

REVISED 9-22-15

**AGENDA
REGULAR MEETING OF THE MAYOR AND COUNCIL
September 22, 2015
SEAFORD CITY HALL - 414 HIGH STREET**

- 7:00 P.M.** - Mayor David Genshaw calls the Regular Meeting to Order.
- Invocation
 - Pledge of Allegiance to the Flag of the United States of America.
 - Changes to agenda for this meeting.
 - Approval of minutes of the Regular Council meeting of September 8, 2015.

CORRESPONDENCE:

1. Comcast letter in reference to channel changes for High Definition.

7:05 P.M. PUBLIC HEARING:

1. Seaford School District, property owners of 399 N. Market St. (Seaford Senior High School), also identified as Tax Map and Parcel 331-5.00-6.00, is seeking a final site plan review to build a second greenhouse at this location.

NEW BUSINESS:

1. Present an amendment to add new area to the Downtown Development District.
2. Present First Amendment to Nitrogen-Phosphorus Trading Agreement with INVISTA.
3. Letter of Limited/Temporary Authority for Fiber Technologies Networks, L.L.C. d/b/a Lighttower, to be in Seaford's right-of-way and attach to its poles for the limited service for public safety.
4. Present the Right-of-Way and Pole Attachment Franchise Agreement with Fiber Technologies Networks, L.L.C. d/b/a Lighttower. (Place holder for agreement.) (DELETE)
5. Request authorization for the City Manager to sign the Delaware Hazardous Substance Cleanup Act; Brownfield Certification for a grant application to request \$35,000 for the remedial investigation of the Power Plant Site. (ADD)

REVISED 9-22-15

AGENDA

Regular Meeting of the Mayor and Council

September 22, 2015

OLD BUSINESS:

1. Reminder of the proposed Special Election proposing the issuance by the City of Seaford, Delaware, of up to \$1,658,300 maximum aggregate principal amount of a general obligation bond to finance the installation and operation of a renewable energy generating system by the City of Seaford to be held on September 28, 2015 (Monday) from 2 p.m. until 6 p.m. at City Hall in Council Chambers.
2. Announce the City of Seaford will have two City-wide power outages one on September 28th and one on October 5th (date change) as a result of upgrades to the transmission line serving our single point of delivery at Pine Street Substation.

PUBLIC COMMENT PERIOD:

REMINDER OF MEETINGS & SETTING NEW MEETINGS:

1. DEMEC Annual Dinner meeting, Dover Downes on September 23rd at 5:30 p.m.
2. Seaford Police Department Night Out at Seaford Police Department on September 24th from 5 p.m. until 8 p.m.
3. Delaware League of Local Governments, Duncan Center, Dover on September 24th at 6 p.m.
4. 1st Saturday, lands behind City Hall, October 3rd, 12 noon - 5 p.m.
5. Cancer Walk, gathering at 7 p.m., October 5th at the Cancer Center with step off for Gateway Park at 7:30 p.m. with ceremonies following.
6. Residences at Riverplace groundbreaking, 10 a.m. on October 6th.

COMMITTEE REPORTS:

1. **Police & Fire - Councilwoman Leanne Phillips-Lowe**
2. **Administration - Councilman H. William Mulvaney III**
3. **Parks and Recreation - Councilman Orlando Holland**
4. **Operations Committee - Councilman Dan Henderson**
5. **Electric - Councilwoman Peterson**

Mayor Genshaw solicits a motion to adjourn the regular council meeting.

NOTE: Agenda shall be subject to change to include or delete Additional items (including executive session) which arise at the time of the meeting. (29 Del. C. S1004 (e) (3))

C-1
9/22/15



Comcast Cable
7850 Walker Drive
Greenbelt, MD 20770

August 31, 2015

Ms. Dolores Slatcher
City Manager
City of Seaford
P O box 1100
Seaford, DE 19973

Dear Ms. Slatcher:

Currently, many High Definition channels are available to customers in the 200 channel range and are duplicated in 800 channel range. To mitigate confusion for our customers, on October 8th, duplicate channels in the 200s will be dropped.

The enclosed updated channel lineup is being mailed to customers which also details the changes. Further, customers are receiving a bill message (as provided below) informing them of the duplicate channel drop in October.

Please do not hesitate to contact me at (301) 836-9461 with any questions you may have.

Sincerely,

A handwritten signature in cursive script that reads "Yantee Neufville".

Yantee Neufville
Manager, Government & Regulatory Affairs

cc: Chris Comer, Beltway Division Director of Government & Regulatory Affairs

Enclosure: Channel Lineup Update

Bill Message:

Starting October 8, 2015, all HD channels will only be available on channels located between 800 and 946, including HD channels currently available in the 200s.

Your scheduled DVR recordings will not be affected; however, if you marked an HD channel as your favorite in the 200s, be sure to update it after October 8!

For more info, visit www.myxfinityupdate.com

N.B.1
9/22/15

Memorandum

TO: Mayor and Council

September 14, 2015

FR: Dolores Slatcher, City Manager
Charles Anderson, Asst. City Manager
Trisha Newcomer, ED Manager

RE: Expand the Limits of the Downtown Development District

Staff is recommending the expansion of the DDD area to allow the opportunity for more participants to acquire funding and to improve additional residential and business properties.

