

REVISED 10-21-15

**AGENDA
REGULAR MEETING OF THE MAYOR AND COUNCIL
October 27, 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.
- Executive Session - Personnel.
- Changes to agenda for this meeting.
- Approval of minutes of the Regular Council meeting of October 13, 2015.

CORRESPONDENCE:

1. Letter Office State Planning Coordination affirming the Downtown Development District Expansion for Seaford.

NEW BUSINESS:

1. Present for approval the Resolution approving the issuance of up to \$1,658,000 maximum aggregate principal amount of a general obligation bond to the Delaware Department of Natural Resources and Environmental Control, Delaware Water Pollution Control, Revolving Fund, as registered owner to finance the installation and operation of a Renewable Energy Generating System by the City of Seaford as approved by the electors; setting forth the form and details of the Bond; determining that the Bond will be sold by private sale and authorizing execution of a financing agreement; pledging the full faith, credit and taxing power of the City of Seaford for the Bond; and authorizing other necessary actions.
2. Present for approval the proposal from Pennoni for the bid phase services for the Ground Mounted Photovoltaic Generating Facility.
3. Trisha Newcomer, Information Technology Manager to present the creation, cost, guidelines, and implementation of a City Facebook page.
4. Berley Mears, Director of Public Works to review the National Pollution Discharge Elimination System (N.P.D.E.S.) permit renewal and compliance schedule in the permit renewal.
5. Presentation of the quarterly review for the FY16 budget.

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AGENDA

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6. Present for approval Purchase and Sale Agreements between the City of Seaford and Seaford Development Associates, LLC for lands as listed below:
 - a. First Purchase and Sale Agreement -
 - i. Sussex County Tax Parcel - 4-31-5.00-208.00 (vacant lot)
 - b. Second Purchase and Sale Agreement -
 - i. Sussex County Tax Parcel - 4-31-5.00-291.00 (Power Plant)
 - ii. Sussex County Tax Parcel - 4.31-5.00-294.01 (Power Plant)
 - iii. Sussex County Tax Parcel - 4-31-5.00-301.00 (Power Plant)
 - iv. Sussex County Tax Parcel - 4-31-5.00-296.00 (Vacant lot)
 - v. Sussex County Tax Parcel - 4-31-5.00-297.00 (Vacant lot)

OLD BUSINESS:

1. Revisit the hours for the special elections for borrowing money and annexations to be in conjunction with the Municipal Election hours.

PUBLIC COMMENT PERIOD:

REMINDER OF MEETINGS & SETTING NEW MEETINGS:

1. Sussex County Coalition, Heritage Shores, October 28th - 6 p.m.
2. DSA, Halloween Parade & Party, Downtown Seaford, October 28th - 7 p.m.
3. Trick or Treat, City of Seaford, October 31st - 6 p.m. - 8 p.m.
4. SCAT, Millsboro Town Center, November 4th - 6 p.m.
5. 1st Saturday, lands behind City Hall, November 7th, 12 noon - 5 p.m.

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**

EXECUTIVE SESSION:

1. Discuss personnel

Mayor Genshaw solicits a motion to hold an Executive Session for the purpose of discussing personnel negotiations.

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. §1004 (e) (3))

Agenda
10-27-15

NB1

RESOLUTION

APPROVING THE ISSUANCE OF UP TO \$1,658,300 MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF A GENERAL OBLIGATION BOND TO THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, DELAWARE WATER POLLUTION CONTROL REVOLVING FUND, AS REGISTERED OWNER, TO FINANCE THE INSTALLATION AND OPERATION OF A RENEWABLE ENERGY GENERATING SYSTEM BY THE CITY OF SEAFORD AS APPROVED BY THE ELECTORS; SETTING FORTH THE FORM AND DETAILS OF THE BOND; DETERMINING THAT THE BOND WILL BE SOLD BY PRIVATE SALE AND AUTHORIZING EXECUTION OF A FINANCING AGREEMENT; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE CITY OF SEAFORD FOR THE BOND; AND AUTHORIZING OTHER NECESSARY ACTION

WHEREAS, the City Council of the City of Seaford (the "City") pursuant to Section 35 of 53 Del. Laws Ch. 42, as amended (the "Charter"), proposed to the electors of the City by Resolution dated July 28, 2015 (the "First Resolution") to borrow up to one million six hundred fifty-eight thousand and three-hundred dollars (\$1,658,300) principal amount in order to: (i) finance the installation and operation of a renewable energy generating system (a ground mounted solar array) that will offset a portion (approximately 54%) of the energy consumption at the City's Waste Water Treatment Plant; and (ii) pay the costs of issuance of the Bond (as hereinafter defined) (collectively, the "Project"), and fixed a time, date and place for a public hearing on the First Resolution. Notice of the public hearing on the First Resolution was properly placed as required by the Charter; and

WHEREAS, the public hearing was held in accordance with the Charter on August 25, 2015 and the City Council, by affirmative vote of its members, thereafter passed a second resolution on August 25, 2015 (the "Second Resolution") ordering a special election to be held not less than thirty days and not more than sixty days after the public hearing to borrow the said money, for the purpose of voting for or against the proposed loan. The passage of the Second Resolution calling the special election was considered the City Council's determination to proceed in the matter at issue as authorized by the Charter, Section 35(c); and

WHEREAS, the Mayor submitted to City Council, and City Council approved, the names of three individuals to serve as the Board of Election with respect to a special election and to conduct the special election, and such special election was held on September 28, 2015 (the "Special Election"), and notice was properly given for the Special Election, whereby a majority of the electors approved the borrowing by voting in the Special Election which was conducted and certified in accordance with the provisions of Sections 35(e)-(g) of the Charter; and

WHEREAS, the Delaware Department of Natural Resources and Environmental Control has authorized a loan to the City from the Delaware Water Pollution Control Revolving Fund in

the amount of up to one million six hundred fifty-eight thousand and three-hundred dollars (\$1,658,300), for a term equal to the construction period plus twenty (20) years, at an interest rate and administrative fee together equaling the combined rate of 2.00%, and, upon completion of the Project, principal forgiveness in the amount of \$500,000 of the outstanding loan principal amount; and

WHEREAS, Section 35(g) of the Charter authorizes the City to borrow sums, to be included in its total bonded indebtedness, not exceeding in the aggregate 25% of the value of the real property situate within the limits of the City as shown by the last assessment preceding the creation of this proposed indebtedness; and

WHEREAS, the City now proposes to issue up to \$1,658,300 maximum aggregate principal amount of a General Obligation Bond (the "Bond") to finance the Project as approved by the electors in the Special Election; and

WHEREAS, the City Council desires to formalize, ratify, and confirm such action by adoption of a formal written resolution.

NOW, THEREFORE, BE IT HEREBY RESOLVED AND DETERMINED by the City Council of the City of Seaford, as follows:

Section 1. Authorization of the Incurrence of Indebtedness as Approved by the Electors. The City shall borrow the sum of up to one million six hundred fifty-eight thousand and three-hundred dollars (\$1,658,300) as approved by referendum of the electors in the Special Election held on September 28, 2015, by the issuance of the Bond, which together with other bonded indebtedness of the City does not exceed in the aggregate 25% of the value of the real property situate within the limits of the City as shown by the last assessment preceding the creation of this proposed indebtedness.

Section 2. Authorization of Issuance of the Bond. The City shall issue, pursuant to the Charter and the First and Second Resolutions and this Resolution, up to \$1,658,300 aggregate principal amount of its General Obligation Bond, to provide funds for the Project.

Section 3. Form and Terms of the Bond. The Bond shall be substantially in the Form of Bond provided in **Exhibit A** with appropriate omissions, insertions and variations. The actual Bond will contain the terms of the Bond as required by Section 35(g) of the Charter. The Bond will be issued for a term equal to the construction period plus twenty (20) years, at an interest rate of 1.00% per annum and an administrative fee at the rate of 1.00% per annum. Upon completion of the Project, \$500,000 of the outstanding loan principal amount shall be forgiven.

Section 4. Sale of the Bond. The Bond shall be sold at a private sale by negotiation to the Delaware Department of Natural Resources and Environmental Control, Delaware Water Pollution Control Revolving Fund (the "Department") pursuant to the terms of the Bond and the Financing Agreement.

Section 5. Covenant to Pay Debt Service - Pledge of Full Faith, Credit and Taxing Power. The City hereby covenants with the registered owner of the Bond (the Department) pursuant to

this Resolution as follows: that the City will include in its budget for each fiscal year during the life of the Bond, the amount of the debt service on the Bond issued hereunder which will be payable in each such fiscal year so long as the Bond shall remain outstanding; that the City shall appropriate such amounts from its general revenues to the payment of such debt service; that the City shall duly and punctually pay or cause to be paid the principal of the Bond and the interest and fee thereon at the dates and places and in the manner stated in the Bond according to the true intent and meaning thereof; and for such budgeting, appropriation and payment the City hereby pledges its full faith, credit and taxing power. The covenant contained in this Section 5 shall be specifically enforceable.

Section 6. Authorization of the Financing Agreement. The Mayor and the Secretary of Council of the City Council are hereby authorized to execute and deliver the Financing Agreement (the "Financing Agreement") by and between the City and the Department setting forth the terms of the loan and the City's obligation to repay the loan, which will be evidenced by the execution of the Financing Agreement and delivery of the Bond.

Section 7. Further Action. The proper officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, publish all notices and otherwise comply with the provisions of this Resolution and the Charter in the name and on behalf of the City.

Section 8. Charter Applicable to the Bond. This Resolution is adopted pursuant to, and the Bond issued hereunder shall be subject to, the provisions of the Charter and all of the mandatory provisions thereof shall apply hereunder whether or not explicitly stated herein.

Section 9. Contract with Bondholder. This Resolution constitutes a contract with the Department as registered owner of the Bond and shall be enforceable in accordance with the provisions of the laws of the State of Delaware.

Section 10. Severability. In case any one or more of the provisions contained in this Resolution or in the Bond issued pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Resolution or of said Bond and this Resolution or said Bond shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

Section 11. Repealer. All Resolutions and parts of Resolutions heretofore adopted to the extent that the same are inconsistent herewith are hereby repealed.

Section 12. Effective Date. This Resolution shall take effect on the date this Resolution is adopted by the City Council.

ADOPTED AND RESOLVED this 27th day of October, 2015.

(CITY SEAL)

Attest: _____
Dolores J. Slatcher,
Secretary of Council

_____ Date

_____ David Genshaw
Mayor

**Exhibit A
Form of Bond**

**REGISTERED
R-1**

\$1,658,300

**UNITED STATES OF AMERICA
STATE OF DELAWARE
CITY OF SEAFORD**

**GENERAL OBLIGATION BOND
(RENEWABLE ENERGY GENERATING SYSTEM PROJECT)
SERIES _____-SRF**

Projected Final Maturity Date: _____, 20__

REGISTERED OWNER: Delaware Water Pollution Control Revolving Fund, acting by and through the Delaware Department of Natural Resources and Environmental Control.

