

# City of Milford



## AGENDA

Monthly Council Meeting

January 10, 2011

Joseph Ronnie Rogers Council Chambers, Milford City Hall, 201 South Walnut Street, Milford, Delaware

COUNCIL MEETING - 7:00 p.m.

Call to Order - Mayor Joseph Ronnie Rogers

Invocation

Pledge of Allegiance

Approval of Previous Minutes

Recognition

Monthly Police Report

City Manager's Report

Committee Reports

Communications

Unfinished Business -  
Right of Way Acquisition/Cypress Hall Development

New Business -  
Appointment/Reappointment of Board of Adjustment Member(s)  
Introduction of Ordinance 2011-1/Fiber Optic Leasing\*  
State of Delaware Fiber Optic Agreement\*

Monthly Finance Report

Executive Session -

*Pursuant to 29 Del. C. §10004(b)(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed*

*Pursuant to 29 Del. C. §10004(b)(4) Strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation\**

Executive Session Matter-Personnel Issue

Executive Session Matter-Legal Issue

Adjourn

This agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting.

**SUPPORTING DOCUMENTS MUST BE SUBMITTED TO THE CITY CLERK IN ELECTRONIC FORMAT  
NO LATER THAN ONE WEEK PRIOR TO MEETING; NO PAPER DOCUMENTS WILL BE ACCEPTED  
OR DISTRIBUTED AFTER PACKET HAS BEEN POSTED ON THE CITY OF MILFORD WEBSITE.**

# CITY OF MILFORD

DELAWARE



OFFICE OF THE CHIEF OF POLICE  
E. KEITH HUDSON

“THE GARDEN CITY OF TWIN COUNTIES”

400 N.E. FRONT STREET  
MILFORD, DELAWARE 19963  
(302)422-8081 FAX (302)424-2330

## MEMORANDUM

TO: Mayor and Members of City Council

FROM: E. Keith Hudson, Chief of Police

DATE: January 5, 2011

RE: Activity Report/December 2010

=====

### **Monthly Stats:**

A total of 364 arrests were made by the Milford Police Department during December 2010. Of these arrests, 128 were for criminal offenses and 236 for traffic violations. Criminal offenses consisted of 35 felonies and 93 misdemeanors. Traffic violations consisted of 27 Regular Duty Radar, 15 Drunk-Driving charges, 23 Special Duty Radar and 171 other.

Police officers investigated 63 accidents during the month (7 personal injury, and 56 property damage) and issued 127 written reprimands. In addition, they responded to 1084 various complaints including city requests and other agency assistance.

A total of \$8,961.64 was collected in fines during December.

No False Alarm Violation Invoice were issued during the month of December.

### **Monthly Activities:**

The police department is still accepting applications for the 2011 Citizens Police Academy scheduled to begin January 26, 2011. The classes will be held Wednesday evenings through March 16, 2011. Anyone interested can stop by the police department and fill out a brief application. Questions may be addressed to Lieutenant Steven Rust by calling 302-422-8081. At this time, the department has not received any applications, however several people have verbally expressed an interest.

On December 17<sup>th</sup>, Jonathan Ricketts graduated from the Delaware State Police Academy after 26 weeks of intense training. Patrolman Ricketts will go through a Field Training Program for the next 12 weeks with an assigned training officer.

December 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup>, three officers attended a Field Training Officer School held at the Delaware State Police Academy. This training gives instruction in to the proper techniques of training new police officers.

On December 6<sup>th</sup>, an officer attended the 2010 Domestic Violence Conference which was held in Dover.

On December 7<sup>th</sup>, two members of the department's administrative staff attended an overview of Officer Involved Shootings held at the Delaware State Police Academy.

