

Sewer Basin Public Works Agreement
In Accordance With Kent County Code, Chapter 128

This Murderkill River Area Sewer Basin Public Works Agreement (“Agreement”) is dated as of the 5th day of January, 2005 by and between the Kent County Sewage Disposal District No. 1 (“KCSDD”), James Schiff (“O I”), Susan R. Burris & Jane Gilmore (“O II”), Debra Cromer, Bayard Spence, William Spence (“O III”), West Farms, Inc. (“O IV”), Weslof, Inc. (“O V”), and Ronald & Phyllis Link (“O VI”), as well as the equitable owners of the respective properties.

BASIS OF UNDERSTANDING

- A. OI is the owner of a parcel of land, to be developed with a yet unnamed Subdivision, located in the South Murderkill Hundred east of State Route 15 in Kent County, Delaware, being tax parcel no. SM-00-140.00-01-46.00, and being more particularly depicted in Exhibit “B” attached hereto (“The OI Property”), upon which O I and the equitable owner of said property Schiff Farms, Inc. plan to construct a residential housing development to be occupied by up to 183 equivalent dwelling units (EDUs).
- B. OII is the owner of a parcel of land, to be developed with a yet unnamed Subdivision, located in the South Murderkill Hundred east of State Route 387 in Kent County, Delaware, being tax parcel nos. SM-00-140.00-01-47.00 and SM-00-140.00-01-48.00, and being more particularly depicted in Exhibit “B” attached hereto (“The OII Property”), upon which O II and the equitable owner of said property Millenium Land Development, LLC, plan to construct a residential housing development to be occupied by up to 445 equivalent dwelling units (EDUs).
- C. OIII is the owner of a parcel of land, to be developed with a yet unnamed Subdivision, located in the Milford Hundred west of State Route 35 in Kent County, Delaware, being tax parcel no. MD-00-150.00-02-01.00, and being more particularly depicted in Exhibit “B” attached hereto (“The OIII Property”), upon which O III and the equitable owner of said property James R. Wood, plan to construct a residential housing development to be occupied by up to 144 equivalent dwelling units (EDUs).
- D. OIV is the owner of a parcel of land, to be developed with a yet unnamed Subdivision, located in the South Murderkill Hundred west of State Route 35 in Kent County, Delaware, being tax parcel no. SM-00-140.00-01-62.00, and being more particularly depicted in Exhibit “B” attached hereto (“The OIV Property”), upon which O IV and the equitable owner of said property West/Harrington, LLC, plan to construct a residential housing development to be occupied by up to 200 equivalent dwelling units (EDUs).

- E. OV is the owner of a parcel of land, to be developed with a yet unnamed Subdivision, located in the Milford Hundred west of State Route 15 in Kent County, Delaware, being tax parcel no. MD-00-150.00-01-13.00, and being more particularly depicted in Exhibit "B" attached hereto ("The OV Property"), upon which O V and the equitable owner of said property Garrison/Harrington, LLC, plan to construct a residential housing development to be occupied by up to 173 equivalent dwelling units (EDUs).
- F. OVI is the owner of a parcel of land, to be developed with a yet unnamed Subdivision, Milford Hundred located on the northeast side of State Route 15 in Kent County, Delaware, being tax parcel no. MD-00-150.00-02-02.00(P), and being more particularly depicted in Exhibit "B" attached hereto ("The OVI Property"), upon which O VI and the equitable owner of said property Harrington Three, LLC, plan to construct a residential housing development to be occupied by up to 130 equivalent dwelling units (EDUs).
- G. OI through O VI are here and after referred to as the "Properties".
- H. The Properties are located within a sewer basin, created by the Kent County Department of Public Works in accordance with Kent County Code Chapter 128 and reviewed by the O I and O VI as part of the Technical Feasibility Study. The boundaries of the sanitary sewer basin shall be defined by the Department of Public Works with the intent to optimize topographic features with the final routing decision, however, at the sole discretion of the Kent County Levy Court.

The basin contains approximately 810 acres. Said basin boundaries generally described as follows to wit: Bound to the east by Carpenter Bridge Road (Rd 35), to the south by Kent County Growth Zone, to the west by Canterbury Road (RD 15) and to the North by Roesville Road (Rd 387).