PRINCIPAL AMOUNT: One Million Six Hundred Fifty-Eight Thousand and Three-Hundred Dollars (\$1,658,300)

THE CITY OF SEAFORD, a municipal corporation and political subdivision of the State of Delaware (hereinafter referred to as the "Borrower"), for value received hereby acknowledges itself indebted and promises to pay to the DELAWARE WATER POLLUTION CONTROL REVOLVING FUND, or to any other registered owner hereof, the principal sum of ONE MILLION SIX HUNDRED FIFTY-EIGHT THOUSAND AND THREE-HUNDRED DOLLARS (\$1,658,300) or so much thereof as shall actually be advanced to the Borrower by the Delaware Water Pollution Control Revolving Fund acting by and through the Delaware Department of Natural Resources and Environmental Control (the "Department") pursuant to the Financing Agreement dated _____, 20__ (the "Financing Agreement") between the Borrower and the Department.

The Bond is being issued in order to: (i) finance the installation and operation of a renewable energy generating system (a ground mounted solar array) that will offset a portion (approximately 54%) of the energy consumption at the City's Waste Water Treatment Plant, as more fully described in Exhibit A to the Financing Agreement (collectively, the "Project") and (ii) pay the costs of issuing the Bond.

The Borrower shall pay to the Department, on the principal amount drawn down and outstanding hereunder from the date(s) drawn, interest at the rate of 1.00% per annum and an administrative fee at the rate of 1.00% per annum (collectively, interest and the administrative fee are referred to herein as "Fee"). Such Fee shall accrue starting on the date hereof (the

"Closing") through the completion of the Project or through the final maturity date or prepayment in full hereof. The Borrower shall pay Fee hereunder initially on _____, 20__ and semiannually thereafter on each _____ and _____ (each, a "Payment Date"). The Borrower shall pay only Fee and no principal during the period commencing with the Closing through the Payment Date next succeeding the date on which the Project is actually completed (currently expected to be [September 30, 2016] as of the Closing). The date the Project is completed is the "Amortization Start Date." After the Amortization Start Date, and subject to any principal forgiveness set forth herein, Fee and principal shall be payable on the outstanding principal amounts drawn hereunder semiannually, on each Payment Date, commencing on the Payment Date next succeeding the Amortization Start Date and continuing on each of the next 39 following Payment Dates, in an amount sufficient to amortize all principal drawn with substantially equal semiannual payments of principal and Fee over twenty (20) years. Once determined, Payment Dates shall remain the same throughout the term of this Bond.

The Borrower expects to complete the Project by [September 30, 2016]. This projected date of completion of the Project is subject to an extension if such extension is mutually agreed upon by the Department and the Borrower. Upon the date of completion of the Project, up to \$500,000 of the outstanding loan principal amount will be forgiven by the Department. The remaining outstanding principal amount plus Fee will be due and payable as hereinbefore outlined.

The Amortization Start Date and the projected final maturity date are based on the expected Project completion date, as of the Closing, of [September 30, 2016] and are subject to change should the actual completion date of the Project vary from the expected date of completion. Once the Borrower has confirmed the Project is completed and/or notified the Department that no additional funds will be drawn or requested for the Project, the Amortization Start Date will commence.

If by _____, 20__, which is one year from the date of Closing, (i) the Borrower has not drawn down the principal amount of this Bond by more than ten percent (10%) of the Project costs, and (ii) the Department has not received a Notice to Proceed as required by the Financing Agreement, the Department may in its discretion assess a penalty of one percent (1%) of the total principal amount authorized by this Bond (the "Penalty"). Such Penalty may be drawn by the Department from the principal amount allocated to this Bond. It is within the Department's complete discretion whether to impose the Penalty based upon its review of affirmative steps taken by the Borrower to complete the Project and the totality of the circumstances surrounding any such delay in making draws on the principal amount of this Bond.

Notwithstanding the foregoing, all unpaid principal and Fee shall be projected to be paid in full on _____, 20__. The Fee hereon shall be calculated on the basis of a 360-day year and paid for the actual number of days elapsed. Both the principal of and Fee on this Bond are payable in lawful money of the United States of America. Principal of and Fee on this Bond shall be paid by check or draft mailed or remitted electronically on the payment date to the Registered Owner, as shown on the books and records of the Borrower.

This Bond is authorized and issued pursuant to the Laws of the State of Delaware, including Section 35 of 53 Del. Laws Ch. 42, as amended (the "Charter") and resolutions adopted by the Borrower on July 28, 2015, August 25, 2015 and October 27, 2015, a public hearing held on August 25, 2015 and a favorable special election conducted on September 28, 2015.

At the option of the Borrower and upon providing prior written notice to the Registered Owner hereof, as shown on the books and records of the Borrower, this Bond may be prepaid or redeemed in whole or in part, without penalty, at any time, and any prepayment in part of this Bond shall be applied to all or a portion of the principal installments then outstanding as shall be specified by the Borrower. If all or a portion of this Bond is called for redemption, it or the portion so called will cease to bear Fee on the specified redemption date provided that funds for the payment of the principal amount of the portion of this Bond so called for redemption and the accrued Fee thereon to the redemption date are on deposit at the place of payment on the redemption date.

It is hereby certified and recited that all conditions, acts, and things required by the Constitution, statutes or laws of the State of Delaware to exist, be performed or happen, precedent to or in the issuance of this Bond, do exist, have been performed and have happened, and that the amount of this Bond, together with all other indebtedness of the Borrower, is within every debt and other limit prescribed by said Constitution, statutes or laws. This Bond is a valid and legally binding general obligation of the Borrower and, unless paid from other sources, the principal and Fee payable hereon will be paid from ad valorem taxes levied upon all real property subject to taxation by the Borrower. The full faith and credit of the Borrower are hereby pledged to the punctual payment of the principal of and Fee on this Bond according to its terms.

This Bond may be transferred by the Registered Owner hereof in person or by its attorney duly authorized in writing. The Borrower may deem and treat the Registered Owner as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof and Fee due hereon and for all other purposes.

The provisions of this Bond shall be construed and enforced under the laws of the State of Delaware.

IN WITNESS WHEREOF, the Borrower has caused this Bond to be signed by the Mayor and attested by the Secretary of City Council, and the official corporate seal of the Borrower to be imprinted or impressed hereon, and this Bond to be dated _____, 20_____.

CITY OF SEAFORD, DELAWARE

(CITY SEAL)

David Genshaw
Mayor

Dolores J. Slatcher
Secretary of Council

[End of Form of Bond]

CERTIFICATE OF SECRETARY OF COUNCIL

The undersigned, Secretary of Council of the City Council of the City of Seaford, HEREBY CERTIFIES that:

The foregoing Resolution authorizing the issuance of a General Obligation Bond of the City of Seaford was duly moved and seconded and adopted by a majority vote of the City Council of said City at a duly called and convened public meeting of said Council held on October 27, 2015; and that the roll of the City Council was called and such members voted or were absent as follows:

<u>Name</u>	<u>Vote</u>
David Genshaw, Mayor	(if tie)
Leanne Phillips-Lowe	
Grace S. Peterson	
Dan H. Henderson	
H. William Mulvaney III	
Orlando Holland	

and that such Resolution and the votes thereon have been duly recorded in the minutes.

WITNESS my hand and seal of the City this 27th day of October, 2015.

(CITY SEAL)

Dolores J. Slatcher
Secretary of Council



Agenda
10-27-15
N.B. 2

October 7, 2015

File No. SEAF1301

Mr. Charles Anderson, Assistant City Manager
City of Seaford
P.O. Box 1100
Seaford, DE 19973

RE: GROUND MOUNTED PHOTOVOLTAIC GENERATING FACILITY

Dear Mr. Anderson:

On behalf of Pennoni Associates, Inc. we are providing this proposal for additional bid services to the City of Seaford ("City") in response to your request for a fee proposal. The proposal includes professional services for the review, update and revision to the previous bid documents for a re-advertisement and bid of the above referenced project. We are also including the effort for the bid phase services up to and including the review of the received bids.

1. Bid Phase Services

- a. Review, Update, and Revise Bid Package
- b. Provide Plan Sets and Bid Documents
- c. Facilitate/Attend Pre-Bid Meeting
- d. Bid Process (Responses to RFIs and Addendums)
- e. Attend Bid Opening
- f. Bid Review

The following fees will be charged in accordance with our enclosed General Terms and Conditions.

***Bid Phase Services*.....\$7,500.00**

Additional meetings requested by the City, may be considered Additional Services. Pennoni will notify the City for approval prior to attending meetings if the meetings are to be considered additional services.

ADDITIONAL SERVICES

It should be noted that any work performed, but not included under our scope of services, shall be considered extra work and will be billed at our then current hourly rates. Pennoni will not initiate extra work without your written authorization. The following is a list of our current hourly rates for personnel that may be involved at any time during this project:

Principal Engineer	\$140.00/hour
Senior Engineer	\$130.00/hour
Project Engineer	\$125.00/hour
Associate Engineer	\$ 75.00/hour
Senior CAD Technician	\$ 65.00/hour
Environmental Scientist	\$100.00/hour
Senior Surveyor	\$110.00/hour
2-Person Survey Crew	\$150.00/hour
Clerical	\$ 45.00/hour

SCHEDULE

We will begin work immediately upon receipt of an executed contract. The revised bid package for advertisement and bidding is expected to be provided within 3 weeks of contract execution.

BILLING AND PAYMENT

The Client acknowledges that the method of monthly billing and payment based on percentage of work performed has been discussed in detail, that the terms agreed upon can only be changed by a written addendum agreed to by both parties, and that work may be stopped until payment is made in accordance with our General Terms and Conditions.

ACCEPTANCE

Our proposal is based upon the work being performed in accordance with our enclosed General Terms and Conditions.

If this scope of work is acceptable, please indicate your authorization for Pennoni to proceed by having an authorized representative sign this proposal in the space provided below and return the executed copy to us via email, fax and/or mail.

We are pleased to have this opportunity to work with you on this project. Please do not hesitate to contact us if there are any questions regarding this proposal.

October 7, 2015

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Project #SEAF1301
Mr. Charles Anderson

City of Seaford Ground Mounted
Photovoltaic Generating Facility

Sincerely,

PENNONI ASSOCIATES INC.



Mark H. Davidson
Associate Vice President



Brian W. Miller, PE
Project Engineer

Enclosures: Pennoni General Terms & Conditions (Form LE01, dated 11/2006)

ACCEPTED BY:

City of Seaford

Date

Print Name

Title



PENNONI ASSOCIATES INC.
CONSULTING ENGINEERS

PENNONI ASSOCIATES INC.