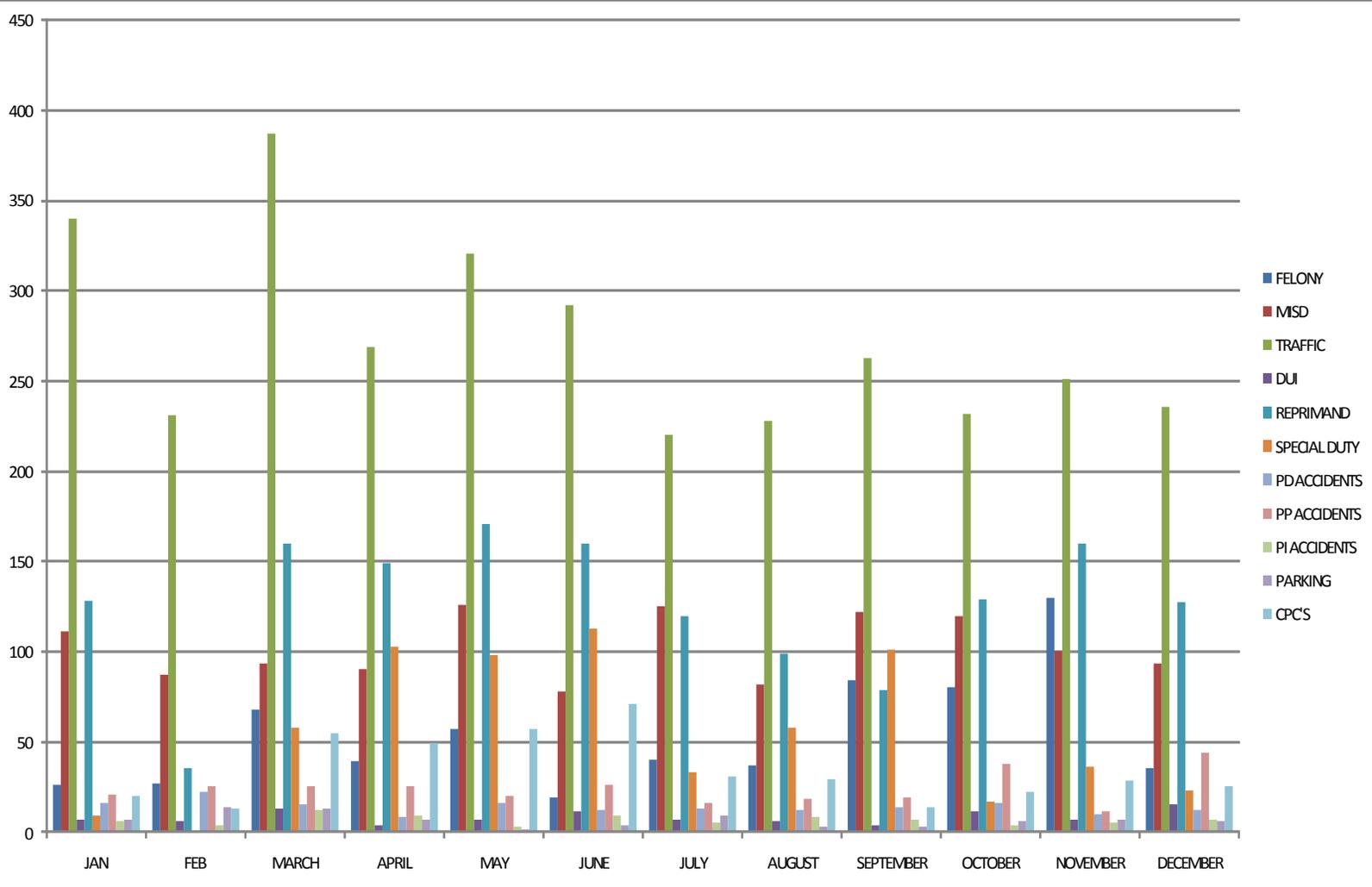
On December 16<sup>th</sup> & 17<sup>th</sup>, an officer attended a seminar on "Advanced Roadside Impaired Driving Enforcement".

The Police Department's Community Policing Unit assisted with the Downtown Holiday Stroll by placing signs where needed, providing security during the event. They also assisted with a benefit to raise money for the Holiday Food and Toy Drive. They also assisted with the hayride that benefits the Christmas Toy Drive.

EKH/vrk

## DECEMBER ACTIVITY REPORT

|                                | <u>DEC 2009</u> | <u>TOTAL 2009</u> | <u>DEC 2010</u>   | <u>TOTAL 2010</u>   |
|--------------------------------|-----------------|-------------------|-------------------|---------------------|
| <u>Complaints</u>              | 928             | 14312             | <b>925</b>        | <b>13209</b>        |
| <u>Criminal Arrests</u>        | 203             | 2364              | <b>128</b>        | <b>1869</b>         |
| Felonies                       | 102             | 751               | <b>35</b>         | <b>642</b>          |
| Misdemeanors                   | 101             | 1613              | <b>93</b>         | <b>1227</b>         |
| <u>Traffic Arrests</u>         | 99              | 4329              | <b>236</b>        | <b>3252</b>         |
| Regular Duty Radar             | 15              | 661               | <b>27</b>         | <b>263</b>          |
| D.W.I.                         | 2               | 144               | <b>15</b>         | <b>98</b>           |
| Special Duty Radar             | 15              | 762               | <b>23</b>         | <b>649</b>          |
| Other                          | 67              | 2762              | <b>171</b>        | <b>2282</b>         |
| <u>Reprimands</u>              | 56              | 2177              | <b>127</b>        | <b>1517</b>         |
| <u>Accidents</u>               | 50              | 596               | <b>63</b>         | <b>524</b>          |
| Personal Injury                | 3               | 60                | <b>7</b>          | <b>79</b>           |
| Property Damage                | 47              | 515               | <b>56</b>         | <b>454</b>          |
| Fatal (included in PI)         | 0               | 2                 | <b>0</b>          | <b>2</b>            |
| <u>Parking Summons</u>         | 1               | 124               | <b>6</b>          | <b>80</b>           |
| <u>Crime Prevention Checks</u> | 2               | 473               | <b>25</b>         | <b>413</b>          |
| <u>Fines Received</u>          | \$9,173.73      | \$133,875.25      | <b>\$8,961.64</b> | <b>\$109,132.50</b> |