The current area is approximately 49.41 acres and with the addition of the approximately 25.23 the total DDD area will be approximately 74.64 acres just below the authorized 85 acres.

We are requesting Council approve this change so it may be sent to the Office of State Planning Coordination to be presented to the Cabinet Committee for final approval.

If you have any questions regarding this memorandum please contact any one of us.

Thanks for your consideration.

N.B. 2
9/22/15

FIRST AMENDMENT TO NITROGEN-PHOSPHORUS TRADING AGREEMENT

This FIRST AMENDMENT TO NITROGEN-PHOSPHORUS TRADING AGREEMENT (this "First Amendment") is made as of August 12, 2015 (the "First Amendment Effective Date"), by and between INVISTA S.à r.l. ("INVISTA") and the City of Seaford, Delaware (the "City"), with reference to that certain Nitrogen-Phosphorus Trading Agreement, dated as of August 15, 2014 (the "Agreement"), made by and between INVISTA and the City. Any capitalized terms not defined in this First Amendment have the meaning ascribed to them in the Agreement. INVISTA and the City are each separately referred to herein as a "Party" and, together, as the "Parties."

A. INVISTA and the City each desire to amend the Renewal Permit Allocations, Trade, the Submissions to DNREC and the Termination Prior to Effective Date of the Trade sections of the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. **References to 2014 Renewal Permit and 2014 Renewal Permits.** All references to "2014 Renewal Permit" and "2014 Renewal Permits" in the Agreement shall be deleted and replaced in their entirety with "2015 Renewal Permit" and "2015 Renewal Permits", as applicable.

2. **Renewal Permit Allocations.** Section 2.1(b) of the Agreement is hereby deleted in its entirety and replaced with the following:

"(b) For purposes of INVISTA's 2015 Renewal Permit, the INVISTA TP Allocation Pre-Trade is expected to be non-detect, defined as less than or equal to 0.1 mg/l, and the INVISTA TN Allocation Pre-Trade is expected to be One Hundred Seventy-One Thousand Eight Hundred Eighteen (171,818) pounds per year, calculated as a moving 12-month cumulative load."

3. **Trade.** Section 3.1(b) of the Agreement is hereby deleted in its entirety and replaced with the following:

"(b) INVISTA shall (i) transfer to the City all of INVISTA's authorization and interest in a total of Twenty-Seven Thousand Four Hundred Thirty-One (27,431) pounds per year, calculated as a moving 12-month cumulative load, of the INVISTA TN Allocation Pre-Trade ("Traded TN Allocation") for use by the City as set forth herein, and (ii) accept a limit for TN in its 2015 Renewal Permit that prohibits INVISTA from discharging the amount of TN specified in the Traded TN Allocation."

4. **Submissions to DNREC.** Section 4.1(b)(iii) of the Agreement is hereby deleted in its entirety and replaced with the following:

"(iii) stating that the Traded TP Allocation will be used by DNREC to establish a discharge limit for TP in INVISTA's 2015 Renewal Permit that is no less than One Thousand Four Hundred Sixty (1,460) pounds per year, calculated as a moving 12-month cumulative load (the "DNREC Traded TP Allocation Approval")."

5. **Termination Prior to Effective Date of the Trade.** Section 7.2(d) of the Agreement is hereby deleted in its entirety and replaced with the following:

"(d) This Agreement shall be terminated automatically if the Effective Date of the Trade has not occurred by December 31, 2016."

6. **Ratification and Authority.** The Agreement, as expressly amended by this First Amendment, is hereby ratified and shall remain in full force and effect. INVISTA and the City each possess all requisite corporate power and authority to enter into this First Amendment and ratify the Agreement. The Agreement, as amended, and this First Amendment shall be read and construed as one document, and this First Amendment shall be considered to be part of, and as equally valid as, the Agreement, as amended.

7. **Governing Law.** This First Amendment shall be subject to the terms and conditions of Section 8.4 of the Agreement, which terms and conditions are hereby incorporated by reference.

8. **Conflicts.** To the extent any provision of this First Amendment conflicts with any provision of the Agreement, this First Amendment shall control.

9. **Counterparts and Electronic Signatures.** This First Amendment may be executed in one or more counterparts or duplicate originals, all of which when taken together will constitute one and the same agreement. Electronic and facsimile copies of an original executed signature page (including, without limitation, copies electronically transmitted in portable document format or ".pdf") will be deemed the same as the original executed signature page. Electronically executed versions of a signature page through the DocuSign, Inc. electronic signing system implemented by INVISTA will also be deemed the same as an original executed signature page. At the request of either Party at any time, the Parties shall promptly confirm all electronic or facsimile copies, and all electronically executed versions, of any signature page by manually executing and delivering a duplicate original signature page.

[The remainder of this page has intentionally been left blank; signature page follows.]

IN WITNESS WHEREOF, each Party has caused its duly authorized representative to execute this First Amendment as of the First Amendment Effective Date.

CITY OF SEAFORD, DELAWARE

By: _____

Name: David C. Genshaw

Title: Mayor

By: _____

Name: Dolores J. Slatcher

Title: Attest; Secretary of Council

INVISTA S.À R.L.