GENERAL TERMS & CONDITIONS

SEAF1301

1. Unless withdrawn sooner, proposals are valid for thirty (30) days.
2. The technical and pricing information in proposals is the confidential and proprietary property of Pennoni Associates Inc. ("Pennoni") or any Pennoni subsidiary or affiliate. Client agrees not to use or to disclose to third parties any technical or pricing information without Pennoni's written consent.
3. The agreement created by the Client's acceptance of a proposal and these Terms & Conditions is hereinafter referred to as the "Agreement." If a proposal is submitted to Client and Client fails to return a signed copy of the proposal but knowingly allows Pennoni to proceed with the services, then Client shall be deemed to have accepted the terms of the proposal and these General Terms & Conditions. If there is a conflict or inconsistency between any express term or condition in the proposal and these General Terms & Conditions, then the proposal shall take precedence. The proposal and these General Terms & Conditions constitute the entire Agreement, and supersede any previous agreement or understanding.
4. Payment is due upon receipt of invoices as submitted. If Client chooses to make any payment via major credit card, Client agrees to pay a 3% surcharge or 1.03 times the total amount invoiced. Client agrees to pay interest at the rate of 1½ percent per month on invoices that are more than 30 days past due. If an invoice is 30 or more days past due, then Pennoni may suspend services and refuse to release work on this Agreement or any other agreement between Client and Pennoni until Client has paid all amounts due. Unless Pennoni receives written notice of Client's dispute of an invoice within 30 days of the invoice date, the invoice will be presumed correct. If payment is not made in accordance with the Agreement, then Client agrees to pay reasonable costs and attorney's fees incurred by Pennoni to collect payment.
5. All drawings, sketches, specifications and other documents ("Documents") in any form, including electronic, prepared by Pennoni are instruments of Pennoni's services, and as such are and shall remain Pennoni's property. Upon payment in accordance with the Agreement, Client shall have the right to use and reproduce the Documents solely for the purposes of constructing, remediating, using or maintaining the project contemplated by the Agreement ("Project"). The Documents are prepared for use on this Project only, and are not appropriate for use on other projects, any additions or alterations of the Project, or completion of the Project by others. Client shall not use the Documents in violation of this paragraph without Pennoni's express written consent; and such use is at the Client's sole risk. Client agrees to indemnify, defend and hold harmless Pennoni from any claims, damages, losses, liabilities and expenses arising from such prohibited use.
6. The proposed fees and schedule constitute Pennoni's best estimate of the charges and time required to complete the Project. As the Project progresses, facts uncovered may dictate revisions in scope, schedule or fee. The hourly rate schedule for services provided on a time and material basis will be subject to increases annually.
7. Fee and schedule commitments will be subject to change for delays caused by Client's failure to provide specified facilities or information, or for delays caused by third parties, unpredictable occurrences or force majeure.
8. Where the method of payment is based on time and materials, Client agrees that the following will apply: The minimum time segment for charging work is one-quarter hour, except the minimum time segment for charging of field survey work is four (4) hours. Client reimbursable expenses include travel and living expenses of personnel when away from the home office on business connected with the Project; subcontractor and subconsultant costs; identifiable communications, mailing and reproduction costs; identifiable drafting and stenographic supplies; and expendable materials and supplies purchased specifically for the Project. A ten (10) percent administrative and handling charge will be added to client reimbursable expenses.
9. Client's termination of this Agreement will not be effective unless Client gives Pennoni seven (7) days prior written notice with accompanying reasons and details, and affords Pennoni an opportunity to respond. Where the method of payment is "Lump Sum," Client agrees that the final invoice will be based on services performed to the effective date of cancellation, plus an equitable adjustment to provide for costs Pennoni incurred for commitments made prior to cancellation. Where the method of payment is time and materials, Client agrees that the final invoice will include all services and direct expenses up to the effective date of cancellation plus an equitable adjustment to provide for costs Pennoni incurred for commitments made prior to cancellation.
10. Pennoni will maintain at its own expense Workman's Compensation insurance, Commercial General Liability insurance, and Professional Liability insurance.
11. Neither the Client nor Pennoni shall assign this Agreement without the written consent of the other.

LE01 11/2014

12. Pennoni does not represent or warrant that any permit or approval will be issued by any governmental or regulatory body. Pennoni will endeavor to prepare applications for such permit or approval in conformance with applicable requirements; but, in view of the complexity of and the frequent changes in applicable rules and regulations and interpretations by the authorities, Pennoni cannot guarantee that any such application will be considered complete or will conform to all applicable requirements.
13. Pennoni will perform its work in accordance with generally accepted professional standards. THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED. This Agreement is solely for the benefit of the Client and its successors. There is no third-party beneficiary of this Agreement.
14. CLIENT AND PENNONI HAVE CONSIDERED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, AS WELL AS PENNONI'S TOTAL FEE FOR SERVICES. CLIENT AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, PENNONI'S TOTAL AGGREGATE LIABILITY (INCLUDING THE LIABILITY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS AND CONSULTANTS) TO THE CLIENT (AND ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT) FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES OR DAMAGES ARISING OUT OF THIS AGREEMENT FROM ANY CAUSE OR CAUSES IS LIMITED TO THE TOTAL FEE RECEIVED BY PENNONI UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. SUCH CAUSES INCLUDE, BUT ARE NOT LIMITED TO, PENNONI'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, OR BREACH OF CONTRACT OR WARRANTY.

IN THE EVENT THE CLIENT IS UNABLE TO ACCEPT THE ABOVE LIMITATION OF LIABILITY, PENNONI AGREES TO INCREASE THE LIMITATION TO \$1,000,000 UPON ITS RECEIPT, PRIOR TO PERFORMING ANY SERVICES, OF CLIENT'S WRITTEN AGREEMENT TO PAY AN ADDITIONAL SUM OF NOT LESS THAN 10% OF THE TOTAL FEE UNDER THIS AGREEMENT OR \$1,000, WHICHEVER IS GREATER.
15. Client shall make no claim against Pennoni unless the Client first provides a written certification, executed by an independent design professional, specifying those acts or omissions which the independent design professional contends is a violation of generally accepted professional standards and upon which the claim will be premised. The independent design professional must be licensed to practice in the state where the Project is located and in the discipline related to the claim. Client agrees that the independent design professional's certification is a condition precedent to the Client's right to institute any judicial proceeding.
16. If required under the scope of services, Pennoni shall visit the Project site to become generally familiar with the progress and quality of the work for which Pennoni prepared contract documents, and Pennoni shall not make exhaustive or continuous onsite inspections. Pennoni's services do not include supervision or direction of the contractor's work. Observation by Pennoni field representatives shall not excuse the contractor for defects or omissions in its work. Pennoni shall not control construction means, methods, techniques, sequences, or procedures, and the contractor is solely responsible for all work on the Project, including safety of all persons and property.
17. If Client does not retain Pennoni to render construction phase services, then Client waives any claim it may have against Pennoni and agrees to indemnify, defend, and hold harmless Pennoni from any loss or liability, including attorneys fees and other defense costs, arising out of or related to the interpretation of Pennoni's plans and specifications, the review of shop drawings, the evaluation of contractor's request for change orders, or the failure to detect and correct obvious errors or omissions in Pennoni's plans and specifications.
18. Unless and until a court determines that Pennoni's preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, specifications and/or Pennoni's giving or failure to give instructions is the primary cause of any damage, claim, loss or expenses, Client shall indemnify, defend and hold harmless Pennoni and its officers, employees and consultants from and against all damages, claims, losses or expenses, including reasonable attorneys fees and other costs of defense, arising out of this Agreement. In the event the Client is required to defend Pennoni under this paragraph, Pennoni shall have the right to select its attorneys.
19. Client agrees to pay reasonable expert witness fees if Pennoni or any of its employees is subpoenaed to testify as a fact or opinion witness in any court proceeding, arbitration, or mediation to which the Client is a party.
20. Unless otherwise provided in this proposal, Pennoni shall have no responsibility for the discovery, presence, handling, removal, or disposal of hazardous materials or underground structures at the Project site.
21. Client and Pennoni waive consequential damages arising out of this Agreement.
22. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.
23. Both Pennoni and Client agree to waive the right to subrogation for covered losses and each shall obtain similar waivers from Owner, subcontractors, property and casualty insurers, and any other party involved in this Project.

N.B. 4
10-27-15

NPDES Schedule of Compliance

Final Nitrogen and Phosphorus Limits

<u>Action needed:</u>	<u>Due Date:</u>
Submit a proposed annexation plan map for the Seaford Sewer District.	12/31/2015
Establish Design Parameters for the proposed expansion with Seaford, BSSD and DNREC and other stake holders.	1/31/2016
Complete planning study for expansion of the treatment works and solids handling facility based on design parameters.	1/31/2017
Complete Preliminary Design for the proposed expansion to include preliminary project cost estimates and identification of best treatment alternatives and any additional land or other major items required.	1/31/2018
Complete process of project funding and referendum preparation for public review and consideration.	1/31/2019
Submit a "Report of Progress" towards and a schedule to achieve compliance.	1/31/2020
Complete final design drawings and obtain necessary permits for project construction/implementation, and begin construction of the proposed expansion and upgrade.	1/31/2021
Submit a "Report of Progress" towards and a schedule to achieve compliance.	1/31/2022
Complete construction of proposed expansion and upgrade.	1/31/2023
Operate new facility and treatment works to optimum levels of efficiency.	1/31/2024

Begin to sum nitrogen and phosphorus (See Special Conditions No. 7) for compliance.

1/31/2025

Be in compliance with the "Final Effluent Limitations and Monitoring Requirements for Outfall 001".

12/31/2025

Dissolved Copper Limits

Action needed:

Due Date:

Submit a plan for achieving compliance with the final limits for copper. BLM modeling

4/30/2016

Submit a "Report of Progress" towards and a schedule to achieve compliance. Report shall include any monitoring results acquired.

4/30/2017

Submit a "Report of Progress" towards and a schedule to achieve compliance. Report shall include any monitoring results acquired.

1/31/2018

Achieve compliance with the dissolved copper limits.