## City Manager's Report January 10, 2011

- **Solid Waste & Recycling**

On August 1, the City Solid Waste Department began the collection of curbside recycling. During the month of November, the Solid Waste Department collected 377.85 tons (304.60 tons of Solid Waste; 46.62 tons of Recycling and 26.03 tons of yard waste)

|        | Recycling<br>Tons | Recycling<br>Rate |
|--------|-------------------|-------------------|
| Dec-09 | 46.12             | 10.70%            |
| Dec-10 | 46.62             | 10.98%            |

Earlier this year, SB234 was signed into law and part of the legislation establishes diversion rates of 50% by January 1, 2015 for Municipal Solid Waste being disposed of at the landfill.

|      | Recycling | Solid Waste | Yard<br>Waste | Total    | Diversion<br>Rate |
|------|-----------|-------------|---------------|----------|-------------------|
| 2009 | 442.44    | 4,684.38    | -             | 5,126.82 | 8.63%             |
| 2010 | 441.14    | 4,630.47    | 37.49         | 5,109.10 | 9.37%             |

- **Impact Fee Waivers**

Since the waiver of impact fees was implemented in June, the City has waived \$135,507 in fees. This waiver has allowed property owners in Milford to retain this money and has helped to support a total investment of \$7,637,997 (based on building permit values) during the months of June through December.

- **N.E. 10<sup>th</sup> Street Paving**

I have met with Mr. Mallamo and Mr. Dennehy regarding the paving work completed by C&J Paving and Mr. Mallamo is in the process of evaluating options that will address the issues associated with the recent work. It is planned for this to be discussed at the January 24, 2011 City Council meeting where Mr. Mallamo will be presenting the alternatives and providing a recommendation on how to proceed.

- **201, 203, 205 & 207 NW Front Street**

The property owners of 205 & 207 NW Front Street filed an appeal of the City Board of Appeals Decision in Superior Court on December 21, 2010 and the City subsequently filed a motion to dismiss this appeal. On December 30, 2010 the Court held a hearing and issued a stay on the demolition until January 21, 2011. At this time, the Judge indicated they would rule on the City's motion to dismiss on or before January 7, 2011. If the Court denies the motion to dismiss, Mr. Willard believes the Court will request a certified record and a briefing schedule for further review. If the motion to dismiss is granted, the City will be in a position to proceed with demolition unless the property owner appeals to the State Supreme Court and obtains a stay.

- **Economic Development Strategy**  
A copy of the Economic Development Strategy has been provided to members of City Council and will be presented by Mr. John Rhodes at the January 24, 2010 Workshop.
- **Electric Utility Rate Comparison**  
See the attached Residential Utility Rate Comparison from DEMEC for January 2011.
- **City Holidays**  
City offices will be closed on Monday, January 17, 2011 in observance of the Dr. Martin Luther King, Jr. holiday.



# DELAWARE SOLID WASTE AUTHORITY

**Board of Directors**

Richard V. Pryor

*Chairman*

Ronald G. McCabe

*Vice Chairman*

Theodore W. Ryan

Timothy P. Sheldon

Tonda L. Parks

Gerard L. Esposito

Gregory V. Moore, P.E.

Pasquale S. Canzano, P.E., BCEE  
*Chief Executive Officer*Richard P. Watson, P.E., BCEE  
*Chief Operating Officer*

December 21, 2010

Mr. David Baird  
City of Milford  
P.O. Box 159  
Milford, DE 19963

Dear David:

Enclosed please find the City of Milford's numbers for the month of November 2010.

