facilitate a change from the General Residential (GR) Zoning District to a General Residential (GR) Zoning District with a Residential Planned Community (RPC) Overlay and is located on the west side of Parker House Rd, approximately 0.35 mile south of Beaver Dam Rd. The size of the property is 16.1 acres +/-.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the property has the land use designation of "Coastal Areas."

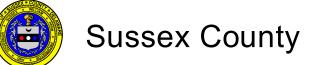
The surrounding land use to the north, west and east are also designated as "Coastal Areas." Coastal Areas support a range of housing types including single-family homes, townhouses, and multifamily units provided that any relevant special environmental concerns are addressed.

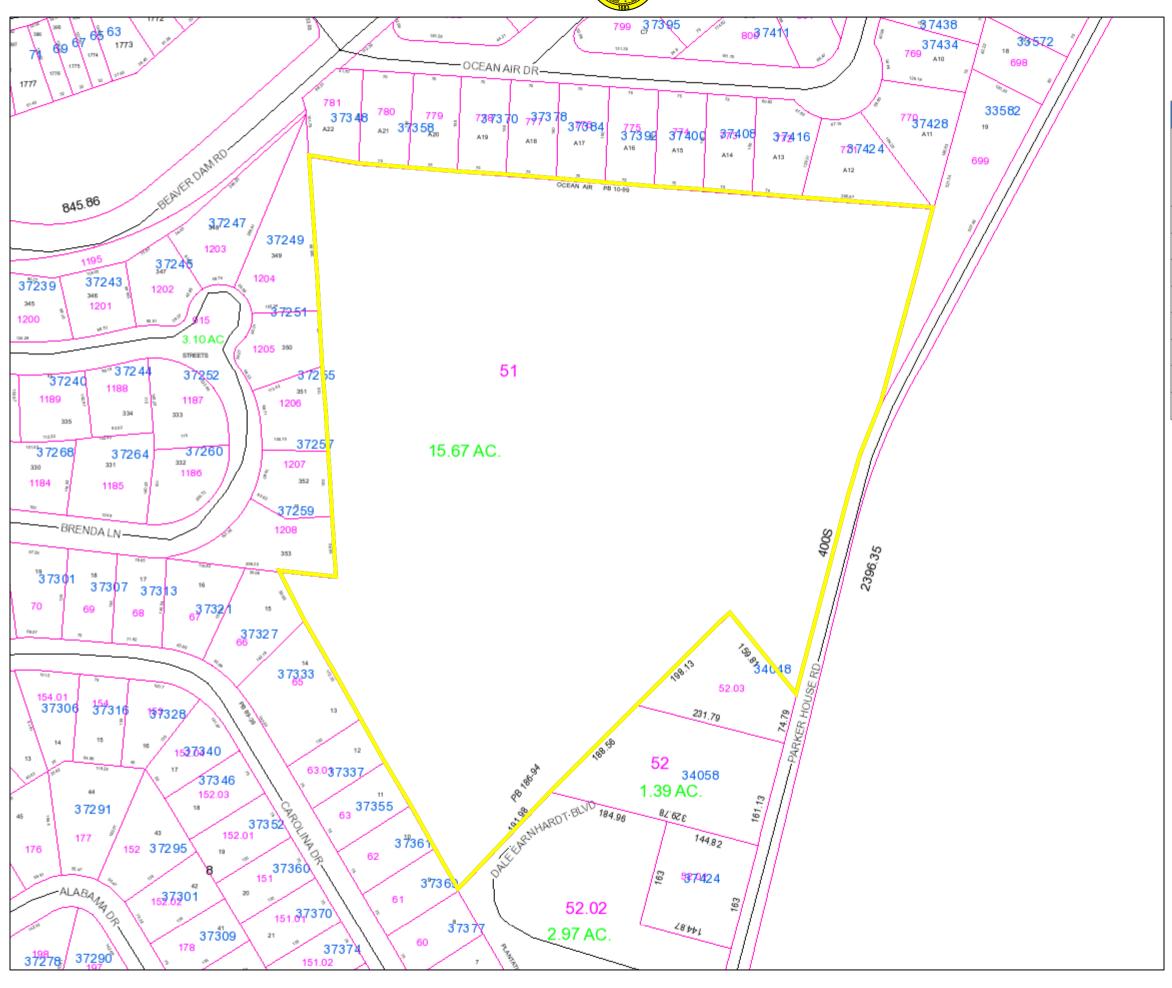
The property is zoned GR (General Residential District.) The properties directly to the north, west and south of the application site are all also zoned General Residential District (GR). To the immediate south of the application site there is a triangular shaped parcel of land that is zoned C-1 (General Commercial Zoning District).

Since 2011, there has been 1 change of zone application within a 1-mile radius of the application site. CZ 1758 for a change of zone from AR-1 to MR on a 7.2035 acre parcel (134-19.00-19.00) was approved by County Council at its meeting of December 2nd 2014.

Based on the analysis of the land use, surrounding zoning and uses, a change of zone to allow for a GR-RPC in this location, subject to considerations of scale and impact, could be considered as being consistent with the surrounding land use, area zoning, and uses.







PIN:	134-16.00-51.00
Owner Name	JUSTICE MICHAEL P TTEE REV TR
Book	4741
Mailing Address	29687 SAW MILL DR
City	DAGSBORO
State	DE
Description	OCEAN VIEW TO
Description 2	DOUBLE BRIDGES
Description 3	N/A
Land Code	

