

RESOLUTION NO. R 011 00

RESOLUTION OF INTENTION TO ISSUE \$12,000,000 INDUSTRIAL DEVELOPMENT REVENUE BONDS (PERDUE-AGRIRECYCLE, LLC PROJECT)

WHEREAS, Council of Sussex County (the "County"), has heretofore adopted the Sussex County Commercial, Industrial and Agricultural Revenue Bond Ordinance, Ordinance No. 80, as amended, (the "General Ordinance") to encourage and assist the financing of the construction, acquisition, sale or lease of industrial, commercial and agricultural facilities related to the maintenance or promotion of employment or to the redevelopment or revitalization of areas within the County; and

WHEREAS, Perdue-AgriRecycle, LLC (the "Applicant"), has submitted to the County through the County Administrator an application (the "Application") for the financing of a project to acquire, construct and equip a 63,000 square foot building for conversion of poultry litter into fertilizer (the "Project"). The proposed project site is on Route 2, bordering Route 13A and near the intersections of Route 13A and County Road 485 in Seaford, Sussex County, Delaware. The Applicant has requested the County to finance a portion of the costs of the Project (the "Costs"), said financing to be accomplished through the issuance by the County of Industrial Development Revenue Bonds in a principal amount not to exceed \$12,000,000 (the "Bonds"); and

WHEREAS, the Application has been reviewed by a committee, comprised of the County Administrator, the Director of Finance, the County Attorney, the Director of Economic Development, and the Assistant Director of Economic Development (the "Review Committee"); and

WHEREAS, the Review Committee has made the findings and determinations required by the General Ordinance, including the findings that:

(a) the Project is eligible for financial assistance and the financing thereof will accomplish the public purposes contemplated by the General Ordinance; and

(b) the Project will (i) tend to maintain or provide gainful employment opportunities within and for the people of the County; (ii) aid, assist and encourage the economic development or redevelopment of the County; and (iii) maintain, diversify or expand employment promoting enterprises within the County; and

(c) the Bonds are to be payable solely from Revenues as specified in Section 7 of the General Ordinance; and

WHEREAS, the County Administrator has advised the Applicant of the Review Committee's findings and determinations; and

WHEREAS, the County Administrator has advised the Council of the Review Committee's findings and determinations and has transmitted the Application to the Council; and

WHEREAS, the Review Committee had held a public hearing with respect to the Application in order to give interested parties a reasonable opportunity to be heard; and

WHEREAS, the Council also desires to approve the Project, to make the findings and determinations required by the General Ordinance and to authorize the issuance and sale of the Bonds; and

WHEREAS, the Council has determined that the Project be completed at the earliest practical date, and recognizes that the Applicant requires satisfactory assurances from the County that the proceeds of the sale of the Bonds will be made available to finance the Project; and

WHEREAS, the Council deems it necessary and advisable that it take such official action as may be required under the General Ordinance, to authorize the issuance and sale of the Bonds;

NOW, THEREFORE, BE IT RESOLVED:

1. The Council hereby authorizes the issuance of the Bonds for the purpose of paying a portion of the Costs of acquisition, construction and equipping of the Project.

2. In order to facilitate the commencement of the Project, the Council hereby determines that the purposes of the Ordinance will be more effectively served if the Applicant enters into contracts for the commencement of the Project as soon as practicable. The County intends to reimburse the Applicant from the proceeds of the sale of the Bonds for Costs of the Project paid subsequent to sixty (60) days prior to the passage of this Resolution and prior to delivery of the Bonds.

3. Subject in all respects to the prior advice, consent and approval of the Applicant, the County Administrator is hereby authorized and directed to prepare or cause to be prepared and to execute and file on behalf of the County any applications, filings and certifications, and take such other action as he may deem necessary or advisable to obtain approvals of the Project, to provide for the issuance of the Bonds and to establish that the interest on the Bonds is exempt from Federal income taxes. In addition, to prepare or cause to be prepared and to be executed and filed on behalf of the County all documents, certifications and filings required by the laws of the United States and the State of Delaware necessary or appropriate in order to implement and carry out the matters herein authorized or required by the General Ordinance.

4. The County's obligations hereunder shall be contingent upon the receipt of a final commitment to purchase the Bonds and all obligations of the County hereunder shall be satisfied solely from the proceeds of the sale of the Bonds. Approval of this Resolution shall in no way preclude the Council from independent consideration (and denial) of any application concerning land use matters relating to the Project (e.g., zoning matters). Issuance of the Bonds in the aggregate principal amount up to \$12,000,000 shall be made in accordance with the terms of a Project Resolution which the Council shall adopt after the receipt of a final commitment which shall provide for repayment in not more than 30 years at an interest rate not to exceed 80% of the prime rate generally offered by commercial lenders in Bonds, or at such other interest rate or method for determining the same, as shall be approved by the Council in the Project Resolution. The Applicant shall have the full responsibility to obtain the issuance of such a final commitment. The County shall have no responsibility to seek the issuance of such a commitment. The County's obligations hereunder shall terminate one year from the effective date hereof.

5. This resolution shall take effect upon its passage by the Council.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. R 011 00 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 29TH DAY OF FEBRUARY, 2000.


ROBIN A. GRIFFITH
CLERK OF THE COUNTY COUNCIL

SYNOPSIS: This Inducement Resolution expressed the County's intent to issue industrial development revenue bonds (the "Bonds") in an amount not greater than \$12,000,000 for the financing of a project consisting of the acquisition, construction and equipping of a 63,000 square foot building for conversion of poultry litter into fertilizer. The proposed project site is on Route 2, bordering Route 13A and near the intersection of Route 13A and County Road 485 in Seaford, Sussex County, Delaware, and authorizes the applicant to proceed with the Project in reliance on this commitment. The Bonds will actually be issued pursuant to a subsequent Project Resolution of the Council which will set out the detailed terms of the bond issuance and will approve the loan documents involved in the transaction. The terms of the bond issuance will be tailored to meet the terms of the final commitment to purchase the Bonds. The County has no obligation to issue the Bonds unless the Applicant obtains such a final commitment and, in any event, any obligation of the County may be satisfied solely from the proceeds of the sale of the Bonds. The Applicant has the sole responsibility to obtain such a final commitment.