**November 2010  
Weight in Pounds**

| MARSHALL STREET       |               |        |             |
|-----------------------|---------------|--------|-------------|
| CARD BOARD            | SINGLE-STREAM | TOTAL  | OIL GALLONS |
| 3,221                 | 64,739        | 67,960 | 225         |
| MILFORD MIDDLE SCHOOL |               |        |             |
| 933                   | 4,158         | 5,091  |             |
| MILFORD COMMONS       |               |        |             |
| 1,315                 | 16,036        | 17,351 |             |

Sincerely,

Rich Von Stetten  
Sr. Manager of Statewide RecyclingC:\RVSRD correspondence\cityofmilford.doc  
Attachments: City of Milford Site Totals1128 S. Bradford Street, P.O. Box 455, Dover, Delaware 19903-0455  
Phone: (302) 739-5361 Fax: (302) 739-4287CITIZENS' RESPONSE LINE: 1-800-404-7080 [www.dswa.com](http://www.dswa.com)

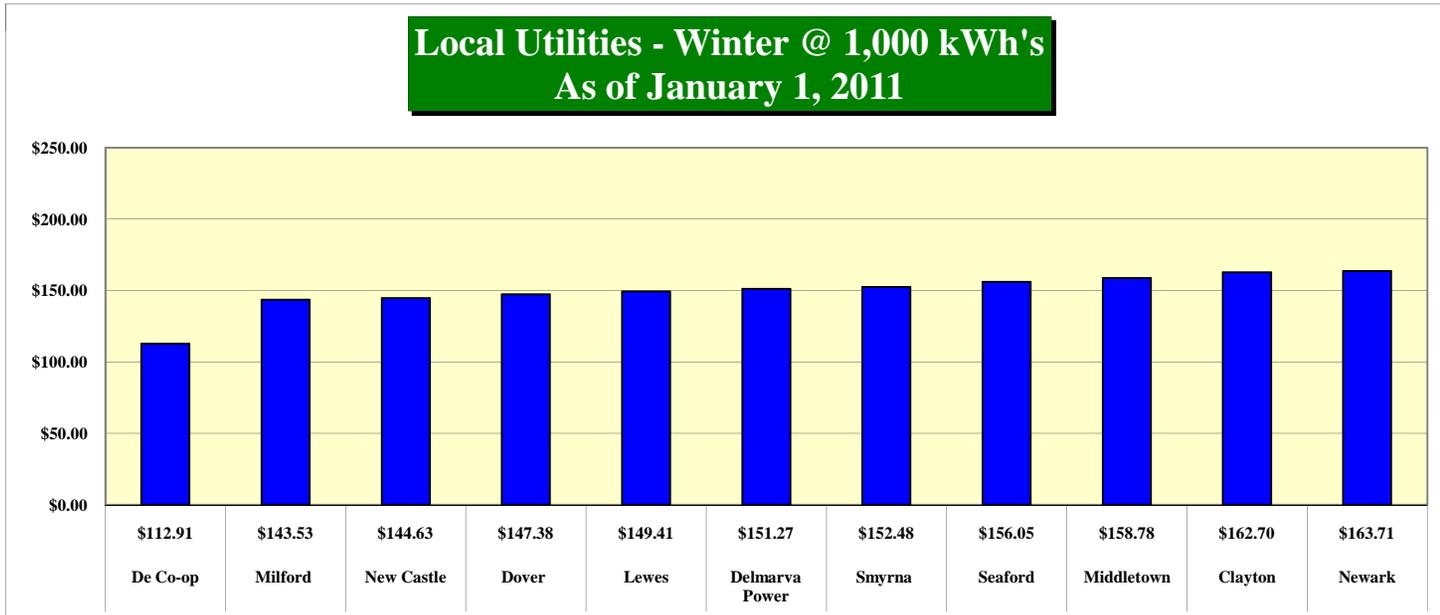
## Selected Area Utilities

Winter (Oct. - May)

# RESIDENTIAL RATE COMPARISON @ 1,000 kWh

|                       |          | <u>% Difference</u> | <u>% Difference</u> |
|-----------------------|----------|---------------------|---------------------|
| <u>De Co-op</u>       | \$112.91 | 0%                  | -25%                |
| <u>Milford</u>        | \$143.53 | 27%                 | -5%                 |
| <u>New Castle</u>     | \$144.63 | 28%                 | -4%                 |
| <u>Dover</u>          | \$147.38 | 31%                 | -3%                 |
| <u>Lewes</u>          | \$149.41 | 32%                 | -1%                 |
| <u>Delmarva Power</u> | \$151.27 | 34%                 | 0%                  |
| <u>Smyrna</u>         | \$152.48 | 35%                 | 1%                  |
| <u>Seaford</u>        | \$156.05 | 38%                 | 3%                  |
| <u>Middletown</u>     | \$158.78 | 41%                 | 5%                  |
| <u>Clayton</u>        | \$162.70 | 44%                 | 8%                  |
| <u>Newark</u>         | \$163.71 | 45%                 | 8%                  |

\* Approximate. DP&L's transmission capacity charge is based on each individual's Peak Load Contribution (PLC) to the overall transmission load. Each customer has a unique PLC that changes every January.