11/30/2018

N.B.5
10/27/15

City of Seaford
Summary Statement of Revenue & Expenditures
YTD as of 09/30/2015

Account Id	Account Description	2016 Budgeted	2016 Actual	%Expd/%Real
001	GENERAL FUND Revenue Total	8,888,347.00	3,715,299.11	41.80%
Expenditures:				
001-100	EXECUTIVE	115,921.00	35,426.07	30.56%
001-120	ADMINISTRATION	2,213,636.00	1,112,509.62	50.26%
001-130	ED/IT	134,078.00	21,875.00	16.32%
001-140	CODE	350,663.00	141,980.52	40.49%
001-150	FIRE	273,707.00	23,759.24	8.68%
001-160	POLICE	3,753,980.00	843,074.05	22.46%
001-165	DISPATCH	630,808.00	136,610.94	21.66%
001-170	RECREATION	216,011.00	66,193.60	30.64%
001-175	PARKS	496,105.00	353,513.49	71.26%
001-178	POOL	25,630.00	6,893.04	26.89%
001-180	STREETS	677,808.00	92,849.27	13.70%
	GENERAL FUND Expenditure Total	8,888,347.00	2,834,684.84	31.89%
040	GOLF FUND Revenue Total	454,204.00	0	0.00%
Expenditures:				
040-500	GOLF	454,204.00	81,772.79	18.00%
	GOLF FUND Expenditure Total	454,204.00	81,772.79	18.00%
042	WATER FUND Revenue Total	1,317,418.00	203,035.61	15.41%
Expenditures:				
042-200	WATER	1,317,418.00	168,907.82	12.82%
	WATER FUND Expenditure Total	1,317,418.00	168,907.82	12.82%
043	SEWER FUND Revenue Total	2,551,785.00	481,595.03	18.87%
Expenditures:				
043-300	SWR COLLECTOR	437,494.00	20,990.51	4.80%
043-310	WWTF	1,882,776.00	209,989.70	11.15%
043-320	COMPOST	231,515.00	30,929.71	13.36%
	SEWER FUND Expenditure Total	2,551,785.00	261,909.92	10.26%
044	ELECTRIC FUND Revenue Total	15,365,040.00	2,957,422.92	19.25%
Expenditures:				
044-410	ELECTRIC DISTR	15,365,040.00	2,487,657.74	16.19%
	ELECTRIC FUND Expenditure Total	15,365,040.00	2,487,657.74	16.19%

NB # 6
10/27/15

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made this _____ day of _____, 20____, by and between **CITY OF SEAFORD** ("Seller") and **SEAFORD DEVELOPMENT ASSOCIATES, LLC**, and/or assigns ("Purchaser").

RECITALS

WHEREAS, Seller is the owner in fee simple of that certain property consisting of the following properties in Seaford Hundred, Sussex County, State of Delaware (the "Property"):

- SCTP No. 4-31-5.00-208.00 (see attached tax map).

WHEREAS, Seller desires to sell to Purchaser the Property and Purchaser desires to purchase the Property from Seller, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing Recitals which are incorporated by reference herein, and the mutual promises herein contained and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the parties agree as follows:

1. Property. Seller does hereby bargain and sell unto Purchaser and Purchaser does hereby purchase from Seller all of Seller's right, title and interest in and to the Property.

2. Purchase Price and Payment. The purchase price (the "Purchase Price") for the Property shall be **FIFTY THOUSAND DOLLARS (\$50,000.00)**.

The Purchase Price shall be payable by Purchaser to Seller as follows:

a. Within five (5) Business Days after the execution of this Agreement by both Seller and Purchaser, a deposit of **TEN THOUSAND DOLLARS (\$10,000.00)** (the "Deposit") shall be remitted by Purchaser to Morris James Wilson Halbrook & Bayard, LLP., as escrow agent ("Escrow Agent"), to be held by Escrow Agent in escrow as set forth in Section 12. The Deposit shall be applied toward the Purchase Price at Closing or as otherwise provided in this Agreement.

b. At Closing, the Deposit and **FORTY THOUSAND DOLLARS (\$40,000.00)** for a total of **FIFTY THOUSAND DOLLARS (\$50,000.00)** shall be due and payable to Seller, subject to any adjustments contained in this Agreement, including but not limited to, the adjustments described in Section 15 hereof, shall be payable by wire transfer at the time of Closing to an account or qualified intermediary designated by Seller.

3. Effective Date; Delivery of Materials to Purchaser. The "Effective Date" of this Agreement shall be the date upon which the materials described in this paragraph are delivered to Purchaser from Seller. Promptly, but in no event later than seven (7) days following the execution of this Agreement, Seller shall deliver to Purchaser the following (to the extent not previously delivered to Purchaser and to the extent within the possession or control of the Seller):

a. A true and complete copy of all owner's policies of title insurance, if any, previously obtained by or in possession of Seller with respect to the Property.

b. All surveys and engineering or similar reports in Seller's possession or control relating to the Property.

c. All information, studies, proposals, notices regarding the Property, including, but not limited to, land planning notices/reports, soil reports, wetlands reports, environmental notices/reports, and similar notices/reports.

In addition to the foregoing, Purchaser shall receive any documentation with regard to the Property and/or the subdivision process within Seller's possession or control. Further, Seller hereby assigns, consents to and approves the inclusion of Purchaser as a third party that can rely upon any documents delivered to Purchaser pursuant to this section. Seller shall cooperate with all requests to the producers of documents delivered under this section to allow Purchaser to be able to rely upon the documents.

4. Property Requirements. The parties agree to the following condition(s) and requirement(s) regarding the purchase and sale of the Property: Closing on this Property is contingent upon Closing occurring between the parties hereto for the five (5) tax parcels which include the Pine Street Power Plant.

5. Inspections; Study Period.

a. **Inspections.** During the Study Period defined below, Purchaser, its agents, servants, employees, engineers, invitees and/or designees, at their own risk and expense, shall have the full right from and after the Effective Date: (i) to enter upon the Property upon permission from the Seller, which permission shall not be unreasonably withheld, conditioned or delayed for purposes of conducting studies, structural tests, environmental audits, investigations and the like with respect to the Property, any component thereof or any system contained therein and (ii) to review any site plans, surveys or reports in Seller's possession.

b. **Study Period.** For a period of sixty (60) days from the effective date of this Agreement (the "Study Period"), Purchaser shall have the right to terminate this Agreement by written notice to Seller sent prior to the expiration of the Study Period, in

its sole and absolute discretion, for any reason whatsoever, including, by way of example and not of limitation, (i) if Purchaser is dissatisfied with the results of any inspections conducted in connection with this Agreement, or (ii) if Purchaser is dissatisfied with any materials furnished to it pursuant to the terms of this Agreement. In the event that Purchaser terminates this Agreement pursuant to the provisions of this paragraph, the Deposit shall be immediately returned to Purchaser by Escrow Agent and neither party hereto shall have any further obligations or liabilities hereunder to the other, except to the extent the same survive otherwise under the express terms hereof, and this Agreement shall be and become null and void and of no further force and effect, either at law or in equity. Purchaser's right to terminate this Agreement pursuant to the terms of this paragraph is in addition to such other rights set forth elsewhere herein; and this paragraph and any election hereunder shall not be deemed a waiver or election against such other rights. Further, if Purchaser terminates this Agreement during the Study Period, it shall provide copies of all reports, studies, surveys, plots and any other materials it assembled during the Study Period to Seller.

c. During the Study Period, Seller shall use its reasonable efforts to cooperate with Purchaser and/or Purchaser's agents with respect to the Purchaser's investigations permitted in Section 5(a) above.

d. If Purchaser enters the Property prior to Closing, Purchaser shall; (i) keep the Property free and clear of any and all liens or claims resulting therefrom; (ii) defend, indemnify and hold harmless Seller against and from any claim or liability imposed or sought to be imposed upon Seller as a result of actions by Purchaser, its employees, agents, architects and engineers on the Property; (iii) agree not to damage or harm the Property; and (iv) promptly after such entry, restore the Property to substantially the same condition as existed prior to such entry.

6. Title; Title Insurance; Survey.

a. At Closing, Seller shall convey good and marketable title to the Property, free and clear of all liens and encumbrances except for only such easements and other title matters as Purchaser shall have approved, in writing, after receiving a title report for the Property (the "Permitted Exceptions"), and insurable as such at regular commercial rates by a national title insurer duly authorized to transact title insurance in the State of Delaware and reasonably acceptable to Purchaser. Purchaser may, at Purchaser's expense, seek a commitment (the "Title Commitment") from a title insurance company of Purchaser's choice and which is licensed to do business in the State of Delaware for an owner's title insurance policy. Such policy shall issue using the most recent Standard ALTA Policy form and at regular rates. Further, Purchaser may, at Purchaser's expense,

obtain an updated survey of the Property (the "Survey"). If the title commitment shows exceptions to title (a "Title Defect") or if the Survey shows encroachments or that the improvements, if any, are not located within the boundary of the Premises or other matters which would prevent the removal of the survey exception from the Title Commitment (a "Survey Defect"), then, Purchaser shall give Seller notice thereof. Unless Seller gives Purchaser written notice within five (5) calendar days from receipt of said notice from Purchaser that Seller will cure the Title Defects or Survey Defects at or prior to Closing, Purchaser may, at Purchaser's written election:

(i) Terminate this Agreement, in which event the Deposit shall be promptly returned to Purchaser and neither party hereto shall have any further obligations or liabilities hereunder to the other, except to the extent the same survive otherwise under the express terms hereof, and this Agreement shall be and become null and void and of no further force and effect, either at law or in equity; or

(ii) Waive all those Title Defects and Survey Defects and proceed with Closing hereunder;

Provided, however, that Seller shall be obligated to cure any of Purchaser's objections within forty-five (45) days of receipt of Purchaser's provided that the cure of each objection can be achieved by the payment of funds by Seller not to exceed Fifty Thousand Dollars (\$50,000.00).

b. Any lien or encumbrance which attaches to the Property between the Effective Date and the date of Closing, as well as any existing monetary lien or encumbrance (including, without limitation, any existing mortgage, deed of trust, judgment lien or similar lien against the Property) which can be discharged by the payment of money, shall be discharged by Seller at or prior to Closing.