polygonLayer

Override 1

polygonLayer

Override 1

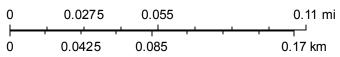
Tax Parcels

911 Address

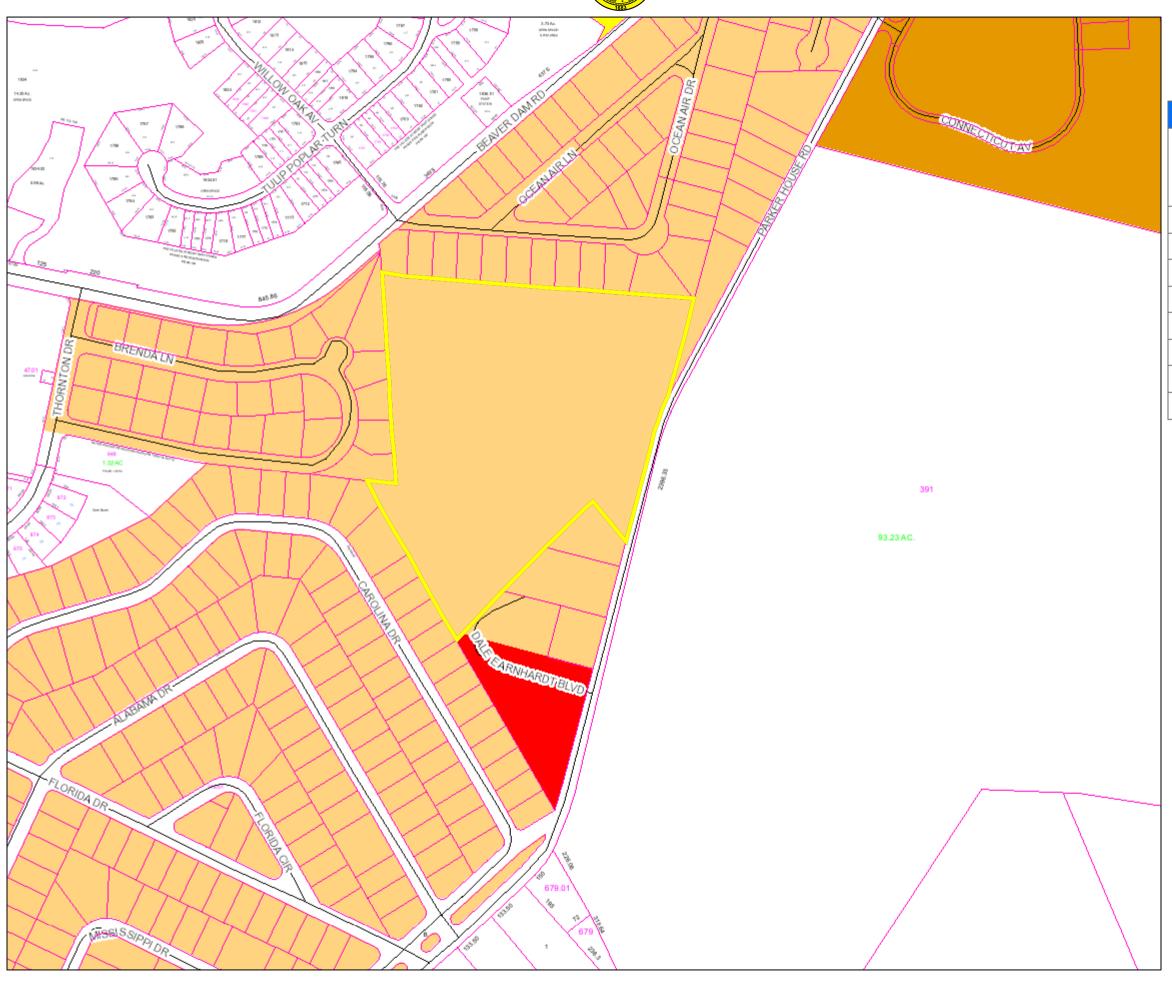
Streets

County Boundaries

1:2,257



Sussex County



PIN:	134-16.00-51.00
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City	DAGSBORO
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Description 3	N/A
Land Code	

polygonLayer

Override 1

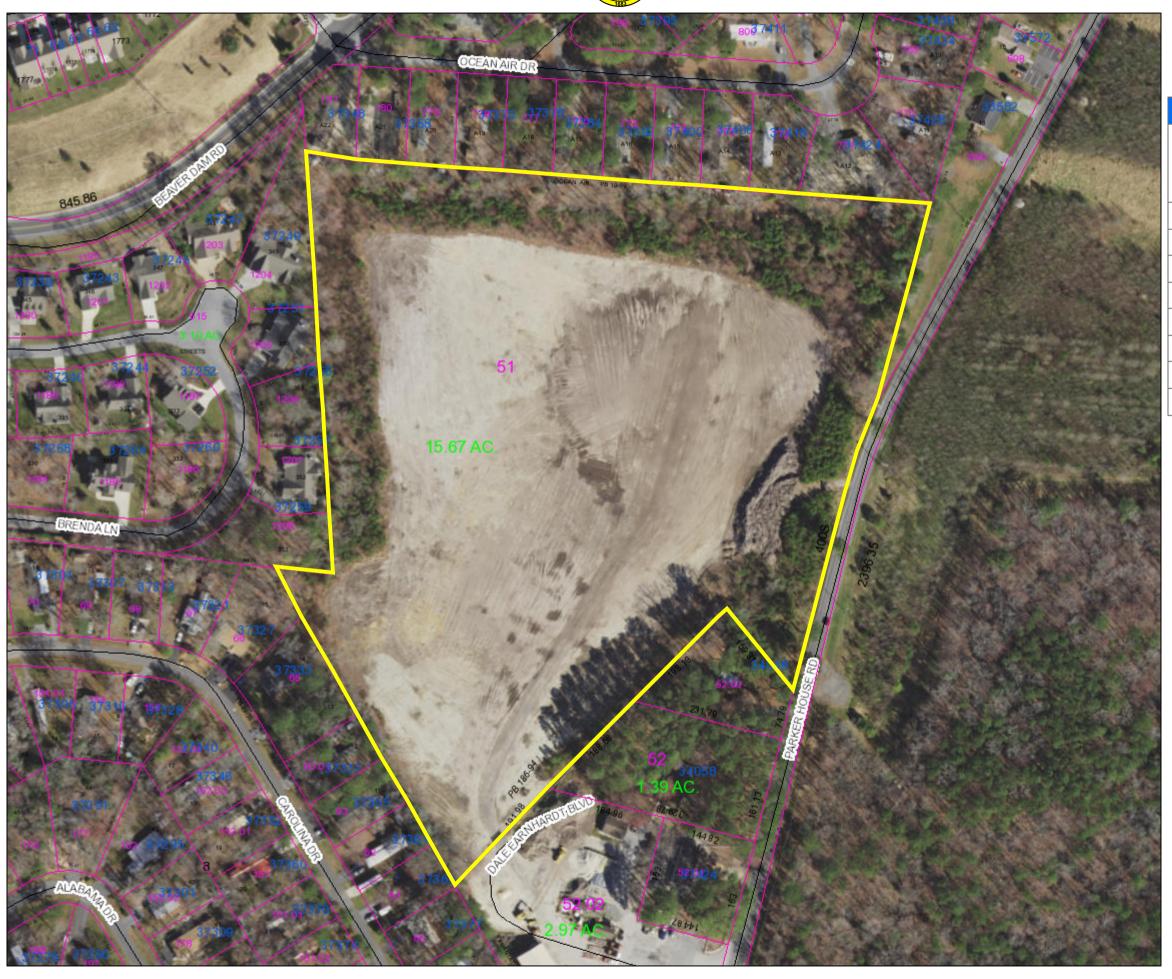
polygonLayer

Override 1

Tax Parcels

- Streets

1:4,514 0 0.05 0.1 0.2 mi 0 0.075 0.15 0.3 km



PIN:	134-16.00-51.00
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Book	4741
Mailing Address	29687 SAW MILL DR
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State	DE
Description	OCEAN VIEW TO
Description 2	DOUBLE BRIDGES
Description 3	N/A
Land Code	

polygonLayer

Override 1

polygonLayer

Override 1

Tax Parcels

911 Address

Streets

County Boundaries

1:2,257

Introduced 9/17/19

Council District No. 5 - Rieley Tax I.D. No. 134-16.00-51.00 911 Address: None Available

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 16.1 ACRES, MORE OR LESS

WHEREAS, on the 5th day of August 2019, a zoning application, denominated Change of Zone No. 1900, was filed on behalf of Michael P. Justice, Trustee; and

WHEREAS, on the ______ day of ______ 2020, 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. 1900 be ______; and

WHEREAS, on the _____ day of ______ 2020, 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 [GR General Residential District] and adding in lieu thereof the designation of GR-RPC General Residential District – Residential Planned Community as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the west side of Parker House Road, approximately 0.35 mile south of Beaver Dam Road, and being more particularly described in the attached legal description prepared by Axiom Engineering, LLC, said parcel containing 16.1 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.





SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

	1	SECTION 1 APPL	ICANT INFOR	MATION	and the same of th
	ORGANIZATION NAME:	First State Co	mmunity Ac	ction Agency, Inc).
	PROJECT NAME:	2020 Equity St	ummit		
	•	51-0104704	a de n'agrae d'athriche la la Maille de la de la de la complete d	NON-PROFIT:	YES NO
	DOES YOUR ORGANIZAT	ION OR ITS PARENT	ORGANIZATION	HAVE A RELIGIOUS AFE	FILIATION?
*		YES NO	*IF YES, FILL O	OUT SECTION 3B.	
	ORGANIZATION'S MISSIC	ON: To work towards poverty on peop	s the elimination le with low incon	of poverty and lessen t nes	the effects of
	ADDRESS:	308 N. Raili	road Ave.	alama da makalan Addin Aldin A	
ŝ.		Georgetow	n	DE	19947
		(CITY)		(STATE)	(ZIP)
ž.	CONTACT PERSON:	Bernice Ed	wards		
•	TITLE:	Executive [Director		
newy.	PHONE:	856-7761	_{EMAIL} . bed	dwards@firststa	tecaa.org
,	St.	The state of the s	The second secon	gyan berendi pantan berada da da sereman segariga agamingunan menendaran menendaran sereman sereman sereman se	N. Commence of the commence of
		TOTAL FUNDING	REQUEST: \$30	00	
30	Has your organization ret the last year?	ceived other grant fu	nds from Sussex	County Government in	YES INO
	If YES, how much was rec	ceived in the last 12 r	nonths?		\$2100
	If you are asking for fundi building in which the fund			ents, do you own the	□YES □NO
	Are you seeking other sou	irces of funding other	r than Sussex Cou	inty Council?	YES NO
	If YES, approximately wh	at percentage of the	project's funding	does the Council grant	represent? 37.5

SECT	ION 2: PROGRAM DESCRIPTION	
PR	OGRAM CATEGORY (choose all that ap	ply)
Fair Housing	Health and Human Services	Cultural
☐ Infrastructure¹	Other	Educational
»	BENEFICIARY CATEGORY	
Disability & Special Needs	■ Victims of Domestic Violence	Homeless
■ Elderly Persons	Low to Moderate Income ²	Youth
■ Minority	Other	rapingur afficial
	BENEFICIARY NUMBER	
Approximately the total nu	mber of Sussex County Beneficiaries serv	ed annually by this program:
idn.	200	, Y Q

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.

Delaware State University, University of Delaware, United Way of Delaware, and First State Community Action Agency are working collaboratively to plan an Equity Summit to be held in Georgetown in Spring 2020. The theme of the Summit is "connecting knowledge to action across sectors to address equity". This will be a full-day session intended to expose the audience (service providers, policymakers, community leaders, philanthropic leaders, other funders, educators and education administration, and other decision makers) to a critical thinking and strategic planning process that will result in direct, measurable action on equity-related issues in Sussex County.

The conference will include four distinct activities. The day will begin with a Poverty Simulation intended to sensitize participants to the realities of those living with low-incomes, broken homes, disabilities, and other barriers to success. This will be followed by a guided debriefing session where participants can "unpack" their experience. The debrief will be followed by a series of focused workgroups around topics such as education, transportation, nutrition, civic engagement, etc. Outcomes of the workgroups will be used to form an actionable strategic plan that will be linked to a specific local call to action to close out the session.

Participants will be engaged periodically throughout the year following the summit to gauge increase in their own activities related to advancing equity. It is hoped that this Summit will become an annual event that will have a measurable impact on advancing equity in Delaware.

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	* # 8
REVENUE Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	0.00
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Rental - Del Tech Carter Partnership Center	\$ 4,669.00
Lunch (+/- 200 participants)	\$ 3,000.00
Printing (Save the Date cards, day of event signage, etc.)	\$ 331.00
TOTAL EXPENDITURES	\$*8,000.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	* \$ 8,000.00

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the First State Comm Action 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.
- No person, on the basis of race, color, or national origin, should be excluded from participation in, 3) be denied the benefit of, or be otherwise subjected to discrimination under the program or activity funded in whole or in part by these Grant funds.

SECTION 5: STATEMENT OF ASSURANCES (continued)

- 4) All information and statements in this application are accurate and complete to the best of my information and belief.
- All funding will benefit only Sussex County residents. 5)
- All documents submitted by the applicant are defined as public documents and available for 6) review under the Freedom of Information Act of the State of Delaware.
- All funding will be used exclusively for secular purposes, i.e., non-religious purposes and shall not 7) be used to advance or inhibit religious purposes.
- 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 Signature

//27/20

01-27 - 2020 Date

Completed application can be submitted by:

Email:

gjennings@sussexcountyde.gov

Mail:

Sussex County Government

Attention: Gina Jennings

PO Box 589

Georgetown, DE 19947

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

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

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

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

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 Signature



SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

	SECTION 1 APP	LICANT INFORMATION	
ORGANIZATION NAME:	The Coming Edge,	Inc.	
PROJECT NAME:	Youth Empowerme	nt Program	
FEDERAL TAX ID:	84-2641500	NON-PROFIT:	YES NO
DOES YOUR ORGANIZA'	TION OR ITS PARENT	T ORGANIZATION HAVE A RELIGIOUS AF	FILIATION?
	YES NO	*IF YES, FILL OUT SECTION 3B.	
ORGANIZATION'S MISS	recent high sch aging out of the to adulthood. T	The Coming Edge, Inc, is to assist disa ool graduates (with a focus on youth in a foster care program), to make a succeive work includes support in securing his action. If a kills and document	rfoster care essful transition rousing,
ADDRESS:	101 S. Walnut S	St.	
	Milford	DE	19963
	(CITY)	(STATE)	(ZIP)
CONTACT PERSON:	Tanya D. Mann		
TITLE:	CEO		
PHONE:	302-424-7535 362-430-4	268 ^{EMAIL:} comingedge@gmail.com	

TOTAL FUNDING REQUEST: \$3,000	
Has your organization received other grant funds from Sussex County Government in the last year?	YES NO
If YES, how much was received in the last 12 months?	
If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for?	YES NO
Are you seeking other sources of funding other than Sussex County Council?	YES NO
If YES, approximately what percentage of the project's funding does the Council grant r	epresent?

SECT	FION 2: PROGRAM DESCRIPTION	
PR Fair Housing Infrastructure ¹	ROGRAM CATEGORY (choose all that ap Health and Human Services Other	oply) Cultural Educational
Disability & Special Needs Elderly Persons Minority	BENEFICIARY CATEGORY Victims of Domestic Violence Low to Moderate Income ² Other Young Adults	Homeless Youth
Approximately the total nu	BENEFICIARY NUMBER mber of Sussex County Beneficiaries serv	red annually by this program:

SECTION 3: PROGRAM SCOPE

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

The Coming Edge, Inc, is a non-profit organization focusing on giving young people who often fail to make a successful transition to adulthood (particularly youth aging out of the foster care system) the skills, resources and information they need to become independent adults who contribute to society. Support from this program will come in many forms, including a series of workshops designed around topics such as financial literacy, computer literacy and access, group support sessions, interviewing skills and resume writing, to name a few. Staff from The Coming Edge, Inc. will also help clients secure any documents they may need such as social security cards and birth certificates. Clients will also have access to the organization's computer lab where they can search for job openings, apartment availability or write a resume or college application. Staff will be on hand to offer any assistance needed. Partnerships have already been established with local thrift shops to provide clients with vouchers for the necessary clothing to enter the work force, and cooperation with other non-profit organizations is being fostered.

The funds requested will be used towards, the purchase of computers and an office printer. This will allow for the agency to move forward with its plans for future growth.

Too many of our young people in their late teens/early twenties flounder alone as they enter this crucial phase of life and add to sad statistics of homelessness, chemical dependence and prostitution as a result. The Coming Edge provides practical assistance which helps to insure a different, productive, happier outcome for its clients and community.

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.

If allowed, the funds received from the Sussex County Non-Profit Grant Program will be used for the non-religious purpose of purchasing office equipment. Although The Coming Edge, Inc. is housed in a church building, it is not a ministry affiliated with First Presbyterian Church of Milford.

The religious purposes for this agency is to offer prayer for its clients, and only at the request of the client.

SECTION 4: BUDGET

REVENUE	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	5,600
EXPENDITURES Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost,	
physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Personnel	-154,600
Operating Costs	-65,000
Hoping to obtain this in the future	
TOTAL EXPENDITURES TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	0

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the Coming Edge, Inc.

agrees that:

(Name of Organization)

- 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.
- 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.