# DELAWARE LEAGUE OF LOCAL GOVERNMENTS

## Monthly Dinner Meeting

January 27, 2011

SHERATON DOVER HOTEL,

1570 North DuPont Highway, Dover, Delaware

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SOCIAL HOUR: 6:00 pm – 6:45 pm  
OPENING: 6:45 pm – 7:00 pm  
DINNER: 7:00 pm – 7:20 pm  
PROGRAM: 7:20 pm – 8:00 pm

### PROGRAM

Valerie J. Mann, President of Mann & Mann Grant Solutions, is the Author of Getting your Share of the Pie. She will discuss ways of securing grants for municipalities. Valerie Mann has political experience which makes her aware of the unique challenges facing local and county governments; she served as President of the Fruitland, MD City Council from 1992 – 1998. Ms. Mann will discuss what funding agencies are looking for and conversely, what will turn them off.

Election of Officers for 2011 will be conducted at this meeting.

NEXT MEETING: February 24, 2011

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*Special diets can be accommodated with 24 hour notice.*

**WE MUST HAVE YOUR RESERVATION NO LATER THAN January 17, 2011.**

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Mail to: Delaware League of Local Governments

P.O. Box 484

Dover, DE 19903

Telephone: 302-678-0991

Fax: 302-678-4777

\_\_\_\_\_ will have \_\_\_\_\_ attendees  
(Municipality/County/Agency)

PLEASE LIST THE NAMES OF THOSE ATTENDING:

| <u>Name</u> |   | <u>Title</u> |
|-------------|---|--------------|
| _____       | & | _____        |
| _____       | & | _____        |
| _____       | & | _____        |
| _____       | & | _____        |
| _____       | & | _____        |
| _____       | & | _____        |
| _____       | & | _____        |

- ( ) Check enclosed for ( ) dinners @ \$20.00 each
- ( ) Please direct bill the Municipality/County/Agency
- ( ) Payment will be made at the door
- ( ) Enclosed for ( ) dinners @ 20.00 each

Mayor, Council, &  
Employees—

Thank you for  
the beautiful flowers  
that were sent to  
Nancy's funeral. They  
were greatly appreciated.  
Thanks again.

For all the kindness you have shown,  
We thank you very much,  
For sympathy in sorrowing days,  
For friendship's healing touch  
With gratitude our hearts are full,  
Though words cannot convey  
The tender thoughts and thankfulness  
We hold for you today.

By the family of

Nancy Daniels

*Gerald G. Friedel, P.E.  
Michael R. Wigley, AIA  
Randy B. Duplechain, P.E.  
Charles R. Woodward Jr., LS  
W. Zachary Crauch, P.E.  
Michael E. Wheadleton, AIA  
Jason P. Lear, P.E.*

December 10, 2010

David W. Baird  
City of Milford  
201 S. Walnut St.  
Milford, Delaware 19963

RE: Cypress Hall Commercial  
US 113 at DE 36 (Shawnee Rd) and DE 36A (Seabury Ext.)  
**Rt. 36 (Shawnee Rd) / US Rt. 113 Right-of-way acquisition**

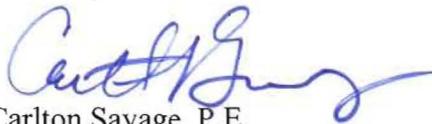
Dear Mr. Baird:

On behalf of our client, Shawnee Farms LLC, we request the following land acquisition for right-of-way dedication from the City of Milford (Parcel 1-30-3.11-21.00) for road improvements along Rt. 36 (Shawnee Road). A 20' wide dedication is necessary to construct a 12' wide eastbound turn lane on Rt. 36 at the intersection with US Rt. 113 including a swale for drainage. An additional 10' wide temporary construction easement (TCE) is also being requested to aid and allow for additional room for construction activities. The turn lane is a requirement based on the Traffic Impact Study (TIS) created for Cypress Hall Commercial (previously Vale Asche Property) dated March 2006 and submitted to the Delaware Department of Transportation (DelDOT) as part of their requirements. A copy of the TIS requirements is attached for reference.

Please find the attached drawing labeled "Exhibit 1" showing the required dedication, temporary construction easement, and improvements proposed for construction as part of the Cypress Hall Commercial project. The improvements have been reviewed by DelDOT and have requested our office to request all required land acquisitions.

Should you have any questions or need additional information please call our office at (302) 424-1441.