By: *Willie V. Scott*

Name: Willie V. Scott

Title: Authorized Signatory

NITROGEN-PHOSPHORUS TRADING AGREEMENT

This NITROGEN-PHOSPHORUS TRADING AGREEMENT (this "Agreement"), dated August 15, 2014 ("Execution Date"), is entered into by and between the City of Seaford, Delaware, a municipal corporation organized under and by virtue of the laws of the State of Delaware (the "City"), and INVISTA S.à r.l., a Luxembourg *société à responsabilité limitée* ("INVISTA"). The City and INVISTA may be individually referred to as a "Party" or collectively as the "Parties."

A. INVISTA owns and operates a manufacturing facility located at 25876 DuPont Road, Seaford, Delaware ("Seaford Plant").

B. The City and the Seaford Plant are individually permitted point source dischargers into the Nanticoke River, which ultimately is tributary to the Chesapeake Bay, under the National Pollutant Discharge Elimination System ("NPDES") permit program, and the individual discharge permits held by the City and INVISTA (each, an "NPDES Permit" and collectively, the "NPDES Permits") currently are each in the renewal process before the Delaware Department of Natural Resources and Environmental Control ("DNREC").

C. DNREC promulgated the final Total Maximum Daily Load ("TMDL") requirements for the Nanticoke River in 1998, which establishes target concentrations for Total Nitrogen ("TN") and Total Phosphorus ("TP") and waste load allocations for certain point sources (among other provisions) (the "Nanticoke TMDL").

D. The current NPDES Permit held individually by INVISTA contains water-quality based effluent limitations for TN and TP and the current NPDES Permit held individually by the City contains water quality based effluent limitations for TN and TP, in each case based on the Nanticoke TMDL, that INVISTA and the City are required to meet for their respective treated wastewater discharges;

E. Effective December 29, 2010, the U. S. Environmental Protection Agency ("EPA") established final TMDL (the "Chesapeake Bay TMDL") requirements for TN and TP for the Chesapeake Bay.

F. The NPDES Permits expected to be issued to the City and INVISTA as a result of the current renewal process ("2014 Renewal Permits") are expected to contain discharge limitations for TN and TP.

G. The City's individual allocation of the annual mass loading limit under the Chesapeake Bay TMDL for TP ("City TP Allocation Pre-Trade") for purposes of its 2014 Renewal Permit is expected to be in excess of the level of TP anticipated to be present in its discharge, such that the City anticipates being capable of limiting its TP discharge below the City TP Allocation Pre-Trade so as to generate a TP credit available for water quality trading.

H. INVISTA's individual allocation of the annual mass loading limit under the Chesapeake Bay TMDL for TN ("INVISTA TN Allocation Pre-Trade") for purposes of its 2014 Renewal Permit is expected to be in excess of the level of TN anticipated to be present in its discharge, such that INVISTA anticipates being capable of limiting its TN discharge below the INVISTA TN Allocation Pre-Trade so as to generate a TN credit available for water quality trading.

I. The City and INVISTA have agreed to trade a portion of the City TP Allocation Pre-Trade for a portion of the INVISTA TN Allocation Pre-Trade to ensure that each Party will have operational flexibility and the ability to meet the overall limitations on TP and TN that are expected by the requirements of the Chesapeake Bay TMDL.

J. The trade of Allocations (as defined below) described herein is being made pursuant to section 8.3.3 of the Delaware Water Discharge Regulations (as defined below) and at the initiation of DNREC with the City and INVISTA in early 2013, and the City and INVISTA have been advised by DNREC that DNREC supports the trade of Allocations contemplated by the Parties pursuant to this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

- 1.1. "2014 Renewal Permits" has the meaning set forth in the Preamble.
- 1.2. "Allocations" means the City TN Allocation Pre-Trade, the City TP Allocation Pre-Trade, the INVISTA TN Allocation Pre-Trade, and the INVISTA TP Allocation Pre-Trade.
- 1.3. "Chesapeake Bay TMDL" has the meaning set forth in the Preamble.
- 1.4. "City" has the meaning set forth in the Preamble.
- 1.5. "City TN Allocation Pre-Trade" means the City's individual allocation of the annual mass loading limit under the Chesapeake Bay TMDL for TN prior to the trade of Allocations described in this Agreement.
- 1.6. "City TP Allocation Pre-Trade" has the meaning set forth in the Preamble.
- 1.7. "Delaware Water Discharge Regulations" means the State of Delaware Regulations Governing the Control of Water Pollution, 7 Del. Admin. Code §§7201-1.0 - 13.0.
- 1.8. "DNREC" has the meaning set forth in the Preamble.
- 1.9. "DNREC Allocation Confirmation" has the meaning set forth in Section 4.1(b)(i).

1.10. "DNREC Approvals" means the DNREC Allocation Confirmation, the DNREC Traded TN Allocation Approval and the DNREC Traded TP Allocation Approval.

1.11. "DNREC Traded TN Allocation Approval" has the meaning set forth in Section 4.1(b)(ii).

1.12. "DNREC Traded TP Allocation Approval" has the meaning set forth in Section 4.1(b)(iii).

1.13. "Effective Date of the Trade" has the meaning set forth in Section 3.3.

1.14. "EPA" has the meaning set forth in the Preamble.

1.15. "Execution Date" has the meaning set forth in the Preamble.