7. Covenants, Representations and Warranties of Seller. Seller represents and warrants to Purchaser, which representations and warranties are true and correct as of the date of this Agreement and shall be true and correct as of the Closing Date, that to the best of its knowledge and belief;

a. Seller has the full right, power and authority to enter into this Agreement and to perform its covenants and obligations hereunder.

b. Seller is aware of the following regarding the Property and its use, generation, manufacture, refining, transportation, treatment, storage, handling or disposal of, or the conduct or performance of any activity on or about the Property in connection with, any hazardous substance or hazardous waste, as such terms are defined in the Delaware General Environmental Act, 7 Del. C. Chapter 60, the Delaware Hazardous

Waste Management Agreement, 7 Del. C. Chapter 63, the Federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C., 6901, et seq., the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., any other environmental laws, as any of the same may have been or may be amended, and the regulations promulgated under any of said laws:

c. Other than the disclosures found in Section 7.b, Seller is not aware of, and Seller has not caused or allowed the use, generation, manufacture, refining, transportation, treatment, storage, handling or disposal of, or the conduct or performance of any activity on or about the Property in connection with, any hazardous substance or hazardous waste, as such terms are defined in the Delaware General Environmental Act, 7 Del. C. Chapter 60, the Delaware Hazardous Waste Management Agreement, 7 Del. C. Chapter 63, the Federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C., 6901, et seq., the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., any other environmental laws, as any of the same may have been or may be amended, and the regulations promulgated under any of said laws.

d. Other than a notice(s) described in this Agreement, Seller has no outstanding written notices of any violations of any federal, state, county or municipal law, code, ordinance, order, regulation or requirement affecting the Property.

e. There are no persons with any rights to occupy or use the Property as tenant and the Property is currently occupied by Seller.

f. There is no pending or threatened litigation affecting the Property.

g. There is no pending or threatened condemnation or similar proceedings affecting the Property.

h. Seller is not a "foreign person" as defined in the Foreign Investment in Real Property Tax Act under Section 1445 of the Internal Revenue Code of 1986, as amended.

i. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (i) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or

instrument to which Seller is a party or (ii) violate any restriction to which Seller is subject.

j. All covenants, representations and warranties contained in this Agreement shall merge with the Deed and shall survive Closing for a period of twenty-four (24) months.

k. Adequate utilities and facilities, including but not limited to water, sewer, storm sewer and electric, exist for the attached Site Plan (project presented to the City at the August 25, 2015 meeting).

8. Condition of Property. Purchaser acknowledges and agrees that Seller makes no covenant, representation or warranty as to the suitability of the Property or as to the physical condition thereof for any purpose whatsoever, except as expressly provided in Sections 4 and 7 above, Purchaser further acknowledges and agrees that the Property is to be sold and conveyed to, and purchased and accepted by Purchaser in its present condition on the date hereof, "AS IS" and "WHERE IS" with all known or unknown faults and hereby assumes the risk that adverse past, present or future physical characteristics and conditions may have not been revealed by any inspection or investigation of the Property, subject in all respect to the representations made by Seller in this Agreement. Purchaser, for itself and its successors and assigns, hereby releases and waives all claims, suits, actions, causes of action, liabilities, losses, damages, rights of contribution or indemnification and all costs and expenses in connection therewith, against Seller, its predecessors, successors and assigns, and its subsidiaries, and their respective directors, members, officers, employees and stockholders, which Purchaser has, may or could have, now or hereafter, against any one or more of them arising from or in connection with the physical characteristics and condition(s) existing under, on or above the Property as aforesaid, now or hereafter arising, whether at common law or by federal, state, county or municipal law or ordinance including, without limitation, any conditions existing prior to or subsequent to Settlement. Purchaser covenants and agrees that the obligations contained in this Paragraph shall survive the Settlement and delivery of the deed hereunder.

9. Maintenance of Property Until Closing. Seller agrees that, from the Effective Date to the date of Closing, it will, at its sole cost and expense, keep the Property in as good of a condition and repair as exists as of the date hereof, and shall keep the Property in compliance with all common law or by federal, state, county or municipal laws and ordinances.

10. Possession; Risk of Loss; Insurance, Condemnation.

a. Possession. Subject to other specific provisions herein, possession of the Property shall be given to Purchaser as of the date of Closing.

b. Risk of Loss. Seller shall bear the risk of all loss, destruction or damage to the Property or any portion thereof from any and all causes whatsoever until Closing.

c. **Condemnation.** If, on or before Closing, any portion of the Property is condemned or taken pursuant to any governmental or other power of eminent domain, any notice of such a condemnation or taking is issued with respect to any portion of the Property, or any proceeding is instituted against any portion of the Property by any governmental or other authority having the power of eminent domain (any such action, notice or proceeding being hereinafter referred to as a "Taking"), then Purchaser shall (a) proceed to the Closing and accept the Property subject to the Taking, without any reduction in the Purchase Price, in which event Seller shall assign to Purchaser all awards attributable to the Taking; or (b) terminate this Agreement.

11. Seller's Deliveries and Conditions Precedent to Purchaser's Obligations. In addition to other conditions precedent set forth elsewhere in this Agreement, Seller shall deliver to Purchaser at the Closing all of the following, the delivery of which shall be a condition to Purchaser's obligation to consummate the purchase of the Property:

a. **Special Warranty Deed.**

b. **Additional Documents.** Such additional documents as may be requested by Purchaser's title company to consummate the transactions described herein and to cause the title company to issue and deliver its title policy subject only to the Permitted Exceptions and such other exceptions to which Purchaser consents in writing.

12. Default.

a. **Default by Seller.** In the event that all conditions precedent to Seller's obligation to consummate the transactions contemplated by this Agreement have been satisfied or waived and Seller is not entitled to terminate this Agreement under any provisions hereof, then in the event of default by Seller under this Agreement, Purchaser shall have the option of either (i) giving Escrow Agent and Seller written notice of Seller's default, in which event Escrow Agent shall return the Deposit to Purchaser as liquidated damages for Seller's default hereunder, or (ii) pursue any and all legal rights or remedies at law or in equity available to Purchaser against Seller, including, but not limited to, any right to specific performance, injunction or damages, including, but not limited to, reasonable attorneys' fees and costs.

b. **Default by Purchaser.** If all conditions and other events precedent to Purchaser's obligations to consummate the transactions contemplated by this Agreement have been satisfied or waived, but Purchaser fails, refuses or is unable to consummate the purchase and sale contemplated by this Agreement, or to perform any other obligation required by this Agreement, then Seller, in addition to any other right or remedy at law or equity (including, but not limited to, actions for specific performance and/or damages), shall have the right to give Escrow Agent and Purchaser written notice of Purchaser's default, in which event Escrow Agent shall deliver the Deposit to Seller.

c. Notice. Neither party shall be deemed to be in default hereunder, unless and until, it shall have been sent written Notice of such default by the other party, and shall have failed to cure the default within ten (10) business days following receipt of such notice.

13. Escrow Agent. The duties of the Escrow Agent shall be as follows:

a. Duties. During the term of this Agreement, Escrow Agent shall hold and disburse the Deposit in accordance with the terms and provisions of this Agreement. Purchaser simultaneously with the execution of this Agreement shall provide Escrow Agent with Purchaser's Federal Tax Identification number for use by Escrow Agent in establishing the escrow account and any interest thereon shall be reported as income by Purchaser on its tax returns.

b. Dispute or Termination. If this Agreement shall be terminated by the mutual written agreement of Seller and Purchaser, or if Escrow Agent shall be unable to determine at any time to whom the Deposit should be paid, or if a dispute shall develop between Seller and Purchaser concerning to whom the Deposit shall be paid, then Escrow Agent shall pay the Deposit in accordance with the joint written instructions of Seller and Purchaser. In the event that such written instructions shall not have been received by Escrow Agent within ten (10) days after Escrow Agent has served a written request for instructions upon Seller and Purchaser, or if either party notifies Escrow Agent that the dispute has not been resolved then Escrow Agent shall by bill of interpleader pay the Deposit, less the reasonable expenses of Escrow Agent, as hereinafter set forth, into a court of competent jurisdiction and interplead Seller and Purchaser in respect thereof, and thereafter Escrow Agent shall be discharged of any obligations in connection with this Agreement.

c. Expenses. If costs or expenses are incurred by Escrow Agent because of litigation or a dispute between Seller and Purchaser arising out of the holding of the Deposit in escrow, the party held not to be entitled to the Deposit shall pay Escrow Agent such reasonable costs and expenses. Except for such costs or expenses, no fee or charge shall be due or payable to Escrow Agent for its services as escrow holder.

d. Limitation on Duty. Seller and Purchaser acknowledge that Escrow Agent hereunder is required only to perform the duties and obligations imposed upon Escrow Agent under the terms of this Agreement and expressly does not undertake to perform any of the other covenants, terms and provisions incumbent upon Seller and Purchaser hereunder.

e. Limitation on Liability. Purchaser and Seller hereby agree and acknowledge that Escrow Agent assumes no liability in connection herewith except for gross negligence or willful misconduct; that Escrow Agent shall never be responsible for

the validity, correctness or genuineness of any document or notice referred to under this Agreement; and that in the event of any dispute under this Agreement, Escrow Agent may seek advice from its own counsel and shall be fully protected in any action taken by it in good faith in accordance with the opinion of such counsel.

14. Closing. Subject to the satisfaction of all of the terms, covenants and conditions contained herein, Closing shall occur upon the earlier of (1) thirty (30) days of Purchaser receiving site plan approval or a building permit for one of the following: The Shoppes at Riverwalk, The Marketplace at Riverwalk, the Hotel or the Galleria, or (2) December 31, 2016 (the "Closing" or "Closing Date"), at a time and place designated by Purchaser in Sussex County, Delaware. Subject to the provisions of Section 11 above, and upon payment of the Purchase Price as provided for in Section 2, at the time of Closing, Seller shall convey good and marketable title to the Property to Purchaser as provided for in Section 6. The Closing Date is subject to a one (1) year extension if requested by Purchaser ninety (90) days prior to December 31, 2016.

15. Adjustments, Prorations and Closing Costs.

a. Any taxes, general or special, and all other public or governmental charges or assessments against the Property which are, or may be, payable with respect to the Property (including assessments, liens or encumbrances for sewer, water, drainage or other public improvements, completed or commenced, on or prior to the date hereof, or subsequent thereto), shall be adjusted and apportioned as of the date of Closing and are to be assumed and paid thereafter by Purchaser, said adjustment apportionment to be on the basis of the fiscal year for which assessed, whether or not such assessments have been levied as of the date of Closing.

b. All other charges, if any and fees customarily pro-rated and adjusted in similar transactions shall be pro-rated at Closing and thereafter assumed by Purchaser. In the event that accurate prorations and other adjustments cannot be made at Closing because current bills or statements are not obtainable, the parties shall pro-rate on the best available information, subject to adjustment upon receipt of the final bill or statement.

c. The parties shall equally divide the cost of all transfer taxes. Seller shall be responsible for the cost of deed preparation. All recording costs shall be borne by the Purchaser. Fees for owner's and lender's title insurance shall be borne by Purchaser. Each party shall be responsible for the fees of its respective legal counsel, except as otherwise specified herein.

16. Agency. Seller and Purchaser each warrant and represent to the other that it has not used the services of any real estate broker, agent or finder in connection with this Agreement.

17. Notices. Any notice or demand under this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, postage prepaid, or by recognized overnight courier service such as Federal Express, as follows:

If to Seller:

The City of Seaford
Attn: City Manager
P.O. Box 1100
414 High Street
Seaford, DE 19973

With a copy to:

James A. Fuqua, Esquire
Fuqua, Yori and Willard, P.A.
26 The Circle
P.O. Box 250
Georgetown, DE 19947

If to Purchaser:

Seaford Development Associates, LLC
656 Quince Road
Suite 720
Gaithersburg, MD 20878

With a copy to:

David C. Hutt, Esquire
Morris James Wilson, Halbrook & Bayard, LLP
107 West Market Street
P.O. Box 690
Georgetown, DE 19947.