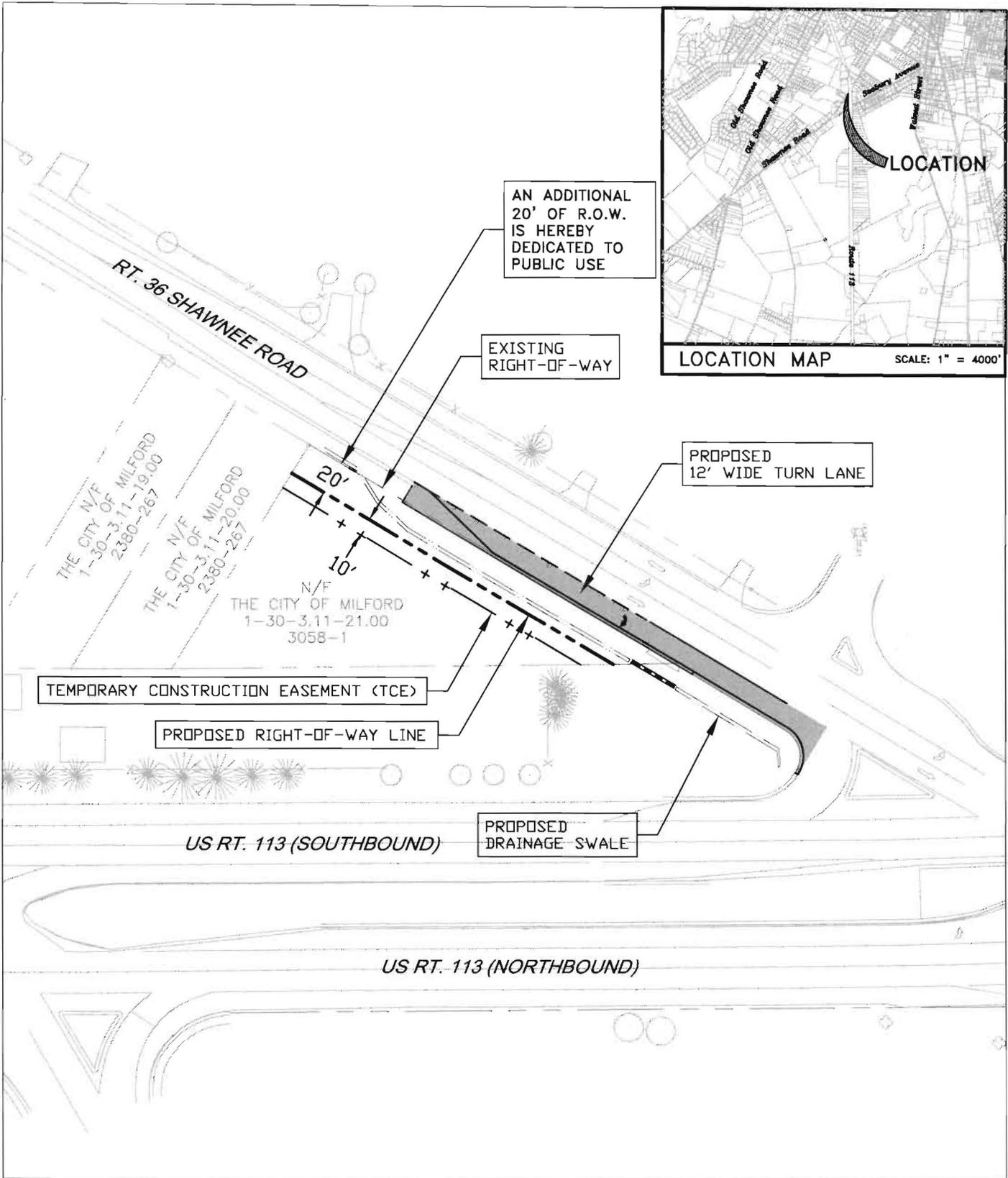
Sincerely,



Carlton Savage, P.E.  
Project Manager

Enclosures

Cc:



**DAVIS, BOWEN & FRIEDEL, INC.**  
 ARCHITECTS, ENGINEERS & SURVEYORS

SALISBURY, MARYLAND (410) 543-9091  
 MILFORD, DELAWARE (302) 424-1441

**CYPRESS HALL COMMERCIAL**  
 REQUEST FOR RIGHT-OF-WAY DEDICATION  
 CITY OF MILFORD

**EXHIBIT 1**

PROJ. NO. : 1423A002J

DATE : DECEMBER 2010

SCALE: 1" = 80'