- I. The parties hereto desire that KCSDD design, construct and install gravity and pumped sanitary sewer systems (the "Improvements"), of appropriate size and depth to service and benefit the development of the Properties. The Improvements for the entire basin to be constructed by KCSDD shall be routed in such a way as to provide gravity sewer service to the Properties in the locations shown on Exhibit "A" and are further described as follows:

Construction of Pump Station No. 13B (min. 10 foot diameter and 15 foot depth) to an instantaneous build out pump capacity of 425 gallons per minute and extension of an 8" diameter PVC SDR21 force main from said PS, along the property of the Roland Farm, along the right-of-way of State Route 35, terminating at the 12in. GI for the Frederica West Area.

Construction of 10 in. gravity interceptors terminating at said PS13, touching all participating properties, installed at maximum depth and minimum slope (the "Improvements").

- J. O I through O VI shall each grant to KCSDD easements for the construction and maintenance of the Improvements ("Easement Areas").
- K. O I through O VI shall be solely responsible at their costs for designing, constructing and maintaining the improvements located on their respective Properties (collectively the "Property Improvements").
- L. The cost of designing, constructing and installing the Improvements shall be calculated based on either the preliminary plan submitted for the Technical Feasibility Study - or - the respective number of EDUs "achievable" under the current zoning category at the time of execution of this Agreement. It shall be allocated among and paid by the parties based on the resulting flow as a percentage of the total flow contributing to the sewer basin in accordance with Kent County Code, Chapter 180 and as set forth below. The "achievable" number of EDU's shall be based on the bulk area regulations of the Kent County Code, Chapter 205, Zoning.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, and other good and valuable consideration, the parties hereto, intending to be legally bound, agree as follows:

1. Design and Installation of KCRSD Improvements
 - (A) KCSDD shall be solely responsible for designing and installing the improvements. KCSDD shall be the contracting party on design as well as construction contracts and shall cause the Improvements to be designed and constructed within 600 calendar days, starting no later than September 1, 2004 (the "Start Date") and subsequently completed by April 1, 2006 (the "Completion Date"). The Improvements shall be designed and constructed to (i) maintain sufficient capacity to support a sewer transmission system with an instantaneous capacity of 425 gpm to accommodate and aggregate EDU count of 1,525 in the sanitary sewer basin defined by KCSDD; (ii) maintain sufficient capacity and depth as to support a gravity collection system for the Properties in the KCSDD sanitary sewer system; (iii) include gravity sewer stubs at the intersection of the Easement Areas within public right-of-ways to serve the Properties as shown on Exhibit "A" and (iv) provide sanitary sewer service for the contemplated development of the Properties in said basin.

- (B) KCSDD covenants that construction of the Improvements shall be done (i) in a good and workmanlike manner using materials of good quality, (ii) in accordance with all applicable laws, codes, regulations and ordinances, (iii) pursuant to duly issued permits, (iv) without reasonable interference as determined by the Department of Public Works with O I through O VI use of their respective Properties, and (v) without cost to O I through O VI except to the extent provided below. All contracts entered into by the KCSDD for the Improvements shall be publicly advertised, competitively bid and obtained in accordance with applicable federal, state, and local permit regulations.
- (C) KCSDD's obligation to install and construct Improvements upon the Properties shall be secured by O I and O VI supplying a payment bond, acceptable to KCSDD, in the amount of one hundred percent (100%) of the respective allocation set forth below, at the signing of this agreement and shown as Exhibit "C".

2. Payment of Project Costs

- (A) The parties acknowledge that the estimated pre-design cost for design, contract administration and construction including a ten percent (10%) contingency (collectively, the "Project Costs") of the Improvements is one million, eight hundred, thirty-one thousand, and seven hundred Dollars (\$1,831,700.00).

