

RESOLUTION NO. R 005 12

RESOLUTION APPROVING AGREEMENT TO PROVIDE FIRE FIGHTING SERVICES AND APPROVING ISSUANCE OF CERTAIN BONDS OR NOTES BY THE ELLENDALE VOLUNTEER FIRE COMPANY, INC.

WHEREAS, the Ellendale Volunteer Fire Company, Inc. (the "Fire Company") is a volunteer fire company organized and existing under the laws of the State of Delaware; and

WHEREAS, the Fire Company has provided and continues to provide firefighting services to a specific area within Sussex County, Delaware (the "County") and the Fire Company and the County would like to formalize such arrangement by entering into the Agreement to Provide Fire Fighting Services which is attached hereto as Exhibit A; and

WHEREAS, the Fire Company has advised the County Council of Sussex County, Delaware (the "Council") that the Fire Company proposes to issue up to \$1,600,000 of bonds or notes of the Fire Company (the "Bonds") to (1) finance or refinance the costs to construct a fire substation on property located at 8751 N. Old State Road in Lincoln, an unincorporated area of Sussex County, DE (the "Lincoln Substation"), and (2) pay issuance costs associated therewith (collectively, the "Project"); and

WHEREAS, it is the intent of the Fire Company that the interest on the Bonds qualify for exclusion from gross income of the owners thereof for federal income tax purposes pursuant to Sections 103 and 150 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, pursuant to Sections 103 and 147 of the Code, interest on the Bonds will not qualify for exclusion from gross income of the owners thereof for federal income tax purposes unless the issuance of the Bonds is approved by the applicable elected representative of a governmental unit with which the Fire Company has entered into an agreement, after a public hearing to consider the issuance of the Bonds has been conducted, following reasonable public notice; and

WHEREAS, the Fire Company hereby resolves and declares its intent under Treasury Regulation §1.150-2 to use tax-exempt bonds to finance the capital costs of the Project, subject to the following conditions:

1. The maximum principal amount of the tax-exempt bonds expected to be issued to finance the Project is \$1,600,000.

2. Pending issuance of the tax-exempt bonds, the Fire Company may finance the Project with other funds which will be reimbursed with the proceeds of the tax-exempt bonds, provided that (a) with respect to the Project, the tax-exempt bonds shall not be used to reimburse any expenditure for the Project paid more than 60 days prior to the date of adoption of this Resolution (b) the tax-exempt bonds shall not be issued more than 18 months after the later of (i) the date of the original expenditure to be reimbursed with the proceeds of the tax-exempt bonds, or (ii) the date the Project is placed in service; and (c) in no event may the tax-exempt bonds be issued more than three years after the date of the original expenditure to be reimbursed with the proceeds of the tax-exempt bonds; and provided further that the limitations of this paragraph 2 shall not apply to qualified "preliminary expenditures" as permitted by Treasury Regulation §1.150-2(f)(2), "or to a de minimis amount not to exceed the lesser of \$100,000 or 5% of the proceeds of the tax-exempt bonds, in accordance with Treasury Regulation §1.150-2(f)(1)."

3. Issuance of the tax-exempt bonds shall be subject to documentation acceptable to the Fire Company providing for the tax-exempt bonds to be payable from the payments by the Fire Company.

WHEREAS, the County and the Fire Company have entered into an Agreement dated as of the date hereof (the "Agreement") pursuant to which the Fire Company agreed, among other things, to provide exclusive firefighting services to the area of the County described therein; and

WHEREAS, notice of the requisite public hearing was published on January 23, 2012 in the News Journal and Delaware State News, newspapers of general circulation in the County; and

WHEREAS, on February 7, 2012 the Council conducted a public hearing on behalf of the Fire Company for the purpose of considering the issuance of the Bonds.

NOW, THEREFORE BE IT RESOLVED THAT, the County Council of Sussex County, for the sole purpose of qualifying the interest payable on the Bonds of the Fire Company for exclusion from the gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Code, does hereby approve the Agreement and the issuance of bonds or notes by the Fire Company in a maximum aggregate principal amount of up to \$1,600,000 for the purpose of financing a portion of the costs of the Project, provided, that such financing closes in calendar year 2012, and that such bonds or notes shall be an obligation of the Fire Company and shall never be a debt of the County and the County shall not be liable for any payment on such bonds or notes.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. R 005 12 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 7TH DAY OF FEBRUARY 2012.


ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

AGREEMENT

THIS AGREEMENT made this 7th day of February, 2012 by and between Sussex County, Delaware, a county and political subdivision of the State of Delaware (the "County") and the Ellendale Volunteer Fire Company, Inc. (the "Fire Company"), a non-profit corporation of the State of Delaware.

WHEREAS, the Fire Company has provided fire protection and prevention services to the portion of the County as currently regulated by the State Fire Prevention Commission (the "Area"), and

WHEREAS, the County and the Fire Company both desire to continue in this relationship, and

WHEREAS, the Fire Company desires to borrow funds to pay a portion of the costs of the construction of a new fire substation, and

WHEREAS, under Section 150 of the Internal Revenue Code in order for the borrowing to be accorded favorable federal income tax treatment, the Fire Company must have a written agreement with the County to furnish fire fighting services to the Area.

NOW THEREFORE, in consideration of their mutual promises and obligations, the parties thereto, intending to be legally bound, hereby agree as follows:

1. The Fire Company shall continue to provide and furnish fire protection, fire prevention and fire fighting services to the Area from the date of this Agreement on a volunteer basis.
2. The County shall continue to allow the Fire Company to provide and furnish volunteer fire protection, fire prevention and fire fighting services to and within the Area from this date.
3. The County acknowledges that the Fire Company is the exclusive fire fighting entity for the Area established pursuant to State of Delaware ("State") law by the State Fire Prevention Commission and shall not enter into a written agreement with any other person or entity for the provision of fire fighting services to or within the Area except in compliance with mutual aid agreements with the Fire Company or in compliance with applicable State law.

4. The parties hereto agree that the Area shall automatically change and conform if any changes are required thereto pursuant to 16 Del.C. § 6607.

5. The parties hereto acknowledge that 16 Del.C. § 6607 vests in the State Fire Prevention Commission the power and the authority to determine whether any new fire companies or substations shall be authorized in the State, to prohibit the suspension of fire protection services in the State, to confirm the established geographical boundaries of areas served by all existing fire companies in the State and to resolve boundary disputes between or among such fire companies in the State. Notwithstanding anything in this Agreement to the contrary, the County is not hereby assuming any power, authority or responsibility with respect to any of the aforementioned powers or authority of the State Fire Prevention Commission.

6. The provisions of this Agreement shall be binding on the successors of the parties hereto.

7. The rights, privileges and obligations of the parties hereto shall not be assignable.

8. This Agreement shall not be nor be implied to be a waiver of any limitation of the liability of the Fire Company or the County as provided by statute or otherwise.

9. This Agreement shall continue in effect for a period of ten (10) years from the date hereof. Thereafter, it shall continue on a year to year basis unless and until terminated by either party in writing delivered to the other party at least thirty (30) days before the expiration of that current term.

10. The Fire Company hereby agrees to defend, indemnify and save the County and its officers, employees and agents harmless from and against, all liabilities, losses, damages, costs and expenses (including reasonable attorney fees), causes of action, suits, claims, demands and judgments of any nature arising from or in connection with its entry into this Agreement or

in connection with the Fire's issuance of its "tax exempt" notes or bonds under the Internal Revenue Code (including, but not limited to, the Fire Company's issuance of up to \$1,600,000 of its notes or bonds, the proceeds of which will be used (i) pay a portion of the costs for the construction of a new fire substation to be located on real property located on 8751 N. Old State Road in Lincoln, an unincorporated area of Sussex County, Delaware; and (ii) pay the costs of issuance of the bond or note (the "Project").

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IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals the day and year first above written.

SUSSEX COUNTY, DELAWARE

By Michael W. Vincent
President of County Council

Attest: (SEAL)

[Signature]
Clerk Of Council

Approved as to form

By: [Signature]
County Attorney

ELLENDALE VOLUNTEER FIRE
COMPANY, INC.

By [Signature]
President

Attest: (CORPORATE SEAL)

Lisa Turner

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