DWG. 1 of 1



STATE OF DELAWARE  
**DEPARTMENT OF TRANSPORTATION**  
800 BAY ROAD  
P.O. Box 778  
DOVER, DELAWARE 19903

CAROLANN WICKS, P.E.  
SECRETARY

September 13, 2006

Mr. Gary Norris  
City Planner  
City of Milford  
201 South Walnut Street  
P.O. Box 159  
Milford, DE 19963

Dear Mr. Norris:

The attached Traffic Impact Study (TIS) review letter for the **Vale Asche Property** subdivision has been completed under the responsible charge of a registered professional engineer whose firm is authorized to work in the State of Delaware. They have found the TIS to conform to DelDOT's Rules and Regulations for Subdivision Streets and other accepted practices and procedures for such studies. DelDOT accepts this TIS review and concurs with the recommendations. We are providing it to you in fulfillment of our joint agreement regarding the review of TIS. If you have any questions concerning this letter or the attached review letter, please contact me at (302) 760-2134.

Sincerely,

Todd J. Sammons  
Project Engineer

TS:km

Enclosures

cc with enclosures: Ms. Constance C. Holland, Office of State Planning Coordination  
Mr. Dennis Hughes, Davis, Bowen & Friedel  
Mr. Scott Diehl, McCormick Taylor  
Mr. Brad Herb. Johnson, Mirmiran & Thompson  
DelDOT Distribution





September 12, 2006

Mr. Todd J. Sammons  
Project Engineer  
DelDOT Division of Planning  
P.O. Box 778  
Dover, DE 19903

RE: Agreement No. 1294  
Traffic Impact Study Review Services  
**Task No. 98 – Vale Asche Property**

Dear Mr. Sammons,

McCormick Taylor has completed its review of the Traffic Impact Study (TIS) for the Vale Asche Property performed by Davis, Bowen, & Friedel (DBF) dated March 2006. This review was assigned as Task Number 98. DBF prepared the report in a manner generally consistent with DelDOT's *Rules and Regulations for Subdivision Streets*.

The TIS evaluates the impacts of the Vale Asche Property, proposed to be located on approximately 146 acres in the City of Milford, Sussex County, Delaware. It is proposed to be located on the south side of Seabury Avenue (Sussex Road 36A) and Shawnee Road (Delaware Route 36, Sussex Road 36). This site is currently proposed as a mixed use development with approximately 279 single-family detached houses, 288 townhouses/condominiums, and a 160,000 square foot shopping center with seven pad sites for a variety of uses. Two access points along US Route 113 and one access point along Seabury Avenue are proposed. The two access points along US Route 113 include one northern access opposite the proposed Simpson Crossing site entrance, and one southern access aligned with an existing crossover (opposite the Milford Church of Christ). The proposed access point along Seabury Avenue is located between Delaware Route 36 and US Route 113. Construction of this development is proposed to be complete by 2015.

DelDOT currently has two relevant projects/programs in the study area. The US 113 North-South Study is being conducted by DelDOT to consider capacity improvements for the US Route 113 corridor from north of Milford to the Delaware/Maryland state line. The project will continue to study viable alternatives for north/south capacity improvements throughout Sussex County. Many alternatives are being studied, both on and off existing alignments. In October 2005, DelDOT narrowed the range of alternatives under study. These alternatives will be studied in more detail over the next year. Because several alternatives are still being studied, the ultimate impact on the traffic flow in the area is not yet known. Currently none of the alternatives being studied would directly affect the study area. It is expected that DelDOT will select a preferred alternative sometime in 2007. For more information, please see the project web site at <http://www.deldot.gov/static/projects/us113/>.

The second DelDOT program is the Corridor Capacity Preservation Program (CCPP). This is a statewide program intended to sustain the capacity of adopted highway corridors by various means such as limiting access points and using service roads for local vehicle trips. US Route 113 north of the southern Milford city limits has already been modified to preserve capacity with improvements similar to those made at the intersection of US Route 113 and Seabury Avenue. The general purpose of the program is to ensure that the existing regional arterial highways are able to efficiently carry regional traffic without impedance from the effects of local development.

Based on our review, we have the following comments and recommendations.

The following intersections exhibit level of service deficiencies without the implementation of physical roadway and/or traffic control improvements:

| <i>Intersection</i>  | <i>Situations for which deficiencies occur</i>                                |
|--|---|
| US Route 113 and Simpson Crossing/proposed northern Vale Ashe entrance | 2015 Saturday without development; 2015 PM and Saturday with development      |
| US Route 113 and church entrance/proposed southern Vale Ashe entrance  | 2015 Saturday with development  |
| US Route 113 and Seabury Avenue  | 2015 Saturday without development; 2015 AM, PM, and Saturday with development |
| US Route 113 and Delaware Route 36                                     | 2015 PM and Saturday with development   |

Should the City of Milford choose to approve the project, the following items should be incorporated into the site design and should be reflected on the record plan. All applicable agreements (i.e., letter agreements for off-site improvements and traffic signal agreements) should be executed prior to entrance plan approval for the proposed development.