1.16. "First Automatic Permit Extension Period" has the meaning set forth in Section 7.1(a).

1.17. "Governmental Authority" means any governmental authority, regulatory or administrative agency, tribunal or court that at any applicable time regulates or enforces the Delaware Water Discharge Regulations and/or the availability, use and/or trading of the Allocations, including but not limited to DNREC and EPA.

1.18. "INVISTA" has the meaning set forth in the Preamble.

1.19. "INVISTA TN Allocation Pre-Trade" has the meaning set forth in the Preamble.

1.20. "INVISTA TP Allocation Pre-Trade" means INVISTA's individual allocation of the annual mass loading limit under the Chesapeake Bay TMDL for TP prior to the trade of Allocations described in this Agreement.

1.21. "Material Change" for a Party means an existing or anticipated change in circumstances that may materially change the Party's ownership or materially increase or decrease the Party's wastewater load or pollutant concentrations for a period longer than ninety (90) calendar days.

1.22. "Nanticoke TMDL" has the meaning set forth in the Preamble.

1.23. "NPDES" has the meaning set forth in the Preamble.

1.24. "NPDES Permit" has the meaning set forth in the Preamble.

1.25. "Party" and "Parties" have the meaning set forth in the Preamble.

1.26. "Permit Transferee" has the meaning set forth in Section 6.2.

1.27. "Renewal Permit Application" has the meaning set forth in Section 7.1(a).

1.28. "Seaford Plant" has the meaning set forth in the Preamble.

1.29. "Second Automatic Permit Extension Period" has the meaning set forth in Section 7.1(b).

1.30. "Second Renewal Permits" has the meaning set forth in Section 7.1(b).

1.31. "Term" has the meaning set forth in Section 7.1(a).

1.32. "TMDL" has the meaning set forth in the Preamble.

1.33. "TN" has the meaning set forth in the Preamble.

1.34. "TP" has the meaning set forth in the Preamble.

1.35. "Traded TN Allocation" has the meaning set forth in Section 3.1(a).

1.36. "Traded TP Allocation" has the meaning set forth in Section 3.1(b).

2. ALLOCATIONS

2.1. 2014 Renewal Permit Allocations. The Parties acknowledge and agree that:

(a) For purposes of the City's 2014 Renewal Permit, the City TP Allocation Pre-Trade is expected to be Eight Thousand Six Hundred Nineteen (8,619) pounds per year, calculated as a moving 12-month cumulative load, and the City TN Allocation Pre-Trade is expected to be Thirty Four Thousand Two Hundred Fifty Three (34,253) pounds per year, calculated as a moving 12-month cumulative load; and

(b) For purposes of INVISTA's 2014 Renewal Permit, the INVISTA TP Allocation Pre-Trade is expected to be non-detect, defined as less than or equal to 0.1 mg/l net, and the INVISTA TN Allocation Pre-Trade is expected to be One Hundred Seventy One Thousand Eight Hundred Eighteen (171,818) pounds per year, calculated as a moving 12-month cumulative net load.

2.2. Basis for Trade. The Allocations set forth in Section 2.1 that are expected for purposes of the Parties' 2014 Renewal Permits are the basis for the trade set forth in this Agreement.

3. TRADE AND USE OF ALLOCATIONS

3.1. Trade.

(a) The City shall (i) transfer to INVISTA all of the City's authorization and interest under the NPDES program in a total of One Thousand Four Hundred Sixty Pounds (1,460) pounds per year, calculated as a moving 12-month cumulative load, of the City TP Allocation Pre-Trade ("Traded TP Allocation") for use by INVISTA as set forth herein, and (ii) accept a limit for TP in its 2014 Renewal Permit that prohibits the City from discharging the amount of TP specified in the Traded TP Allocation.

(b) INVISTA shall (i) transfer to the City all of INVISTA's authorization and interest in a total of Twenty-Seven Thousand Four Hundred Thirty One (27,431) pounds per year, calculated as a moving 12-month cumulative net load, of the INVISTA TN Allocation Pre-Trade ("Traded TN Allocation") for use by the City as set forth herein, and (ii) accept a limit for TN in its 2014 Renewal Permit that prohibits INVISTA from discharging the amount of TN specified in the Traded TN Allocation.

3.2. Use.

(a) The City shall use the Traded TN Allocation solely to enable DNREC to establish the applicable new TN limits in its 2014 Renewal Permit.

(b) INVISTA shall use the Traded TP Allocation solely to enable DNREC to establish the applicable new TP limits in its 2014 Renewal Permit.

3.3. Effective Date of the Trade. Unless otherwise agreed by the Parties, the effective date of the trade ("Effective Date of the Trade") shall be the date on which the first 2014 Renewal Permit is issued to the City or to INVISTA.