At least ten (10) days after bid but prior to award of the construction contract for the Improvements, the KCSDD shall submit to O I through O VI for review an updated budget detailing the Project Costs including a five percent (5%) construction contingency. The updated Project Costs shall be allocated in the following manner:

1. Twelve percent (12 %) to O I
2. Twenty-nine and 1/5 percent (29.2 %) to O II
3. Nine and 2/5 percent (9.4 %) to O III
4. Thirteen and 1/10 percent (13.1%) to O IV
5. Eleven and 3/10 percent (11.3%) to O V
6. Eight and 1/2 percent (8.5%) to O VI
7. Sixteen and 2/5 percent (16.4%) to KCSDD

- (B) During the course of design and construction of the Improvements, KCSDD shall submit to O I through O VI monthly payment requisition requests setting forth the amount of work completed (expressed as a percentage of the total project), the aggregate funds paid out to date for which reimbursement has been received, the amount of the current reimbursement request and such other information as O I through O VI may reasonably request, accompanied by paid receipts or other evidence of payment by KCSDD of the current reimbursement request. O I and O VI shall make payments to KCSDD within thirty (30) days of their receipt of the complete payment request from KCSDD.
- (C) If payment is not received within sixty (60) days, KCSDD has the right to draw on the payment bond. If full payment is not received from the surety within thirty (30) days of presentation of the reimbursement request by KCSDD, then the parties to this agreement agree that the respective property will be liened and said lien may be enforced at the option of the KCSDD.
- (D) The parties O I through O VI shall be responsible for paying \$ 101.64/EDU to KCSDD, for their proportionate share of the design and installation of the district 24 in./30 in. bypass force main. Said amount shall be required to be paid to KCSDD at the time of construction plan approval for each project (O I though O VI) respectively.

3. Maintenance & Easements

- (A) KCSDD shall be responsible for maintaining the Improvements in good operating condition and repair and in accordance with all applicable laws, codes, regulations and ordinances and shall be solely responsible for the payment of all operating, maintenance, repair and replacement costs associated with the Improvements. O I through O VI shall be responsible for maintaining their respective Property Improvements in good operating condition and repair and shall each be solely responsible for the payment of all operating, maintenance, repair and replacement costs associated with their respective Property Improvements until final acceptance by KCSDD at which time the maintenance responsibility for all Property Improvements in public right-of-ways and easements transfers to KCSDD.
- (B) O I through O VII each agree to grant to KCSDD exclusive twenty (20) foot wide permanent easements for gravity interceptors and force mains and a forty (40) foot square permanent easements for a pumping station (in the form attached hereto as Exhibit "D") not part of any individual lot in the approximate locations shown on Exhibit "A", to be used by KCSDD solely for the construction and maintenance of the Improvements.

4. Fees & Charges

- (A) KCSDD requires, prior to issuance of a sewer permit in accordance with Kent County Code, Chapter 128, Fees, payment of Main System Improvement Fees, District Expansion Fees if applicable and all other fees and charges associated with connection into the KCSDD Improvements, whether now existing or hereinafter enacted, however denominated, other than for actual usage of service.
- (B) Properties which were notified that they can be connected to the Levy Court approved Murderkill River Area Sewer Basin shall be subject to Aid in Construction in accordance with Kent County Code, Chapter 128, Fees in the amount of **\$1,302.75 per EDU**. The Aid in Construction shall be used for the following uses in this order: (i) necessary mechanical upgrades required to accommodate the respective property, (ii) reimbursement of any transmission up size costs and (iii) refund of O I through O VI on a prorated basis for costs associated with over sizing of the Improvements.
- (C) KCSDD covenants that it shall charge O I through O VI sanitary sewer service at the rates established by Levy Court in force and effect for the Kent County Sewage Disposal District No. 1 at the time of connection. This charge shall also apply to temporary service contemplated under paragraph 5 below.
- (D) The incremental cost (\$1,302.75/EDU) as calculated for the Improvements covers the construction of up to the number of EDUs stated in the "Basis of Understanding" section of this Agreement. Increases in the total flow contributing to the sewer basin as a result of design changes to any parcel or portion thereof in said basin increasing the number of EDUs shall be the sole responsibility of the party requesting said increase. Each EDU above the stated number shall be subject to payment of the incremental cost in addition to all other applicable fees at the time of sewer permit issuance.
- (E) The cost for upgrading the Improvements to accommodate increases in the total flow contributing to the sewer basin as a result of subsequent changes in zoning or conditional use applications to any parcel or portion thereof in said basin shall be the sole responsibility of the party requesting said change in zoning.