SHCIIION 5: SIAIIHWHNI OF ASSURANCES (komiinu eed)

- 49) Allinformation and statements in this application are accurate and complete to the liest of my information and lief.
- 5)) AllfurtlingwillherrefittorilySussexCountynesillents.
- 6) All documents submitted by the applicant are defined as public documents and available for newiew under the Roccion of Information Aut of the State of Delaware.
- 7/) Allfunding will be used exclusively for secular purposes, i.e., non-nedigious; purposes and shall not be used to advance or inhibit ned gious purposes.
- (a) Hutthe exent that the awarded funding is used inviolation of the requirements of this grant, the awarded funding shall be reimbursed to Sussex County within at time frame designated hy Sussex County by writing shall be reimbursed to Sussex County within at time frame designated hy Sussex County by writing the results of the sussex County by writing the susse

Applicant//Authonized Official Signature

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ID);#the

2/19/19

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

Mail: Sussex County Government

Attention: Gina Jennings

PO Box 589

Georgetown, DE 19947

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

H

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.

Applicant/Authorized Official Signature

Witness Signature

Title

Date



SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

	SECTION 1 APPLICAN			
ORGANIZATION NAM	ORGANIZATION NAME: TRINITY FOUNDATION			
PROJECT NAME:	Para data acceptation data an abbetiva de la companya de la compan	HEART & SOLE 5K	k	
FEDERAL TAX ID:	203303713	NON-PROFIT:	YES NO	
DOES YOUR ORGANIZ	ATION OR ITS PARENT ORGA	ANIZATION HAVE A RELIGIOUS AFF	ILIATION?	
ORGANIZATION'S MIS	To continuously impre	YES, FILL OUT SECTION 3B. Ove people's lives by serving and i mote wellness, inspire giving, and		
ADDRESS:	50 Fallon Av	, 2		
	Seaford	DE	19973	
	(CITY)	(STATE)	(ZIP)	
CONTACT PERSON:	Greg Massey			
TITLE:	VP Agent Dev / 5K Co-chair			
PHONE:	800.314.5008 E	MAIL: greg.massey@trinitylog	gistics.com	
	TOTAL FUNDING REQ	UEST: 1000		
Has your organization the last year?	received other grant funds f	rom Sussex County Government in	YES	
If YES, how much was	received in the last 12 mont	ns?	n/a	

If YES, approximately what percentage of the project's funding does the Council grant represent? 6%

YES NO

YES NO

If you are asking for funding for building or building improvements, do you own the

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

building in which the funding will be used for?

SECTION 2: PROGRAM DESCRIPTION
PROGRAM CATEGORY (choose all that apply)
Fair Housing Health and Human Services Cultural
Infrastructure ¹ Other Educational
Constitution of the control of the c
BENEFICIARY CATEGORY Disability & Special Needs Victims of Domestic Violence Homeless Low to Moderate Income ² Vouth Minority Other Nanticoke Cardiac Rehab
BENEFICIARY NUMBER
Approximately the total number of Sussex County Beneficiaries served annually by this program: 500
SECTION 3: PROGRAM SCOPE
A. Briefly describe the program for which funds are being requested. The narrative should include the need or problem to be addressed in relation to the population to be served or the area to benefit. For the 10th year, the 5K event will support the Cardiac Rehab unit at Nanticoke. Our fundraising efforts have been able to assist in the purchase of rehab equipment in past years, from stationary bikes to treadmills
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$oldsymbol{\cdot}$

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

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

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

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

SECTION 4: BUDGET

REVENUE	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	0.00
EXPENDITURES	
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Event Organizer (Trisportsevents)	\$ 1,500.00
Event shirts	\$ 1,200.00
Event awards	\$ 480.00
	,
TOTAL EXPENDITURES	\$ 3,180.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	\$ 3,180.00

SECTION 5: STATEMENT OF ASSURANCES

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

- 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.
- 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 Signature

Jen Hoff

3-9-2020

Date

3-9-2020

Date

Completed application can be submitted by:

Email:

gjennings@sussexcountyde.gov

Mail:

Sussex County Government

Attention: Gina Jennings

PO Box 589

Georgetown, DE 19947

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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.

Applicant/Authorized Official Signature

htness Signature/

. . .

Date

Rev. 02/2019



SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

	SECTION 1 APPLICANT		
ORGANIZATION NAME:			
PROJECT NAME:	50-2-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1-	Band "Tapestry II" F	
FEDERAL TAX ID:	51- 1015667 OIC	SUGO NON-PROFIT: [YES N
DOES YOUR ORGANIZA	TION OR ITS PARENT ORGAN	IZATION HAVE A RELIGIOUS AFF	FILIATION?
	☐YES ■NO *IFYI	ES, FILL OUT SECTION 3B.	
ORGANIZATION'S MISS		e Henlopen Senior Center, Inc. senior citizens by adding life to	
ADDRESS:	11 Christian S	treet	
	Rehoboth	DE	19971
	(CITY)	(STATE)	(ZIP)
		•	
CONTACT PERSON:	Linda Bonville		
CONTACT PERSON:	Linda Bonville Administrator	1	
TITLE:	Administrator	_{AIL;} Lindachsc@aol.	com
	Administrator	\$	com
TITLE:	Administrator 302-227-2055 EM	Lindachsc@aol.	com
TITLE: PHONE:	Administrator 302-227-2055 EM. TOTAL FUNDING REQUI	Lindachsc@aol.	
TITLE: PHONE: Has your organization rethe last year?	Administrator 302-227-2055 EM. TOTAL FUNDING REQUI	Lindachsc@aol. RST: \$1600.00 m Sussex County Government in	OM ■ YES □ N 5500.00
TITLE: PHONE: Has your organization rethe last year? If YES, how much was re	Administrator 302-227-2055 EM. TOTAL FUNDING REQUIRECT FUNDING FUNDING REQUIRECT FUNDING FU	Lindachsc@aol. RST: \$1600.00 m Sussex County Government in	■YES □N

PRO	OGRAM CATEGORY (choose all that ap	ply)
☐ Fair Housing	Health and Human Services	Cultural
☐ Infrastructure¹	Other Fundraiser	Educational
☐ Disability & Special Needs ☐ Elderly Persons ☐ Minority	☐ Victims of Domestic Violence☐ Low to Moderate Income²☐ Other	☐ Homeless ☐ Youth
	BENEFICIARY NUMBER	
Approximately the total num	nber of Sussex County Beneficiaries serv	ed annually by this progran

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 Cape Henlopen Senior Center for the past 53 years have been actively serving the elderly population in Rehoboth Beach and surroundings communities. We are seeking financial support from Sussex County Council to offset expenses for our Annual Rehoboth Concert Band Fundraiser. To meet our fiscal operating budget, which is partically funded by State Grant in Aid, we must plan many fundraisers. We have over the years received support from civic and community organization and we are most grateful.

Last year's concert was well attended and very profitable. We are looking forward to this years which will be held in April.

The support from the County will enable us to continue to provide the high quality of services that benefits our members and the community. We hope that we can count on you to help us.

Expenses include, design and printing of ads, posters, ticket printing, programs and rental of facility.

We are asking the county if they could help us offset some of these expenses.

We greatly appreciate Sussex County for your support of the Cape Henlopen Senior Center in the past. This fundraiser will help ensure that we can continue to provide the social activities, programs, trips and services that our members depend on and enjoy, and with your continued support we will successfully meet the challenges we face in meeting our operating budget.