4. DNREC CONFIRMATION AND APPROVAL

4.1. Submissions to DNREC. As soon as practicable after the Execution Date, the Parties shall:

(a) prepare and jointly submit to DNREC the petition and supporting documentation described in section 8.3.3 of the Delaware Water Discharge Regulations; and

(b) jointly request one or more written communications from DNREC:

(i) confirming in material respects the Allocations set forth in Section 2.1 ("DNREC Allocation Confirmation");

(ii) stating that the Traded TN Allocation will be used by DNREC to establish a discharge limit for TN in the City's 2014 Renewal Permit that is no less than Sixty One Thousand Six Hundred Eighty Four (61,684) pounds per year, calculated as a moving 12-month cumulative load (the "DNREC Traded TN Allocation Approval"); and

(iii) stating that the Traded TP Allocation will be used by DNREC to establish a discharge limit for TP in INVISTA's 2014 Renewal Permit that is no less than One Thousand Four Hundred Sixty (1,460) pounds per year, calculated as a moving 12-month cumulative net load (the "DNREC Traded TP Allocation Approval").

4.2. DNREC Response.

(a) Each Party shall provide to the other Party copies of any written communications from DNREC or any other Governmental Authority and will advise the other Party of any oral communications from DNREC or any other Governmental Authority with

respect to the petition submitted and the request made pursuant to Section 4.1, including but not limited to the DNREC Approvals and any communications related to the DNREC Approvals.

(b) Each Party shall use commercially reasonable efforts to respond to any request from DNREC or any other Governmental Authority for further information in response to the request made pursuant to Section 4.1, and to otherwise obtain the DNREC Approvals, and shall provide to the other Party prior to submission copies of all communications to DNREC or any other Governmental Authority with regard to the petition submitted and the request made pursuant to Section 4.1 and the DNREC Approvals, and shall collaborate with each other on all such communications to DNREC or other Governmental Authority.

(c) The Parties acknowledge and agree that any of the DNREC Approvals may be contained in one or both of the respective draft renewal NPDES Permits issued by DNREC for public notice and comment in accordance with applicable law.

5. REPRESENTATIONS AND WARRANTIES

5.1. **The City's Representations and Warranties.** The City makes the following representations and warranties to and for the benefit of INVISTA as of the Execution Date and as of the Effective Date of the Trade:

(a) To its knowledge, the City has sufficient authorization and interest in the City TP Allocation Pre-Trade to enable the City to transfer the Traded TP Allocation to INVISTA, and the City has not traded or entered into any agreement to trade all or any portion of the City TP Allocation Pre-Trade to any person or entity other than INVISTA.

(b) The City has sought from DNREC in connection with its 2014 Renewal Permit the pre-trade Allocations set forth in Section 2.1(a).

(c) This Agreement is the legal, valid and binding obligation of the City and the person signing this Agreement on behalf of the City has authority to sign on behalf of and bind the City.

(d) There is no pending or, to its knowledge, threatened litigation, arbitration or administrative proceeding that materially and adversely affects its ability to perform under this Agreement.

(e) The City has dealt with no broker or agent in connection with this transaction.

5.2. **INVISTA's Representations and Warranties.** INVISTA makes the following representations and warranties to and for the benefit of the City as of the Execution Date and as of the Effective Date of the Trade:

(a) To its knowledge, INVISTA has sufficient authorization and interest in the INVISTA TN Allocation Pre-Trade to enable INVISTA to transfer the Traded TN Allocation to the City, and INVISTA has not traded or entered into any agreement to trade all or any portion of the INVISTA TN Allocation Pre-Trade to any person or entity other than the City.

(b) INVISTA has sought from DNREC in connection with its 2014 Renewal Permit the pre-trade Allocations set forth in Section 2.1(b).

(c) This Agreement is the legal, valid and binding obligation of INVISTA and the person signing this Agreement on behalf of INVISTA has authority to sign on behalf of and bind INVISTA.

(d) There is no pending or, to its knowledge, threatened litigation, arbitration or administrative proceeding that materially and adversely affects its ability to perform under this Agreement.

(e) INVISTA has dealt with no broker or agent in connection with this transaction.

5.3. LIMITATION OF WARRANTIES. ALL OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY HEREUNDER WITH RESPECT TO ANY FUTURE ACTION OR FAILURE TO ACT OR APPROVAL OR FAILURE TO APPROVE BY ANY GOVERNMENTAL AUTHORITY.

6. OTHER COVENANTS AND AGREEMENTS

6.1. Maintenance of Traded TN Allocation and Traded TP Allocation.

(a) The City shall ensure that the full Traded TP Allocation is available for use by INVISTA throughout the Term. In the event the City becomes aware of any action or event that potentially may cause the reduction or loss, totally or partially, of the Traded TP Allocation, the City shall, within three (3) business days of becoming aware of such action or event, notify INVISTA of such action or event.

(b) INVISTA shall ensure that the full Traded TN Allocation is available for use by the City throughout the Term. In the event INVISTA becomes aware of any action or event that potentially may cause the reduction or loss, totally or partially, of the Traded TN Allocation, INVISTA shall, within three (3) business days of becoming aware of such action or event, notify the City of such action or event.

6.2. Transfer of NPDES Permit. Neither Party shall transfer or assign its 2014 Renewal Permit, or any other NPDES Permit issued to such Party that incorporates the trades set forth in this Agreement, to any other person or entity ("Permit Transferee") without (a) providing written notice to the other Party prior to any such transfer or assignment, (b) transferring or assigning to the Permit Transferee, and causing the Permit Transferee to assume, all of such Party's rights and obligations under this Agreement, and (c) providing written notice to DNREC and complying with DNREC's requirements for NPDES Permit transfers.