Any such notice or demand shall be deemed given three (3) days after same has been deposited in the United States mail as aforesaid, or the next business day after deposited with a recognized overnight courier. Either party by notice to the other in accordance with the above, may designate a substitute address for such notice or demand and thereafter such substitute address shall be used for the giving of notice or demand.

18. Miscellaneous.

a. This Agreement shall inure to the benefit of and be binding upon Seller and Purchaser and their respective heirs, personal representatives, successors and assigns. Seller specifically reserves the right at any time prior to or at Closing to assign this Agreement to a person or entity selected by it in its sole and absolute discretion, in which

event such assignee shall be entitled to all benefits of and be subject to obligations of Seller hereunder; provided, however, that Seller shall remain liable for its assignee's performance hereunder. Purchaser may not assign this Agreement without the written consent of Seller, which consent may be given or withheld in Seller's sole and absolute discretion; provided, however, Purchaser may assign this Agreement to an entity within which Purchaser and/or its principals exercise operational control.

b. This Agreement contains the final and entire agreement between the parties hereto and supersedes all prior oral representations, negotiations and agreements, and neither the parties, nor their agents, shall be bound by any terms, conditions and representations not herein written. This Agreement may not be modified or changed orally, but only by agreement in writing signed by the party against whom enforcement of any such change is sought.

c. All covenants, representations, warranties and undertakings on the part of Seller contained in this Agreement shall be merged into the Deed and extinguished by any settlement, closing, payment of the Purchase Price or by execution and delivery of any deed or bill of sale.

d. The interpretation, construction and performance of this Agreement shall be governed by Delaware law, the Property described in this Agreement being located in Delaware and this Agreement being executed in Delaware.

e. The titles of the sections and paragraphs are inserted as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the intent of any provision thereof.

f. This Agreement is the result of the combined draftsmanship and/or review of Seller and Purchaser and/or their respective agents, accordingly, there shall be no presumption or interpretation of this Agreement based on its having been drafted by one or the other.

g. Each party shall reasonably cooperate with the other in connection with the satisfaction of any condition or obligation which must be satisfied by Closing pursuant to the terms of this Agreement, and in connection therewith each party agrees to execute any document contemplated by the terms of this Agreement, which may be reasonably requested by the other party.

h. This Agreement may be executed in one or more counterparts by facsimile signatures and/or original signatures. The signatures of the parties who sign different counterparts of this Agreement or any of the instruments executed to effectuate the purposes of this Agreement shall have the same effect as if those parties had signed the same counterparts of this Agreement or of any such instrument.

i. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

j. No determination by any court, governmental or administrative entity or otherwise that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other such provision or (ii) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

k. Nothing in the provisions of this Agreement shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year shown.

SELLER:

ATTEST/WITNESS:

CITY OF SEAFORD

By: _____ {SEAL}

Date: _____

PURCHASER:

ATTEST/WITNESS:

SEAFORD DEVELOPMENT ASSOCIATES, LLC

By: _____ {SEAL}

Warren Diamond, Managing Member

Date: _____

CONSENT OF ESCROW AGENT

The undersigned hereby agrees to act as Escrow Agent in accordance with the terms and conditions of the foregoing Purchase and Sale Agreement, and hereby agrees to be bound thereby.

WITNESS:

Morris James Wilson Halbrook & Bayard, LLP

By: _____ {SEAL}

Name:

Title:

Date: _____

NB#6
10/27/15

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made this _____ day of _____, 20____, by and between **CITY OF SEAFORD** ("Seller") and **SEAFORD DEVELOPMENT ASSOCIATES, LLC** ("Purchaser").

RECITALS

WHEREAS, Seller is the owner in fee simple of that certain property consisting of the following properties in Seaford Hundred, Sussex County, State of Delaware, (the "Property"), see attached tax map:

- SCTP No. 4-31-5.00-291.00 (Power Plant);
- SCTP No. 4-31-5.00-294.01 (Power Plant);
- SCTP No. 4-31-5.00-301.00 (Power Plant);
- SCTP No. 4-31-5.00-296.00 (vacant); and
- SCTP No. 4-31-5.00-297.00 (vacant).

WHEREAS, Seller desires to sell to Purchaser the Property and Purchaser desires to purchase the Property from Seller, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing Recitals which are incorporated by reference herein, and the mutual promises herein contained and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the parties agree as follows:

1. **Property.** Seller does hereby bargain and sell unto Purchaser and Purchaser does hereby purchase from Seller all of Seller's right, title and interest in and to the Property.
2. **Purchase Price and Payment.** The purchase price (the "Purchase Price") for the Property shall be ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00).

The Purchase Price shall be payable by Purchaser to Seller as follows:

a. Within five (5) Business Days after the execution of this Agreement by both Seller and Purchaser, a deposit of TEN THOUSAND DOLLARS (\$10,000.00) (the "Deposit") shall be remitted by Purchaser to Morris James Wilson Halbrook & Bayard, LLP., as escrow agent ("Escrow Agent"), to be held by Escrow Agent in escrow as set forth in Section 12. The Deposit shall be applied toward the Purchase Price at Closing or as otherwise provided in this Agreement.

b. At Closing, the Deposit and ONE HUNDRED FIFTEEN THOUSAND DOLLARS (\$115,000.00) for a total of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) shall be due and payable to Seller, subject to any adjustments contained in this Agreement, including but not limited to, the adjustments described in

Section 15 hereof, shall be payable by wire transfer at the time of Closing to an account or qualified intermediary designated by Seller.

3. Effective Date; Delivery of Materials to Purchaser. The "Effective Date" of this Agreement shall be the date upon which the materials described in this paragraph are delivered to Purchaser from Seller. Promptly, but in no event later than seven (7) days following the execution of this Agreement, Seller shall deliver to Purchaser the following (to the extent not previously delivered to Purchaser and to the extent within the possession or control of the Seller):

- a. A true and complete copy of all owner's policies of title insurance, if any, previously obtained by or in possession of Seller with respect to the Property.
- b. All surveys and engineering or similar reports in Seller's possession or control relating to the Property.
- c. All information, studies, proposals, notices regarding the Property, including, but not limited to, land planning notices/reports, soil reports, wetlands reports, environmental notices/reports, and similar notices/reports.

In addition to the foregoing, Purchaser shall receive any documentation with regard to the Property and/or the subdivision process within Seller's possession or control. Further, Seller hereby assigns, consents to and approves the inclusion of Purchaser as a third party that can rely upon any documents delivered to Purchaser pursuant to this section. Seller shall cooperate with all requests to the producers of documents delivered under this section to allow Purchaser to be able to rely upon the documents.

4. Property Requirements. The parties agree to the following conditions and requirements regarding the purchase and sale of the Property:

- a. Purchaser shall bear all the costs of environmental clean-up of the Property and the demolition of all buildings, including the cooling tower and the tank retaining area. If, in the sole discretion of the Purchaser, the cost is excessive, Purchaser may terminate this agreement.
- b. Immediately upon the execution of this Agreement, Seller shall, at its expense, undertake the process of changing the circuits from the Central Substation to the Pine Station and demolish the Central Substation. Seller shall endeavor to complete this process as soon as possible.
- c. Seller shall, at its expense, subdivide the Riverwalk from the Property to retain title to the Riverwalk and shall provide Purchaser with an easement for the Riverwalk.

d. Purchaser shall provide Seller with easements for water, sanitary sewer, interceptor sewer and storm water facilities as part of the approval of the final site plan.

e. Purchaser shall, if required to accommodate the contemplated improvements on the site, pay for all the costs of utility relocations or realignments, which improvements or utility relocations may require bulkhead repairs, replacement or other provisions (Purchaser will not be required to pay for the changing of the circuits from the Central Substation to the Pine Station or the demolition of the Central Substation). Seller and Purchaser shall cooperate in determining the most economical means of accomplishing this work. If, in the sole discretion of the Purchaser, the cost is excessive, Purchaser may terminate this agreement.

5. Inspections; Study Period.

a. Inspections. During the Study Period defined below, Purchaser, its agents, servants, employees, engineers, invitees and/or designees, at their own risk and expense, shall have the full right from and after the Effective Date: (i) to enter upon the Property upon permission from the Seller, which permission shall not be unreasonably withheld, conditioned or delayed for purposes of conducting studies, structural tests, environmental audits, investigations and the like with respect to the Property, any component thereof or any system contained therein and (ii) to review any site plans, surveys or reports in Seller's possession.

b. Study Period. For a period of sixty (60) days from the effective date of this Agreement (the "Study Period"), Purchaser shall have the right to terminate this Agreement by written notice to Seller sent prior to the expiration of the Study Period, in its sole and absolute discretion, for any reason whatsoever, including, by way of example and not of limitation, (i) if Purchaser is dissatisfied with the results of any inspections conducted in connection with this Agreement, or (ii) if Purchaser is dissatisfied with any materials furnished to it pursuant to the terms of this Agreement. In the event that Purchaser terminates this Agreement pursuant to the provisions of this paragraph, the Deposit shall be immediately returned to Purchaser by Escrow Agent and neither party hereto shall have any further obligations or liabilities hereunder to the other, except to the extent the same survive otherwise under the express terms hereof, and this Agreement shall be and become null and void and of no further force and effect, either at law or in equity. Purchaser's right to terminate this Agreement pursuant to the terms of this paragraph is in addition to such other rights set forth elsewhere herein; and this paragraph and any election hereunder shall not be deemed a waiver or election against such other rights. Further, if Purchaser terminates this Agreement during the Study Period, it shall provide copies of all reports, studies, surveys, plots and any other materials it assembled during the Study Period to Seller.

c. During the Study Period, Seller shall use its reasonable efforts to cooperate with Purchaser and/or Purchaser's agents with respect to the Purchaser's investigations permitted in Section 5(a) above.

d. If Purchaser enters the Property prior to Closing, Purchaser shall; (i) keep the Property free and clear of any and all liens or claims resulting therefrom; (ii) defend, indemnify and hold harmless Seller against and from any claim or liability imposed or sought to be imposed upon Seller as a result of actions by Purchaser, its employees, agents, architects and engineers on the Property; (iii) agree not to damage or harm the Property; and (iv) promptly after such entry, restore the Property to substantially the same condition as existed prior to such entry.