SECTION 4: BUDGET

REVENUE	
Please enter the current support your organization receives for this project	
(not entire organization revenue if not applicable to request)	
TOTAL REVENUES	0.00
EXPENDITURES Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING GOSTS-supplies, equipment, rent/lease, insurance, printing telephone, GONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Concert Expenses - Design and printing ads, posters	
tickets, program printing and advertisement	\$ 800.00
Church Rental, sound technician, custodial fees, security and	
set up fees	\$ 800.00
TOTAL EXPENDITURES	\$ 1,600.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	\$ 1,600.00

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the Cape Henlopen Senior Center 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.

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

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

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

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

N/A

SECTION 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.

Linda Brille

3/6/2020

Date

Applicant/Authorized Official Signature

3/6/2020

Witness Signature

Date

Completed application can be submitted by:

Email:

gjennings@sussexcountyde.gov

Mail:

Sussex County Government

Attention: Gina Jennings

PO Box 589

Georgetown, DE 19947

199

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.

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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 Signature

Mitnace Signature

Administrator

W 9 Hot ab 12/2019

Title

3/6/2020

Date



SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

\$	HETHONELA PPINCE	INTINFORMATION		
organization name: C	Ocean Waves Q	uilt Guild, LLC		
PROJECT NAME: "	Fabric of Life" A	rt/Quilt Show	TTTTN LIFT PARPARAGINE WINNERS HE ANY FIRST THE LAND SALES AND AN AND SALES.	
FEDERAL TAX ID: 5	2-2079625	NON-PROFIT:	YES NO	
DOES YOUR ORGANIZATION	ON OR ITS PARENT OR	GANIZATION HAVE A RELIGIOUS AFF	ILIATION?	
	☐YES ■NO *1	IF YES, FILL OUT SECTION 3B.		
ORGANIZATION'S MISSIO		vely for charitable and educational p s to continue our community service		
ADDRESS:	P.O. Box 63		The control of the co	
	Lewes	DE	19958	
	(CITY)	(STATE)	(ZIP)	
CONTACT PERSON:	Lana Powell			
TITLE:	Co-Chair "Fal	oric of Life" Art/Quilt Show	миниканский приняти менен на приняти на прин	
PHONE:	302-236-0494	EMAIL: owqgservice@gma	il.com	
	TOTAL FUNDING RE	QUEST: \$ 800 \$ 1,000.		
Has your organization rect the last year?		s from Sussex County Government in	☐YES ■NO	
If YES, how much was received in the last 12 months?				
If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for?				
Are you seeking other sour	rces of funding other th	an Sussex County Council?	YES NO	
If YES, approximately what percentage of the project's funding does the Council grant represent? 2.03%				

SECTION OF THE SECTIO	ON 2: PROGRAM DESCRIPTION				
PRO	GRAM CATEGORY (choose all that ap	ply)			
Fair Housing	Health and Human Services	Cultural			
☐ Infrastructure¹	Other	Educational			
Disability & Special NeedsElderly PersonsMinority	BENEFICIARY CATEGORY ■ Victims of Domestic Violence ■ Low to Moderate Income ² Other	Homeless Youth			
BENEFICIARY NUMBER					
Approximately the total number of Sussex County Beneficiaries served annually by this program: 1000+					

SECTION 3: PROGRAM SCOPE

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

We are holding a "Fabric of Life" art/quilt show at Sussex Academy, Georgetown, April, 2021 and will have well over 2,000 visitors bringing in tourism to Sussex county for our week long activity. We need your support for our show expenses. This show helps raise funds to support our mission of education and community service work throughout the county.

For over 22 years we have grown to over 300+active members who serve with charity. We have prepared over 5,000 baby quilts distributed to local Hospitals, Nanticoke Hospital and to neonatal care, also Domestic Violence Shelters, Pregnancy centers. We have sewn over 3,000 teddy bears for the families of our fallen soldiers when then arrive into Dover, and we are active with Quilts of Valor, wrapping our wounded warriors at Seas the Day week in Sussex county and to honor our veterans. We have handed out over 2,000 teddy bears throughout the county to children in need. We sew pillowcases for Tunnell Cancer Center for cancer infusion care, and also pillowcases for the dialysis centers in Lewes, and Millsboro. Patients pick a pillowcase to carry them through their journey of treatment. Hospitals reached out to us and asked for burial gowns to be sewn for babies that do not survive at birth. We now cut up wedding dresses to sew angel gowns. We have sewn over 1,000 heart pillows for women post op from breast cancer surgery. We now also partner with the Cheer center for delivering a sewn placemat to all homebound meals to help those focus on coming to the table to eat. We have given out quilts to 17 homeless high school children at Cape Henlopen High School, and to many, many others in our community. Governor Carney has awarded our Glade quilters with "2019 Outstanding Volunteer of the Year Award" along side the Good Old Boys Organization. We sew for Habitat for Humanity, Milford Housing, Childrens and Families First, Harry K Baby Pantry, Home of the Brave Foundation, Kody's Kids, Sussex Pregnancy Care Center, LaRed Center, Rosa Center, Renaissance Nursing Center, and all of our scrap threads and fabric are bundled up and sewn into dog beds and delivered to the local SPCA-Sussex shelter. Our focus is supporting our community but we need help to continue our work.

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.

REVENUE Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	15000 admissions,17000 vendors & sales, 4K qlts/bskts,4100 regist/fees 1200 bks &thrd, 8500 sponsors
TOTAL REVENUES	49,800.00
EXPENDITURES Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
school rent	-\$ 12,000.00
display pipe and drape	-\$ 17,000.00
printing	-\$ 2,000.00
judges	-\$ 1,750.00
keynote speaker	-\$ 3,000.00
Ads	-\$ 1,000.00
Ribbons, show pins,cards, misc. supplies	-\$ 2,000.00
Ins.	-\$ 500.00
TOTAL EXPENDITURES	-\$ 39,250.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	\$ 10,550.00

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the Ocean Waves Quilt Guild, LLC 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 Signature

Witness Signature

2/28/2020

Date

2/28/2020

Date

Completed application can be submitted by:

Email:

gjennings@sussexcountyde.gov

Mail:

Sussex County Government

Attention: Gina Jennings

PO Box 589

Georgetown, DE 19947

J86)

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.

Applicant/Authorized Official Signature

Title

Co-Chair

2/28/2020

Witness Signature

7 ---

Date

Rev 01/2019

SUSSEX COUNTY GOVERNMENT GRANT APPLICATION

Check Payable to Greater Lewes Foundation

ORGANIZATION NAME: PROJECT NAME: FEDERAL TAX ID:	· · · · · · · · · · · · · · · · · · ·	ARNING GARDEN	YES NO
DOES YOUR ORGANIZA	TION OR ITS PARENT OR	GANIZATION HAVE A RELIGIOUS A	FFILIATION?
A 1.A	ION: THE CHILDRE	and the second s	FILL MECHELLI
	LEWES	ΣE	19958
•	(CITY)	(STATE)	(ZIP)
CONTACT PERSON:	NANCY PHI		
TITLE:	***************************************	LORIAN'S LEARNING GAR	and the state of t
PHONE:	302-827-8032	EMAIL: NANDEP@YAHOO	, 60 M

TOTAL FUNDING REQUEST: \$800.00	,
Has your organization received other grant funds from Sussex County Government the last year?	in YES NO
If YES, how much was received in the last 12 months?	\$700.00
If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for?	YES NO
Are you seeking other sources of funding other than Sussex County Council?	XYES NO
If YES, approximately what percentage of the project's funding does the Council gra	int represent? 25%

PRO	OGRAM CATEGORY (choose all that ap	mlvì
Fair Housing Infrastructure ¹	Health and Human Services Other ENYITOM BUTTLE	Cultural Educational
Disability & Special Needs Elderly Persons Minority	BENEFICIARY CATEGORY Victims of Domestic Violence Low to Moderate Income ² Other	Homeless Youth
Approximately the total num	BENEFICIARY NUMBER aber of Sussex County Beneficiaries serv	ved annually by this program:

SECTION 3: PROGRAM SCOPE

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

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

THE CHILDRED'S LEARNING GARBEL WAS ESTABLISHED & YEARS AGO. WE INVITE CHILDRED AND FEMILIES TO COME AND PLANT, MAINTAIN AND PRARTICIPATE IN LEARNING EXPENDENCES AT THE GARBEL FROM ARRIL TO THE END OF AUGUST. BI-WELLLY ACTIVITIES INCLUDE STORY TELLING, SCIENCE, COPKING, MUSIC AND ARTS AND CROSETS. ACTIVITIES ARE LED BY LOTAL EXPENTS AND LIB VOLUNTEERS. EACH YEAR ATTENDANCE HAS BEEN GROWING. LAST YEAR ATTENDANCE WAS BETWEEN SO TO 90 CHILDRED AT BACH EVENT. ALL ACTIVITIES PROVIDE HANDS ON LEARNING EXPERIENCES THAT ROMAGE A HEALTHLIFESTYLE.

THIS YEAR WE AVE BUILDING IT REPLACEMENT AND ADDITIONAL PLANTERS AND BESS ALENGTHE APPROPRIATE IRRUGATION.

WE HAVE ARBRICE GROVP OF DEDICATES VOLUNTEERS WHO

SUPPORT THE GARDAUX ACTIVITIES AND FAMILIES BACH WEEK.

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.

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

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

SECTION 4: BUDGET

REVENUE	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	\$ 1550
TOTAL REVENUES	the second property
EXPENDITURES	
Please enter the total projected budget for the project (not entire	
organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING	
COSTS-supplies, equipment, rent/lease, insurance, printing telephone,	
CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost,	
physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
OFBRATING WSTS: SEEDS PLANTS, SOIL	
GARROLD TOOLS, FORTILIZES, AND HITHING,	
TBACHANG SUPPRIES, SNALKS BNO WATER	\$1200
· · · · · · · · · · · · · · · · · · ·	
GARDEN REBVILD: RAISED BERS, TRELUS,	
MULCH AND TRRIGHTION SYSTEM	事え500
TOTAL EXPENDITURES	\$3,700 \$0.0 0
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	\$2,100 \$0.00

SECTION 5: STATEMENT OF ASSURANCES

しまして BLOOM
If this grant application is awarded funding, the (出しての) らしめない いららみのも agrees that:
(Name of Organization)

- 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.
- 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.
- No person, on the basis of race, color, or national origin, should be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under the program or activity funded in whole or in part by these Grant funds.

SECTION 5: STATEMENT OF ASSURANCES (continued)

- All information and statements in this application are accurate and complete to the best of my 4) information and belief.
- All funding will benefit only Sussex County residents. 5)
- All documents submitted by the applicant are defined as public documents and available for 6) review under the Freedom of Information Act of the State of Delaware.
- All funding will be used exclusively for secular purposes, i.e., non-religious purposes and shall not 7) be used to advance or inhibit religious purposes.
- 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.

Witness Signature

2/14/2020 Date 2/14/2020

Completed application can be submitted by:

Email:

gjennings@sussexcountyde.gov

Mail:

Sussex County Government

Attention: Gina Jennings

PO Box 589

Georgetown, DE 19947

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

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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.

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

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

Applicant/Authorized Official Signature

Witness Signature

JAMIE WHITEHOUSE, AICP DIRECTOR OF PLANNING & ZONING (302) 855-7878 T (302) 854-5079 F jamie.whitehouse@sussexcountyde.gov





<u>Memorandum</u>

To: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Douglas B. Hudson The Honorable John L. Rieley The Honorable Samuel R. Wilson, Jr.

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: March 13, 2020

RE: County Council Report for CU 2211 Indian River School District

The Planning and Zoning Department received an application (CU 2211 Indian River School District) for a Conditional Use for parcel 133-7.00-8.01 to allow for a special needs school to be located at 26351 Patriots Way, Georgetown.

The Planning and Zoning Commission held a public hearing on February 13, 2020. At its meeting of February 27, 2020, the Commission recommended that the application be approved for the 7 reasons and subject to the 4 recommended conditions outlined below.

The following are the minutes for the Conditional Use from the Planning and Zoning Commission meetings.

Planning & Zoning Commission meeting of February 13, 2020

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a special needs school to be located on a certain parcel of land lying and being in Dagsboro hundred, Sussex County, containing 32.43 acres, more or less. The property is lying on east side of Patriots Way approximately 0.73 mile south of Zoar Road. 911 Address: N/A. Tax Parcel: 133-7.00-8.01

Mr. Whitehouse advised the Commission that the Staff has received a Site Plan, a DelDOT Service Level Evaluation Response, a Staff Analysis and received zero comments in support or opposition.



The Commission found that Mr. C. DeAscanis, Civil Engineer with CDI Engineering, was present on behalf of the Application. Also present on behalf of the Application was Mr. J. Booth of the Indian River School District and Mr. K. Fearn who is the architect of the project.

Mr. DeAscanis stated that the school parcel was originally part of the Stockley Subdivision, 860 plus or minus acres; that a 32.5 acre parcel was carved off on the northside which is located directly across from Sussex Central High School, to the east of Patriots Way; that the parcel is for a special needs school Pre-K through age 21; that the Applicant is expecting about 250 students and 150 Staff; that there will be 34 classrooms and 24 Administrative rooms; that access is taken from a single road directly opposite Sussex Central's entrance; that discussions were held with DelDOT to make sure enough area was carved off to support the school and the access required; that a traffic consultant prepared a Traffic Operational Analysis; that DelDot has reviewed the Service Level Evaluation Request; that there will be a dedicated right turn lane that can fit within the current paving limits of Patriots Way; that the reason for the Conditional Use Application is because the AR-1 Zoning matches the characteristics of the surrounding parcels; that Sussex Central High School was approved for Conditional Use previously; that the layout will be a traditional school layout where there is a loop around road for drop-offs along the front and there will be a secondary loop road for additional dropoffs for events and bus parking to the upper left; that Stormwater Management is handling the requirements of Stormwater Management Code and State Stormwater Regulations; that there is one athletic field dedicated area and the proposed school is 94,500 square feet but are seeking Conditional Use for future additions totaling 157,000 square feet; and that DelDOT's planning is for the total square footage of 157,000.

The Commission found that Mr. Ken Fearn, a registered architect with Fearn-Clendaniel Architects, Inc., was on hand to answer questions posed by the Commission. Mr. Hopkins asked how many students would attend this school and what type of special needs. Mr. DeAscanis stated that there be 250 students; that this is a high-intensity service will be provided. Mr. Fearn stated that there will be a lot of the children attending the school with adaptive equipment of various types and that there are some students who are hearing impaired, some with autism and some visually impaired.

Ms. Stevenson asked if this school would replace Howard T. Ennis School. Mr. Fearn replied that it will replace Ennis because the current Ennis school is undersized; that the new school will serve not only Indian River School District but Sussex County. Mr. Fearn was asked what will happen to the existing Ennis School. Mr. Fearn replied that the Howard T. Ennis school is on the DelTech campus and that DelTech will take it back. Ms. Stevenson asked about the zoning because there is the Institutional Zoning. Mr. Robinson stated that it does not preclude them to go ahead with the Conditional Use; that he realizes that there are all sorts of moving parts with funding and timing; that he would suggest is that once it is underway the Applicant should think about coming back for the Institutional Zoning because that is a permitted district in the Comprehensive Plan; that it was the intent of the Commission to get schools, hospitals and things like that into that district so that if going for Conditional Use, the Commission has the ability to put conditions on it; and that with an Institutional Zone, you just come back in for Site Plan which is a lot easier. Chairman Wheatley noted that it works better for the schools in the long run and that you can come back and apply for that zoning change at any time in the process.