6.3. **Fees and Expenses.** Each Party shall be responsible for any and all fees, taxes and expenses incurred by it and arising from the contemplated transactions, including but not limited to attorneys' fees and expenses associated with any disputes, including without limitation any third party disputes regarding any aspect of this Agreement.

6.4. **Inconsistency with NPDES Permits.** In the event of any inconsistency between this Agreement and an effective NPDES Permit issued to a Party, the provisions of the NPDES Permit will control, except to the extent an NPDES Permit limits or prohibits a Party's ability to terminate this Agreement pursuant to Article 7. The Parties' rights to terminate this Agreement pursuant to Article 7 shall not be eliminated, modified or otherwise affected by the provisions of any NPDES Permit.

7. TERM; TERMINATION; DEFAULT AND REMEDIES

7.1. Term.

(a) Subject to the early termination and extension provisions set forth in this Section 7, the term ("Term") of this Agreement will continue for the full term of the 2014 Renewal Permit that has a later expiration date; provided, that if either Party (or both Parties) has submitted to DNREC (or other authorized Governmental Authority) a complete, timely and valid application ("Renewal Permit Application") to extend or renew its 2014 Renewal Permit in accordance with applicable Delaware Water Discharge Regulations, the Term will automatically continue for the period following expiration of both 2014 Renewal Permits until the date on which DNREC acts on the Renewal Permit Application or Applications filed by a Party or Parties ("First Automatic Permit Extension Period"), at which time the Term will be extended or this Agreement will terminate as provided in Section 7.1(b).

(b) (i) The Term will be extended beyond the First Automatic Permit Extension Period in the event (A) either Party delivers written notice of extension to the other Party no later than one (1) year prior to the expiration date of the 2014 Renewal Permit of the Party seeking the extension, (B) the other Party does not object to such extension by delivering written notice of its objection to the Party seeking the extension, no later than ninety (90) calendar days after receiving notice of the requested extension, and (C) both Parties seek and DNREC issues renewal or extended NPDES Permits ("Second Renewal Permits") to both Parties. The Parties acknowledge and agree that the Term will not be extended beyond the First Automatic Permit Extension Period unless and until DNREC (or other authorized Governmental Authority) issues Second Renewal Permits to both Parties that reflect the terms of this Agreement, and if DNREC does not reflect the terms of this Agreement in the Second Renewal Permits or notifies either or both Parties after the expiration date of the 2014 Renewal Permit that a Second Renewal Permit will not be issued, this Agreement will terminate.

(ii) If all of the events described in Sections 7.1(b)(i)(A), (B) and (C) occur, the Term will be extended until the expiration date of the Second Renewal Permit that has a later expiration date; provided, that if either Party (or both Parties) has submitted to DNREC (or other authorized Governmental Authority) a complete, timely and valid Renewal Permit Application to extend or renew its Second Renewal Permit, the Term will automatically continue for the period following expiration of both Second Renewal Permits until the date on which

DNREC acts on the Renewal Permit Application or Applications filed by a Party or Parties ("Second Automatic Permit Extension Period"), at which time this Agreement shall terminate, unless DNREC (or other authorized Governmental Authority) issues renewal or extended NPDES Permits to both Parties that reflect the terms of this Agreement and the Parties agree in writing to further extend the Term beyond the Second Automatic Permit Extension Period.

(iii) If any of the events described in Sections 7.1(b)(i)(A), (B) and (C) does not occur, the Term will not be extended beyond the First Automatic Permit Extension Period, unless otherwise agreed by the Parties and consented to by DNREC.

7.2. Termination Prior to Effective Date of the Trade.

(a) This Agreement may be terminated prior to the Effective Date of the Trade by either Party upon written notice of termination to the other Party, in the event:

(i) there is a change in the Delaware Water Discharge Regulations or an administrative or legal decision or opinion by any Governmental Authority, including but not limited to any change, decision or opinion resulting from a third party challenge, in each case that materially and adversely affects the City's ability to acquire, hold and use the Traded TN Allocation or INVISTA's ability to acquire, hold and use the Traded TP Allocation as set forth in this Agreement;

(ii) the DNREC Allocation Confirmation is not received by December 31, 2014; or

(iii) there is a material breach of this Agreement by the other Party; and

(A) where such breach is capable of remedy, the other Party fails to remedy the same within thirty (30) calendar days of a written notice from the Party specifying the breach; or

(B) if the breach is not capable of remedy, the Party specifying the breach provides thirty (30) calendar days' prior written notice to the other Party.

(b) This Agreement may be terminated prior to the Effective Date of the Trade by the City upon written notice of termination to INVISTA, in the event:

(i) the City is advised by DNREC or otherwise has a reasonable basis for determining that the City TN Allocation Pre-Trade is materially different than the amount set forth in Section 2.1(a) or the City TP Allocation Pre-Trade is materially less than the amount set forth in Section 2.1(a); or

(ii) the City is advised by DNREC or otherwise has a reasonable basis for determining that DNREC will not issue the TN Allocation Trade Approval.