6. Title; Title Insurance; Survey.

a. At Closing, Seller shall convey good and marketable title to the Property, free and clear of all liens and encumbrances except for only such easements and other title matters as Purchaser shall have approved, in writing, after receiving a title report for the Property (the "Permitted Exceptions"), and insurable as such at regular commercial rates by a national title insurer duly authorized to transact title insurance in the State of Delaware and reasonably acceptable to Purchaser. Purchaser may, at Purchaser's expense, seek a commitment (the "Title Commitment") from a title insurance company of Purchaser's choice and which is licensed to do business in the State of Delaware for an owner's title insurance policy. Such policy shall issue using the most recent Standard ALTA Policy form and at regular rates. Further, Purchaser may, at Purchaser's expense, obtain an updated survey of the Property (the "Survey"). If the title commitment shows exceptions to title (a "Title Defect") or if the Survey shows encroachments or that the improvements, if any, are not located within the boundary of the Premises or other matters which would prevent the removal of the survey exception from the Title Commitment (a "Survey Defect"), then, Purchaser shall give Seller notice thereof. Unless Seller gives Purchaser written notice within five (5) calendar days from receipt of said notice from Purchaser that Seller will cure the Title Defects or Survey Defects at or prior to Closing, Purchaser may, at Purchaser's written election:

(i) Terminate this Agreement, in which event the Deposit shall be promptly returned to Purchaser and neither party hereto shall have any further obligations or liabilities hereunder to the other, except to the extent the same survive otherwise under the express terms hereof, and this Agreement shall be and become null and void and of no further force and effect, either at law or in equity; or

(ii) Waive all those Title Defects and Survey Defects and proceed with Closing hereunder;

Provided, however, that Seller shall be obligated to cure any of Purchaser's objections within forty-five (45) days of receipt of Purchaser's provided that the cure of each objection can be achieved by the payment of funds by Seller not to exceed Fifty Thousand Dollars (\$50,000.00).

b. Any lien or encumbrance which attaches to the Property between the Effective Date and the date of Closing, as well as any existing monetary lien or encumbrance (including, without limitation, any existing mortgage, deed of trust, judgment lien or similar lien against the Property) which can be discharged by the payment of money, shall be discharged by Seller at or prior to Closing.

7. Covenants, Representations and Warranties of Seller. Seller represents and warrants to Purchaser, which representations and warranties are true and correct as of the date of this Agreement and shall be true and correct as of the Closing Date, that to the best of its knowledge and belief;

a. Seller has the full right, power and authority to enter into this Agreement and to perform its covenants and obligations hereunder.

b. Seller is aware of the following regarding the Property and its use, generation, manufacture, refining, transportation, treatment, storage, handling or disposal of, or the conduct or performance of any activity on or about the Property in connection with, any hazardous substance or hazardous waste, as such terms are defined in the Delaware General Environmental Act, 7 Del. C. Chapter 60, the Delaware Hazardous Waste Management Agreement, 7 Del. C. Chapter 63, the Federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C., 6901, et seq., the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., any other environmental laws, as any of the same may have been or may be amended, and the regulations promulgated under any of said laws:

- Draft Remedial Investigation Report prepared by EA Engineering, Science & Technology, Inc., PBC for DNREC date July 2015 regarding the Power Plant Site;
- _____;
- _____.

c. Other than the disclosures found in Section 7.b, Seller is not aware of, and Seller has not caused or allowed the use, generation, manufacture, refining, transportation, treatment, storage, handling or disposal of, or the conduct or performance of any activity on or about the Property in connection with, any hazardous substance or hazardous waste, as such terms are defined in the Delaware General Environmental Act, 7 Del. C. Chapter 60, the Delaware Hazardous Waste Management Agreement, 7 Del. C.

Chapter 63, the Federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C., 6901, et seq., the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., any other environmental laws, as any of the same may have been or may be amended, and the regulations promulgated under any of said laws.

d. Other than a notice(s) described in this Agreement, Seller has no outstanding written notices of any violations of any federal, state, county or municipal law, code, ordinance, order, regulation or requirement affecting the Property.

e. There are no persons with any rights to occupy or use the Property as tenant and the Property is currently occupied by Seller.

f. There is no pending or threatened litigation affecting the Property.

g. There is no pending or threatened condemnation or similar proceedings affecting the Property.

h. Seller is not a "foreign person" as defined in the Foreign Investment in Real Property Tax Act under Section 1445 of the Internal Revenue Code of 1986, as amended.

i. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (i) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which Seller is a party or (ii) violate any restriction to which Seller is subject.

j. All covenants, representations and warranties contained in this Agreement shall merge with the Deed and shall survive Closing for a period of twenty-four (24) months.

k. Adequate utilities and facilities, including but not limited to water, sewer, storm sewer and electric, exist for the attached Site Plan (project presented to the City at the August 25, 2015 meeting).

8. Condition of Property. Purchaser acknowledges and agrees that Seller makes no covenant, representation or warranty as to the suitability of the Property or as to the physical condition thereof for any purpose whatsoever, except as expressly provided in Sections 4 and 7 above, Purchaser further acknowledges and agrees that the Property is to be sold and conveyed to, and purchased and accepted by Purchaser in its present condition on the date hereof, "AS IS" and "WHERE IS" with all known or unknown faults and hereby assumes the risk that adverse past, present or future physical characteristics and conditions may have not been revealed by any inspection or investigation of the Property, subject in all respect to the representations made by

Seller in this Agreement. Purchaser, for itself and its successors and assigns, hereby releases and waives all claims, suits, actions, causes of action, liabilities, losses, damages, rights of contribution or indemnification and all costs and expenses in connection therewith, against Seller, its predecessors, successors and assigns, and its subsidiaries, and their respective directors, members, officers, employees and stockholders, which Purchaser has, may or could have, now or hereafter, against any one or more of them arising from or in connection with the physical characteristics and condition(s) existing under, on or above the Property as aforesaid, now or hereafter arising, whether at common law or by federal, state, county or municipal law or ordinance including, without limitation, any conditions existing prior to or subsequent to Settlement. Purchaser covenants and agrees that the obligations contained in this Paragraph shall survive the Settlement and delivery of the deed hereunder.

9. Maintenance of Property Until Closing. Seller agrees that, from the Effective Date to the date of Closing, it will, at its sole cost and expense, keep the Property in as good of a condition and repair as exists as of the date hereof, and shall keep the Property in compliance with all common law or by federal, state, county or municipal laws and ordinances.

10. Possession; Risk of Loss; Insurance, Condemnation.

a. **Possession.** Subject to other specific provisions herein, possession of the Property shall be given to Purchaser as of the date of Closing.

b. **Risk of Loss.** Seller shall bear the risk of all loss, destruction or damage to the Property or any portion thereof from any and all causes whatsoever until Closing.

c. **Condemnation.** If, on or before Closing, any portion of the Property is condemned or taken pursuant to any governmental or other power of eminent domain, any notice of such a condemnation or taking is issued with respect to any portion of the Property, or any proceeding is instituted against any portion of the Property by any governmental or other authority having the power of eminent domain (any such action, notice or proceeding being hereinafter referred to as a "Taking"), then Purchaser shall (a) proceed to the Closing and accept the Property subject to the Taking, without any reduction in the Purchase Price, in which event Seller shall assign to Purchaser all awards attributable to the Taking; or (b) terminate this Agreement.

11. Seller's Deliveries and Conditions Precedent to Purchaser's Obligations. In addition to other conditions precedent set forth elsewhere in this Agreement, Seller shall deliver to Purchaser at the Closing all of the following, the delivery of which shall be a condition to Purchaser's obligation to consummate the purchase of the Property:

a. Special Warranty Deed.

b. Additional Documents. Such additional documents as may be requested by

Purchaser's title company to consummate the transactions described herein and to cause the title company to issue and deliver its title policy subject only to the Permitted Exceptions and such other exceptions to which Purchaser consents in writing.

12. Default.

a. **Default by Seller.** In the event that all conditions precedent to Seller's obligation to consummate the transactions contemplated by this Agreement have been satisfied or waived and Seller is not entitled to terminate this Agreement under any provisions hereof, then in the event of default by Seller under this Agreement, Purchaser shall have the option of either (i) giving Escrow Agent and Seller written notice of Seller's default, in which event Escrow Agent shall return the Deposit to Purchaser as liquidated damages for Seller's default hereunder, or (ii) pursue any and all legal rights or remedies at law or in equity available to Purchaser against Seller, including, but not limited to, any right to specific performance, injunction or damages, including, but not limited to, reasonable attorneys' fees and costs.

b. **Default by Purchaser.** If all conditions and other events precedent to Purchaser's obligations to consummate the transactions contemplated by this Agreement have been satisfied or waived, but Purchaser fails, refuses or is unable to consummate the purchase and sale contemplated by this Agreement, or to perform any other obligation required by this Agreement, then Seller, in addition to any other right or remedy at law or equity (including, but not limited to, actions for specific performance and/or damages), shall have the right to give Escrow Agent and Purchaser written notice of Purchaser's default, in which event Escrow Agent shall deliver the Deposit to Seller.

c. **Notice.** Neither party shall be deemed to be in default hereunder, unless and until, it shall have been sent written Notice of such default by the other party, and shall have failed to cure the default within ten (10) business days following receipt of such notice.

13. Escrow Agent. The duties of the Escrow Agent shall be as follows:

a. **Duties.** During the term of this Agreement, Escrow Agent shall hold and disburse the Deposit in accordance with the terms and provisions of this Agreement. Purchaser simultaneously with the execution of this Agreement shall provide Escrow Agent with Purchaser's Federal Tax Identification number for use by Escrow Agent in establishing the escrow account and any interest thereon shall be reported as income by Purchaser on its tax returns.

b. **Dispute or Termination.** If this Agreement shall be terminated by the mutual written agreement of Seller and Purchaser, or if Escrow Agent shall be unable to determine at any time to whom the Deposit should be paid, or if a dispute shall develop

between Seller and Purchaser concerning to whom the Deposit shall be paid, then Escrow Agent shall pay the Deposit in accordance with the joint written instructions of Seller and Purchaser. In the event that such written instructions shall not have been received by Escrow Agent within ten (10) days after Escrow Agent has served a written request for instructions upon Seller and Purchaser, or if either party notifies Escrow Agent that the dispute has not been resolved then Escrow Agent shall by bill of interpleader pay the Deposit, less the reasonable expenses of Escrow Agent, as hereinafter set forth, into a court of competent jurisdiction and interplead Seller and Purchaser in respect thereof, and thereafter Escrow Agent shall be discharged of any obligations in connection with this Agreement.

c. Expenses. If costs or expenses are incurred by Escrow Agent because of litigation or a dispute between Seller and Purchaser arising out of the holding of the Deposit in escrow, the party held not to be entitled to the Deposit shall pay Escrow Agent such reasonable costs and expenses. Except for such costs or expenses, no fee or charge shall be due or payable to Escrow Agent for its services as escrow holder.

d. Limitation on Duty. Seller and Purchaser acknowledge that Escrow Agent hereunder is required only to perform the duties and obligations imposed upon Escrow Agent under the terms of this Agreement and expressly does not undertake to perform any of the other covenants, terms and provisions incumbent upon Seller and Purchaser hereunder.

e. Limitation on Liability. Purchaser and Seller hereby agree and acknowledge that Escrow Agent assumes no liability in connection herewith except for gross negligence or willful misconduct; that Escrow Agent shall never be responsible for the validity, correctness or genuineness of any document or notice referred to under this Agreement; and that in the event of any dispute under this Agreement, Escrow Agent may seek advice from its own counsel and shall be fully protected in any action taken by it in good faith in accordance with the opinion of such counsel.