Mr. DeAscanis asked if it would make sense to rezone both the new school and Sussex Central High School. Chairman Wheatley stated that once you have the Institutional Zoning classification and want

to add an addition, it is just a matter of a Site Plan approval because it is properly zoned and you do not have to go through the whole conditional use process again.

The Commission found that no one spoke in favor of or in opposition to Application C /U 2211 Indian River School District.

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

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

Planning & Zoning Commission meeting of February 27, 2020

Mr. Hopkins moved that the Commission recommend approval of C/U 2211 for Indian River School District for a Special Needs School, based upon the record made during the public hearing and for the following reasons:

- 1. The use if for a public purpose, a new special needs school for the children and families of Sussex County.
- 2. A new special needs school will promote the health, safety, and welfare of Sussex County residents and their children.
- 3. The site is appropriate for this use. It is in a location directly across from the existing Sussex Central High School, this site is centrally located within the Indian River School District and Sussex County.
- 4. This new school is needed to replace the aging Howard T. Ennis School which is located on the Del Tech campus.
- 5. Based upon the information presented during the public hearing, there is the need for an additional special needs school in this area of Sussex County.
- 6. The use will not adversely affect neighboring properties or roadways.
- 7. No parties appeared in opposition to this application.
- 8. This recommendation is subject to the following conditions:
 - 1. The site shall comply with all DelDOT entrance and roadway improvements requirements.
 - 2. The site shall comply with all requirements of the Sussex Conservation District.
 - 3. Signage shall be permitted on the site in accordance with the sign regulations applicable to the I-1 Institutional Zone.
 - 4. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

County Council Report for CU 2211 Indian River School District P a g e $\,\mid$ 4

Motion by Mr. Hopkins, seconded by Ms. Stephenson, and carried unanimously to recommend approval for the reasons and with the conditions stated in the Motion. Motion carried 4-0.

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN KIM HOEY STEVENSON, VICE-CHAIRMAN R. KELLER HOPKINS J. BRUCE MEARS HOLLY J. WINGATE





DELAWARE sussexcountyde.gov 302-855-7878 T 302-854-5079 F JAMIE WHITEHOUSE, AICP DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET Planning Commission Public Hearing Date February 13, 2020.

Application: (CU 2211) Indian River School District

Applicant: Indian River School District C/O Joseph Booth

31 West Hosier Street Selbyville, DE 19975

Owner: Indian River School District

31 West Hosier Street Selbyville, DE 19975

Site Location: Located on the east side of Patriots Way (S.C.R. 318) approximately

0.74 miles south of Zoar Road (S.C.R. 48).

Current Zoning: Agricultural Residential (AR-1)

Proposed Use: Special Needs School

Comprehensive Land

Use Plan Reference: Low Density Area

Councilmatic

District: Mr. Wilson

School District: Indian River School District

Fire District: Millsboro Fire District

Sewer: Town of Georgetown

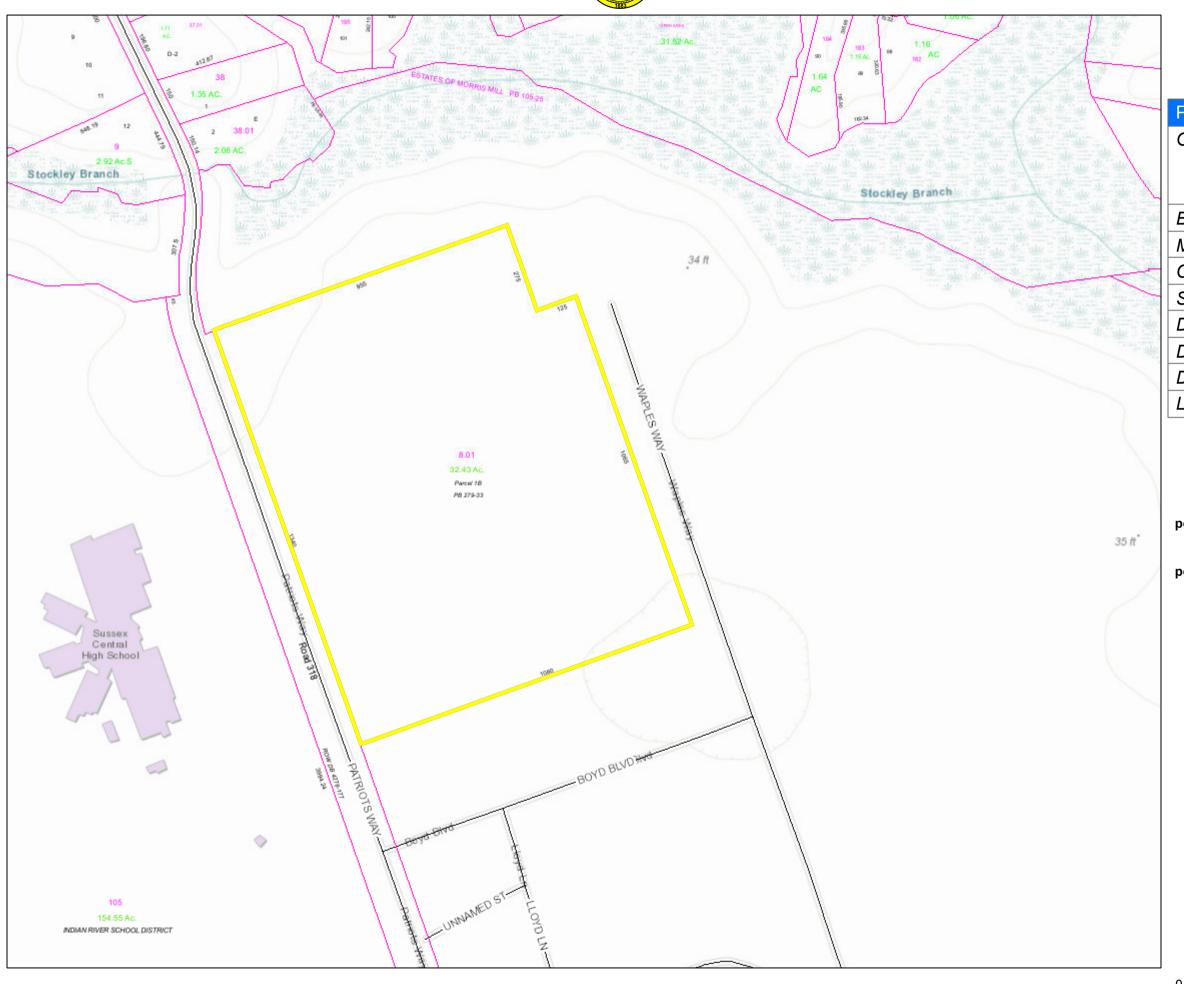
Water: Private, On-Site

Site Area: 32.43 acres +/-

Tax Map ID.: 133-7.00-8.01



Sussex County



PIN:	133-7.00-8.01
Owner Name	INDIAN RIVER SCHOOL DISTRICT
Book	5076
Mailing Address	31 W HOSIER ST
City	SELBYVILLE
State	DE
Description	188000
Description 2	RT 318
Description 3	RT 86
Land Code	