(c) This Agreement may be terminated prior to the Effective Date of the Trade by INVISTA upon written notice of termination to the City, in the event:

(i) INVISTA is advised by DNREC or otherwise has a reasonable basis for determining that the INVISTA TP Allocation Pre-Trade is materially different than the amount set forth in Section 2.1(b) or the INVISTA TN Allocation Pre-Trade is materially less than the amount set forth in Section 2.1(b); or

(ii) INVISTA is advised by DNREC or otherwise has a reasonable basis for determining that DNREC will not issue the TP Allocation Trade Approval.

(d) This Agreement shall be terminated automatically if the Effective Date of the Trade has not occurred by June 30, 2015.

(e) A Party seeking termination under this Section 7.2 shall include with its notice of termination to the other Party a written description of the facts and circumstances providing the basis for any such termination.

7.3. Termination After Effective Date of the Trade. This Agreement may be terminated after the Effective Date of the Trade, prior to the end of the Term, by either Party as follows:

(a) immediately upon written notice of termination to the other Party and DNREC, in the event either Party chooses, in its sole discretion, to terminate the Agreement within the first sixty (60) days after the Effective Date of the Trade;

(b) thirty (30) calendar days after written notice of termination to the other Party and DNREC, in the event there is a change in the Delaware Water Discharge Regulations or an administrative or legal decision or opinion by any Governmental Authority, including but not limited to any change, decision or opinion resulting from a third party challenge, in each case that materially and adversely affects the City's ability to acquire, hold and use the Traded TN Allocation or INVISTA's ability to acquire, hold and use the Traded TP Allocation as set forth in this Agreement, including but not limited to a material reduction in the Traded TN Allocation or the Traded TP Allocation;

(c) one (1) year after written notice of termination to the other Party and DNREC, in the event there is a Material Change for a Party, as determined by the Party; or

(d) thirty (30) calendar days after written notice of termination to the other Party and DNREC, in the event there is a material breach of this Agreement by the other Party that occurs or is discovered after the Effective Date of the Trade; and

(i) where such breach is capable of remedy, the other Party fails to remedy the same within thirty (30) calendar days of a written notice from the Party specifying the breach; or

(ii) if the breach is not capable of remedy, the Party specifying the breach provides thirty (30) calendar days' prior written notice to the other Party.

A Party seeking termination under Section 7.3(b), (c) or (d) shall include with its notice of termination to the other Party a written description of the facts and circumstances providing the

basis for any such termination.

7.4. Effect of Termination.

(a) Upon the termination of this Agreement prior to the Effective Date of the Trade, neither Party shall have any liability to the other Party unless the Agreement is terminated by one Party due to the breach by the other Party, in which case Section 7.5 shall apply.

(b) Upon the termination of this Agreement after the Effective Date of the Trade:

(i) the Traded TP Allocation shall automatically be transferred to the City by INVISTA and available for use by the City in any manner allowed by the Delaware Water Discharge Regulations or other applicable legal requirements;

(ii) the Traded TN Allocation shall automatically be transferred to INVISTA by the City and available for use by INVISTA in any manner allowed by the Delaware Water Discharge Regulations or other applicable legal requirements;

(iii) if needed, each Party shall take all steps necessary to obtain a modification of its 2014 Renewal Permit or other relevant NPDES Permit to reflect the transfer of the Traded TP Allocation back to the City and the transfer of the Traded TN Allocation back to INVISTA; and

(iv) neither Party shall have any liability to the other Party unless the Agreement is terminated by one Party due to the breach by the other Party, in which case Section 7.5 shall apply.

7.5. Defaults and Remedies. In the event of any default by a Party under this Agreement, the non-defaulting Party's only recourse shall be termination of the Agreement and/or a claim for breach of contract, and any damages sought or recovered as a result of such a claim shall be subject to the limitation of liability set forth in Section 7.6.

7.6. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST OR PROSPECTIVE PROFITS, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST EARNINGS, LOST PROFITS OR BUSINESS INTERRUPTION, WHETHER OR NOT BASED UPON A PARTY'S NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE, AND NO PARTY WILL BE REQUIRED TO PAY OR BE LIABLE FOR CONSEQUENTIAL DAMAGES.

7.7. Survival. The provisions of Sections 1, 2, 5.3, 6.3, 7.4, 7.5, 7.6, 7.7 and 8 shall survive any termination of this Agreement. The representations and warranties set forth in Sections 5.1 and 5.2 shall survive the Effective Date of the Trade for the full Term of this Agreement.

8. MISCELLANEOUS

8.1. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Transmission of electronic copies of any signed original agreement will be deemed the same as delivery of an original. At the request of either Party, the Parties will confirm electronic copies of any signed original document by signing and delivering a duplicate original document.

8.2. **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed given when delivered personally by hand or by overnight courier (with written confirmation of receipt) to the following addresses (or to such other address as a Party may have specified by notice given to the other Party pursuant to this provision):

(a) If to the City, to:

City of Seaford, Delaware
414 High Street
Seaford, Delaware 19973
Attn: City Manager

(b) If to INVISTA, to:

INVISTA S.à r.l. – Seaford Plant
25876 DuPont Road
Seaford, Delaware 19973
Attn: Environmental Manager

With a copy to:

INVISTA S.à r.l.
175 Townpark Drive NW, Suite 200
Kennesaw, Georgia 30144
Attn: Chief Counsel – PS&M

8.3. **Entirety.** This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements or understandings between the Parties. The Parties have voluntarily agreed to define their rights, liabilities and obligations respecting the transactions contemplated hereby in contract pursuant to the express terms and provisions of this Agreement and the Parties expressly disclaim that they are owed any duties or are entitled to any remedies not expressly set forth in this Agreement. Furthermore, the Parties each hereby acknowledge that this Agreement embodies the justifiable expectations of sophisticated parties derived from arm's-length negotiations.