14. Closing. Subject to the satisfaction of all of the terms, covenants and conditions contained herein, Closing shall occur upon the earlier of (1) thirty (30) days of Purchaser receiving site plan approval or a building permit for one of the following: The Shoppes at Riverwalk, The Marketplace at Riverwalk, the Hotel or the Galleria, or (2) December 31, 2016 (the "Closing" or "Closing Date"), at a time and place designated by Purchaser in Sussex County, Delaware. Subject to the provisions of Section 11 above, and upon payment of the Purchase Price as provided for in Section 2, at the time of Closing, Seller shall convey good and marketable title to the Property to Purchaser as provided for in Section 6. The Closing Date is subject to a one (1) year extension if requested by Purchaser ninety (90) days prior to December 31, 2016.

15. Adjustments, Prorations and Closing Costs.

a. Any taxes, general or special, and all other public or governmental charges or assessments against the Property which are, or may be, payable with respect to the Property (including assessments, liens or encumbrances for sewer, water, drainage or other public improvements, completed or commenced, on or prior to the date hereof, or subsequent thereto), shall be adjusted and apportioned as of the date of Closing and are to be assumed and paid thereafter by Purchaser, said adjustment apportionment to be on the basis of the fiscal year for which assessed, whether or not such assessments have been levied as of the date of Closing.

b. All other charges, if any and fees customarily pro-rated and adjusted in similar transactions shall be pro-rated at Closing and thereafter assumed by Purchaser. In the event that accurate prorations and other adjustments cannot be made at Closing because current bills or statements are not obtainable, the parties shall pro-rate on the best available information, subject to adjustment upon receipt of the final bill or statement.

c. The parties shall equally divide the cost of all transfer taxes. Seller shall be responsible for the cost of deed preparation. All recording costs shall be borne by the Purchaser. Fees for owner's and lender's title insurance shall be borne by Purchaser. Each party shall be responsible for the fees of its respective legal counsel, except as otherwise specified herein.

16. Agency. Seller and Purchaser each warrant and represent to the other that it has not used the services of any real estate broker, agent or finder in connection with this Agreement,

17. Notices. Any notice or demand under this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, postage prepaid, or by recognized overnight courier service such as Federal Express, as follows:

If to Seller:

The City of Seaford
Attn: City Manager
P.O. Box 1100
414 High Street
Seaford, DE 19973

With a copy to:

James A. Fuqua, Esquire
Fuqua, Yori and Willard, P.A.
26 The Circle

P.O. Box 250
Georgetown, DE 19947

If to Purchaser:

Seaford Development Associates, LLC
656 Quince Road
Suite 720
Gaithersburg, MD 20878

With a copy to:

David C. Hutt, Esquire
Morris James Wilson, Halbrook & Bayard, LLP
107 West Market Street
P.O. Box 690
Georgetown, DE 19947.

Any such notice or demand shall be deemed given three (3) days after same has been deposited in the United States mail as aforesaid, or the next business day after deposited with a recognized overnight courier. Either party by notice to the other in accordance with the above, may designate a substitute address for such notice or demand and thereafter such substitute address shall be used for the giving of notice or demand.

18. Miscellaneous.

a. This Agreement shall inure to the benefit of and be binding upon Seller and Purchaser and their respective heirs, personal representatives, successors and assigns. Seller specifically reserves the right at any time prior to or at Closing to assign this Agreement to a person or entity selected by it in its sole and absolute discretion, in which event such assignee shall be entitled to all benefits of and be subject to obligations of Seller hereunder; provided, however, that Seller shall remain liable for its assignee's performance hereunder. Purchaser may not assign this Agreement without the written consent of Seller, which consent may be given or withheld in Seller's sole and absolute discretion; provided, however, Purchaser may assign this Agreement to an entity within which Purchaser and/or its principals exercise operational control.

b. This Agreement contains the final and entire agreement between the parties hereto and supersedes all prior oral representations, negotiations and agreements, and neither the parties, nor their agents, shall be bound by any terms, conditions and representations not herein written. This Agreement may not be modified or changed orally, but only by agreement in writing signed by the party against whom enforcement of any such change is sought.

c. All covenants, representations, warranties and undertakings on the part of Seller contained in this Agreement shall be merged into the Deed and extinguished by any settlement, closing, payment of the Purchase Price or by execution and delivery of any deed or bill of sale.

d. The interpretation, construction and performance of this Agreement shall be governed by Delaware law, the Property described in this Agreement being located in Delaware and this Agreement being executed in Delaware.

e. The titles of the sections and paragraphs are inserted as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the intent of any provision thereof.

f. This Agreement is the result of the combined draftsmanship and/or review of Seller and Purchaser and/or their respective agents, accordingly, there shall be no presumption or interpretation of this Agreement based on its having been drafted by one or the other.

g. Each party shall reasonably cooperate with the other in connection with the satisfaction of any condition or obligation which must be satisfied by Closing pursuant to the terms of this Agreement, and in connection therewith each party agrees to execute any document contemplated by the terms of this Agreement, which may be reasonably requested by the other party.

h. This Agreement may be executed in one or more counterparts by facsimile signatures and/or original signatures. The signatures of the parties who sign different counterparts of this Agreement or any of the instruments executed to effectuate the purposes of this Agreement shall have the same effect as if those parties had signed the same counterparts of this Agreement or of any such instrument.

i. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

j. No determination by any court, governmental or administrative entity or otherwise that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other such provision or (ii) such provision in any circumstance not controlled by such

determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

k. Nothing in the provisions of this Agreement shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year shown.

SELLER:

CITY OF SEAFORD

ATTEST/WITNESS:

By: _____ {SEAL}

Date: _____

PURCHASER:

SEAFORD DEVELOPMENT ASSOCIATES, LLC

ATTEST/WITNESS:

By: _____ {SEAL}

Warren Diamond, Managing Member

Date: _____

CONSENT OF ESCROW AGENT

The undersigned hereby agrees to act as Escrow Agent in accordance with the terms and conditions of the foregoing Purchase and Sale Agreement, and hereby agrees to be bound thereby.

WITNESS:

Morris James Wilson Halbrook & Bayard, LLP

By: _____ {SEAL}

Name:

Title:

Date: _____

O.B.1

10-27-15

SPONSOR: Sen. Richardson & Rep. D. Short

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 121

AN ACT TO AMEND THE CHARTER OF THE CITY OF SEAFORD RELATING TO ANNUAL ELECTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend The Charter of the City of Seaford by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 6. The candidates for Mayor and City Councilman shall be nominated as follows:

(c) All such notifications of candidacy must be filed with the City Manager on or before the close of business on the ~~Fourth Friday of March~~ Last Friday in February in the year of the annual election next ensuing; and thereupon, it shall be the duty of the City manager to have a list of names of all candidates so filed with him/her printed in a newspaper published in the City of Seaford on the First Thursday in the month of April in the year of the said annual election next ensuing; or in the event that no newspaper is published in the said City, publication may be had in a newspaper having general circulation in the community; or, in the discretion of the City Council, the City Manager may post a list of names of all candidates designating the office sought by each candidate in at last five (5) public places in the City, such public places to be designated by the Council. One (1) of the said public places shall be in the City Hall of the City of Seaford.

Section 7.

(A) The annual municipal election shall be held on the Third Saturday in April of each and every year. The polls shall be opened at ~~Ten (10) A.M. and shall close at Six (6) P.M.~~ Seven (7) a.m. and shall close at three (3) p.m. prevailing time unless only one (1) candidate has been nominated for each office which has expired and for which nominations have been received. If there is only one (1) official candidate for any office and no formal opponent, the official candidate shall assume office without the holding of a formal election for that office. All voting shall take place in the City Hall of the City of Seaford.

SYNOPSIS

This Act amends the Charter of the City of Seaford by amending the filing deadline for a candidate for Mayor or City Council and the hours that the polls are open for the annual City elections.

AUTHOR: Sen. Richardson

LEGISLATION

148TH GENERAL ASSEMBLY Senate Bill 121

Primary Sponsor(s): Richardson **Additional Sponsor(s):** Rep. D. Short

Co-Sponsors: { NONE... }

Introduced On: 06/09/2015

Long Title: AN ACT TO AMEND THE CHARTER OF THE CITY OF SEAFORD RELATING TO ANNUAL ELECTIONS.

Synopsis of Original Bill: (without Amendments) This Act amends the Charter of the City of Seaford by amending the filing deadline for a candidate for Mayor or City Council and the hours that the polls are open for the annual City elections.

Current Status: Signed On 07/15/2015

Date Governor Acted: 07/15/2015 **Effective Date:**

Volume Chapter: 80:101

Full Text of Legislation: (HTML format) [Legis.html](#) [Email this Bill to a friend](#)

Full Text of Legislation: (PDF format)

Full Text of Legislation: (MS Word format) [Legis.Docx](#)

Fiscal Notes/Fee Impact: Not Required

Amendments:

**Substituted
Legislation for
Bill :**

**Committee
Reports:** Senate Committee report 06/17/15 F=0 M=4 U=0----->

**Voting
Reports:** Senate vote: () Passed 6/24/2015 4:34:10 PM----->
House vote: () Passed 6/30/2015 9:11:12 PM----->

**Fiscal
Notes/Fee
Impact:**

**Engrossed
Version:**

**Actions
History:** Jul 15, 2015 - Signed by Governor
Jun 30, 2015 - Passed by House of Representatives. Votes:
Passed 38 YES 0 NO 0 NOT VOTING 3 ABSENT 0 VACANT
Jun 25, 2015 - Introduced and Assigned to House Administration
Committee in House
Jun 24, 2015 - Passed by Senate. Votes: Passed 19 YES 0 NO 0
NOT VOTING 2 ABSENT 0 VACANT
Jun 17, 2015 - Reported Out of Committee
(COMMUNITY/COUNTY AFFAIRS) in Senate with 4 On Its Merits
Jun 09, 2015 - Assigned to Community/County Affairs Committee
in Senate