5. Default & Remedies

- (A) If construction of the Improvements has not commenced 230 days after the Start Date, then O I through O VI may at any time thereafter elect to jointly design, install and complete the Improvements, in which case each of the parties hereto shall remain liable and obligated for the payment of Project Costs in accordance with the terms of Section 2 above. In such case, O I through O VI shall submit monthly payment requisitions to KCSDD.

- (B) If O I through O VI record subdivision plans and obtain all required agency approvals for the construction of said subdivision(s) prior to the Completion Date then KCSDD is prepared to provide temporary sewer service via tanker trucks. O I through O VI shall enhance their respective properties by installing and paying for oversized manhole(s) to provide temporary storage in accordance with DNREC regulations. KCSDD shall assume all operating responsibilities associated with said storage system up to one (1) 5,000 gallon tanker truck pick up or twenty five (25) EDUs per subdivision per day whichever is greater until the date that the Improvements have been completed.
- (C) The foregoing rights and remedies are not intended to be exclusive and the parties hereto shall have the benefits of all rights and remedies provided at law or in equity upon a default under this Agreement. If any party is required to enforce its rights in a court of law or in a court of equity, all reasonable cost in doing so may be recovered.

6. Miscellaneous

- (A) Nothing contained in this Agreement is intended to be construed to impose liability on any party for the conduct or acts of any other party, nor shall anything in this Agreement be construed as creating a joint venture, partnership or other relationship among any of the parties.
- (B) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The failure of any party to this Agreement to perform pursuant to the terms hereof shall not relieve any other party of its obligation to perform under the terms of this Agreement. All holders (now or hereafter) of any interest in all or any portion of the Properties are intended third party beneficiaries of this Agreement.
- (C) No delay or omission by any party to exercise any right or power accruing upon any non-compliance or failure of performance by any other party of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. This Agreement cannot be modified, supplemented or altered in any respect except by a writing signed by the parties hereto, or their respective successors or assigns.
- (D) Time wherever specified herein for satisfaction of conditions or performance of obligations is of the essence of this Agreement.

- (E) This Agreement shall be governed by, and construed under, the laws of the State of Delaware. If any term or provision of this Agreement or application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- (F) This Agreement contains the entire agreement among the parties hereto and supersedes all prior or contemporaneous oral and written agreements and practices.

IN WITNESS WHEREOF, each of the parties hereto have caused this Agreement to be executed.

Signed, Sealed and Delivered

KENT COUNTY REGIONAL
SEWAGE DISPOSAL DISTRICT
NO. 1

By: David R. Burns
Levy Court President

In the Presence of:

Lorraine Lanaha

OWNER:

Debra Cromer
Name: Debra Cromer

x Bayard Spence
Name: Bayard Spence

x William Spence
Name: William Spence

EQUITABLE OWNER:

James R. Wood

By: James R. Wood
Name: JAMES R. WOOD
Title: _____

Name: ~~Carol Jones~~

Name: ~~Lorraine Lanaha~~

Schiff Farms, Inc.

By: James Schiff
Name: JAMES SCHIFF
Title: President

****Property has been sold****

OWNER:

Susan R. Burris
Name: Susan R. Burris
CEO at Exchange Foundation

Jane Gilmore
Name: Jane Gilmore

Stanley C. West Pres.
Name: Stanley West
West Farms, Inc.

Charles H. West
Name: Stanley West Charles West
West Lof, Inc. Weslof

Ronald V. Link Sr.
Name: Ronald Link

Phyllis C. Link
Name: Phyllis Link

EQUITABLE OWNER:

~~Millenium Land-Development, L.L.C.~~

By: [Signature]
Name: BRUCE MARTIN
Title: MAN- MGR.

West/Harrington, LLC

By: Michael J. Harrington Sr.
Name: MICHAEL J. HARRINGTON SR
Title: MANAGING PARTNER

Garrison/Harrington, LLC

By: Michael J. Harrington Sr.
Name: MICHAEL J. HARRINGTON SR
Title: MANAGING PARTNER

Harrington Three, LLC

By: Michael J. Harrington Sr.
Name: MICHAEL J. HARRINGTON SR
Title: MANAGING PARTNER