8.4. **Governing Law; Jurisdiction.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the laws of the State of Delaware or any other jurisdiction that would call for the application of the substantive laws of any jurisdiction other than Delaware.

(b) The appropriate, exclusive and convenient forum for any disputes between any of the Parties hereto arising out of or related to this Agreement or the transactions contemplated hereby shall be any state or federal Court in the State of Delaware. Each of the

Parties hereto irrevocably submits to the jurisdiction of such courts solely in respect of any disputes arising out of or related to this Agreement or the transactions contemplated hereby.

(c) **THE PARTIES HERETO AGREE THAT THEY HEREBY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY DISPUTES BETWEEN ANY OF THE PARTIES HERETO ARISING OUT OF ALL RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

8.5. **Amendments; Waiver.** This Agreement may be amended, supplemented or modified in whole or in part if, but only if, such amendment, supplement or modification is in writing and is signed by each Party and specific reference to this Agreement is made. Any amendment, supplement or modification to this Agreement also is subject to the consent of DNREC. Any provision of this Agreement may be waived if, but only if, such waiver is in writing and is signed by the Party or Parties against whom enforcement of any such waiver is sought and specific reference to this Agreement is made. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

8.6. **Interpretation.** The section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.

8.7. **Assignment.** No assignment of this Agreement or of any rights or obligations hereunder may be made by the City or INVISTA, directly or indirectly (by operation of law or otherwise), without the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld, conditioned or delayed, and any attempted assignment without the required consent shall be null and void and without any legal effect; provided, however, that either Party may assign its rights or obligations hereunder pursuant to Section 6.2 without the consent of the other Party.

8.8. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. The Parties further agree that if any provision contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, they shall take any actions necessary to render the remaining provisions of this Agreement valid and enforceable to the fullest extent permitted by law and, to the extent necessary, shall amend or otherwise modify this Agreement to replace any provision contained herein that is held invalid or unenforceable with a valid and enforceable provision giving effect to the intent of the Parties to the greatest extent legally permissible.

8.9. **Third Party Beneficiaries.** Nothing expressed or implied in this Agreement shall create or be deemed to create any third party beneficiary rights in any person not a party to this Agreement.

* * * * *

IN WITNESS WHEREOF this Nitrogen-Phosphorus Trading Agreement has been duly executed and delivered by each Party as of the date first above written.

CITY OF SEAFORD, DELAWARE

By: David C. Genshaw
Name: David C. Genshaw
Title: Mayor

By: Dolores J. Slatcher
Name: Dolores J. Slatcher
Title: Attest; Secretary of Council

INVISTA S.À R.L.

By: _____
Name: Willie V. Scott
Title: Sr. V.P. Operations, PS&M

* * * * *

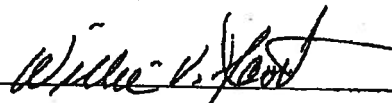
IN WITNESS WHEREOF this Nitrogen-Phosphorus Trading Agreement has been duly executed and delivered by each Party as of the date first above written.

CITY OF SEAFORD, DELAWARE

By: _____
Name: David C. Genshaw
Title: Mayor

By: _____
Name: Dolores J. Slatcher
Title: Attest; Secretary of Council

INVISTA S.A.R.L.

By: 
Name: Willie V. Scott
Title: Sr. V.P. Operations, PS&M





N. B. 3
9/22/15

September 15, 2015

Dolores J. Slatcher
City Manager
City of Seaford
PO Box 1100
Seaford, DE 19973

Dear Ms. Slatcher:

This is to confirm the following. Fiber Technologies Networks, L.L.C. ("Lighttower"), has reported to the City of Seaford ("the City") that it has a contract to provide fiber-optic connections to buildings in the City to serve the State of Delaware (the "State"). Lighttower acknowledges that City law requires that, in order to provide telecommunications services in the City, Lighttower must reach a franchise agreement with the City consistent with City ordinances. Negotiating and signing such an agreement prior to the installation of the fiber-optic facilities needed to serve the State, however, would prevent the State from securing the benefits of such facilities in a timely manner. Therefore, the City has offered to permit such installation to serve the State, as well as the maintenance of the facilities once installed, pursuant to a license that will run until the earlier of the expiration of six months from the date of this letter or the final execution of the franchise agreement. Lighttower acknowledges that, under the license offered by the City, which Lighttower accepts by means of this letter, Lighttower will be required to comply with all requirements relating to the performance of work within City rights-of-way with which franchised telecommunications service providers must comply, including the obtaining of work permits from the appropriate authorities having jurisdiction, providing certificates demonstrating adequate insurance coverage, and the securing of traffic control and other mandated police services, if any.

Lighttower looks forward to negotiating a franchise agreement with the City and to contributing to the City's continued success in the years ahead as a responsible corporate citizen.

Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "James A. Hoare".

James A. Hoare
Assistant General Counsel
Access Strategy