polygonLayer

Override 1

polygonLayer

Override 1

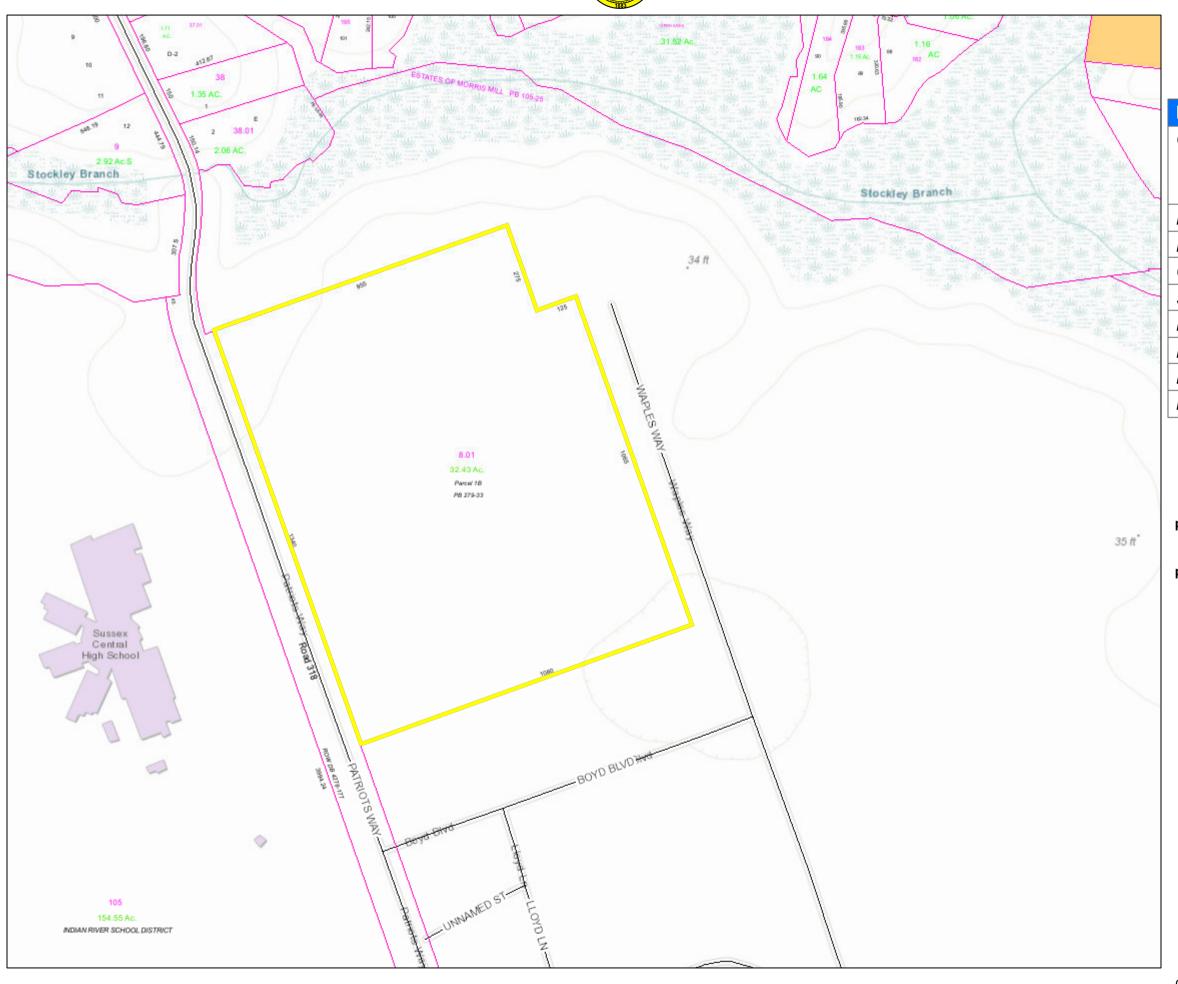
Tax Parcels

- Streets

County Boundaries

1:4,514

0 0.05 0.1 0.2 mi 0 0.075 0.15 0.3 km



PIN:	133-7.00-8.01	
Owner Name	INDIAN RIVER SCHOOL DISTRICT	
Book	5076	
Mailing Address	31 W HOSIER ST	
City	SELBYVILLE	
State	DE	
Description	188000	
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Description 3	RT 86	
Land Code		

polygonLayer

Override 1

polygonLayer

Override 1

Tax Parcels

0.05

0.075

0

Streets

1:4,514 0.1 0.2 mi 0.15 0.3 km



JAMIE WHITEHOUSE, AICP DIRECTOR OF PLANNING & ZONING (302) 855-7878 T (302) 854-5079 F jamie.whitehouse@sussexcountyde.go



Sussex County

DELAWARE sussexcountyde.gov

<u>Memorandum</u>

To: Sussex County Planning Commission Members

From: Jennifer Norwood, Planner I

CC: Vince Robertson, Assistant County Attorney and applicant

Date: February 5, 2020

RE: Staff Analysis for CU 2211 Indian River School District

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2211 Indian River School District to be reviewed during the February 13, 2020 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 133-7.00-8.01 to allow for a special needs school. The size of the property is 32.43 ac. +/-. The property is zoned AR-1 (Agricultural Residential Zoning District) and located east of Patriot's Way approximately 0.73 mile south of Zoar Rd.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework for 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 in the plan indicates that the property has the land use designation of Low-Density Area.

The surrounding parcels to the north, east, and south are all designated on the Future Land Use Map as "Low Density Area". The properties to the west have the land use designation of "Commercial Area", "Developing Area", and "Municipalities". The Low-Density Area land use designation recognizes are agricultural activities and homes. Business development should be largely confined to businesses addressing the needs of these two uses. Institutional and commercial uses may be appropriate depending on surrounding uses. The Developing Area land use designation recognizes a range of single-family homes, townhouses, and multi-family units. Careful mixtures of homes with light commercial and institutional uses can be appropriate to provide convenient services and to allow people to work close to home.

The property is zoned AR-1 (Agricultural Residential Zoning District). The adjoining and surrounding properties to the north, south, east and west are all zoned AR-1 (Agricultural Residential Zoning District).

There was a Conditional Use 1408 for a public school on a parcel zoned AR-1 (Agricultural Residential District), which was approved on July 24, 2001 to the west of the application site.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use to allow for



a special needs school could be considered consistent with the land use, area zoning and surrounding uses.

Staff notes the conceptual site plan shows a proposed 94,500 square foot building, however, the Service Level Evaluation Response received is based on a 157,000 square foot special needs school. The increase in square footage is due to the potential future building additions that are shown on the site plan. For the purpose of the Traffic Operational Analysis, the maximum square footage possible is being used.

Introduced 01/07/20

Council District No. 5 - Rieley

Tax I.D. No. 133-7.00-8.01

911 Address: N/A

ORDINANCE NO. ___

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SPECIAL NEEDS SCHOOL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 32.43 ACRES, MORE OR LESS

WHEREAS, on the 26th day of November 2019, a conditional use application,

denominated Conditional Use No. 2211, was filed on behalf of Indian River School District;

and

WHEREAS, on the _____ day of ______ 2020, 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. 2211 be _____; and

WHEREAS, on the _____ day of ______2020, a public hearing was held, after

notice, before the County Council of Sussex County and the County Council of Sussex County

determined, based on the findings of facts, that said conditional use is in accordance with the

Comprehensive Development Plan and promotes the health, safety, morals, convenience,

order, prosperity and welfare of the present and future inhabitants of Sussex County, and that

the conditional use is for the general convenience and welfare of the inhabitants of Sussex

County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be

amended by adding the designation of Conditional Use No. 2211 as it applies to the property

hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Dagsboro

Hundred, Sussex County, Delaware, and lying on the west side of Patriots Way approximately

0.73 mile south of Zoar Road and being more particularly described in the attached legal

description prepared by CDA Engineering, Inc., said parcel containing 32.43 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.