1. The developer should provide access from the north end of the site directly onto Delaware Route 36. The exact configuration will need to be coordinated with the DelDOT Subdivision Engineer; however, the intersection should be aligned as close to a 90-degree angle as possible. The intersection should include a separate eastbound right-turn lane on Delaware Route 36, and separate left-turn lane on westbound Delaware Route 36, and separate left and right-turn lanes on the northbound site access approach.
2. Seabury Avenue, between US Route 113 and Delaware Route 36, should be vacated.
3. Internal site roadways on the northern side of the property should be designed to discourage cut-through traffic from Delaware Route 36 to US Route 113.

4. The developer should construct the northern site access to align with the proposed access to the Simpson Crossing development. The intersection should have the following lane configuration:
  - Northbound US Route 113: One left-turn lane, two through lanes, one right-turn lane
  - Southbound US Route 113: One left-turn lane, two through lanes, one right-turn lane
  - Eastbound Vale Asche Access: Two left-turn lanes, one through lane, one right-turn lane
  - Westbound Simpson Crossing Access: One left-turn lane, one through lane, one right-turn lane

The developer of Vale Asche should be responsible for the improvements on the west side of US Route 113, while the developer of Simpson Crossing should be responsible for the improvements on the east side of US Route 113. These two developers should share the responsibility for the improvements on US Route 113.

5. The developer should enter into a traffic signal agreement with DeIDOT for the intersection of US Route 113 and the Northern Site Access. The agreement should include pedestrian signals, crosswalks, and interconnection at DeIDOT's discretion.
6. The Southern Site Access onto US Route 113 should be aligned with the existing US Route 113 crossover and should include islands to physically prohibit left-turning and through traffic out of the site. Southbound right-turning traffic on US Route 113, northbound left-turning traffic on US Route 113, and eastbound right-turning traffic from the site should be allowed.
7. The residential section of the site should include one or more stub streets to connect to potential future development to the west of the site.
8. The developer should improve the intersection of US Route 113 and Delaware Route 36 to include an eastbound right-turn lane and a westbound right-turn lane along Delaware Route 36.
9. The following bicycle, pedestrian, and transit improvements should be implemented:
  - a. ADA compliant sidewalks set back a minimum of three-feet from the curb along the site frontage and connecting to any existing sidewalks on adjoining properties should be installed.
  - b. ADA compliant curb ramps and crosswalk should be considered at the site entrance.
  - c. Internal sidewalks to promote walking as a viable transportation alternative should be installed, including sidewalks connecting this development to adjacent developments.

- d. The developer should coordinate with the Delaware Transit Corporation on potential transit features along US Route 113. These features could potentially include bus stops/pads, bus shelters, and bus pull-off areas.

Please note that this review generally focuses on capacity and level of service issues; additional safety and operational issues will be further addressed through DelDOT's subdivision review process.

Additional details on our review of this TIS are attached. Please contact me at (302) 738-0203 or through e-mail at [sjdiehl@mtmail.biz](mailto:sjdiehl@mtmail.biz) if you have any questions concerning this review.

Sincerely,  
**McCormick Taylor, Inc.**



Scott Diehl, P.E., PTOE, AICP  
Project Manager

Enclosures

LEGAL DESCRIPTION  
RIGHT-OF-WAY DEDICATION  
LANDS OF  
SHAWNEE FARM, LLC  
1-30-3.11-21.00

Gerald G. Friedel, P.E.  
Michael R. Wigley, AIA  
Randy B. Duplechain, P.E.  
Charles R. Woodward, Jr., LS  
Jo Anne Williams, P.E.  
W. Zachary Crouch, P.E.  
Michael E. Wheedleton, AIA

December 14, 2010

**ALL** that piece or parcel of land, hereinafter described, situate, lying and being on the southeasterly side of Route 36, Shawnee Road and being located in the City of Milford, Cedar Creek Hundred, Sussex County, Delaware, as shown on a plat entitled "Cypress Hall Commercial, Request for Right-of-way Dedication" completed by Davis Bowen & Friedel, Inc., dated Dec. 2010; said piece or parcel being more particularly described as follows:

**BEGINNING** at an concrete monument found at a point formed by the intersection of the southeasterly right-of-way line of Route 36, Shawnee Road, with the northerly line of other lands of, now or formerly, The City of Milford, as recorded in the Office of the Recorder of Deeds in and for Sussex County and the State of Delaware in Deed Book 2380, Page 267, thence running,

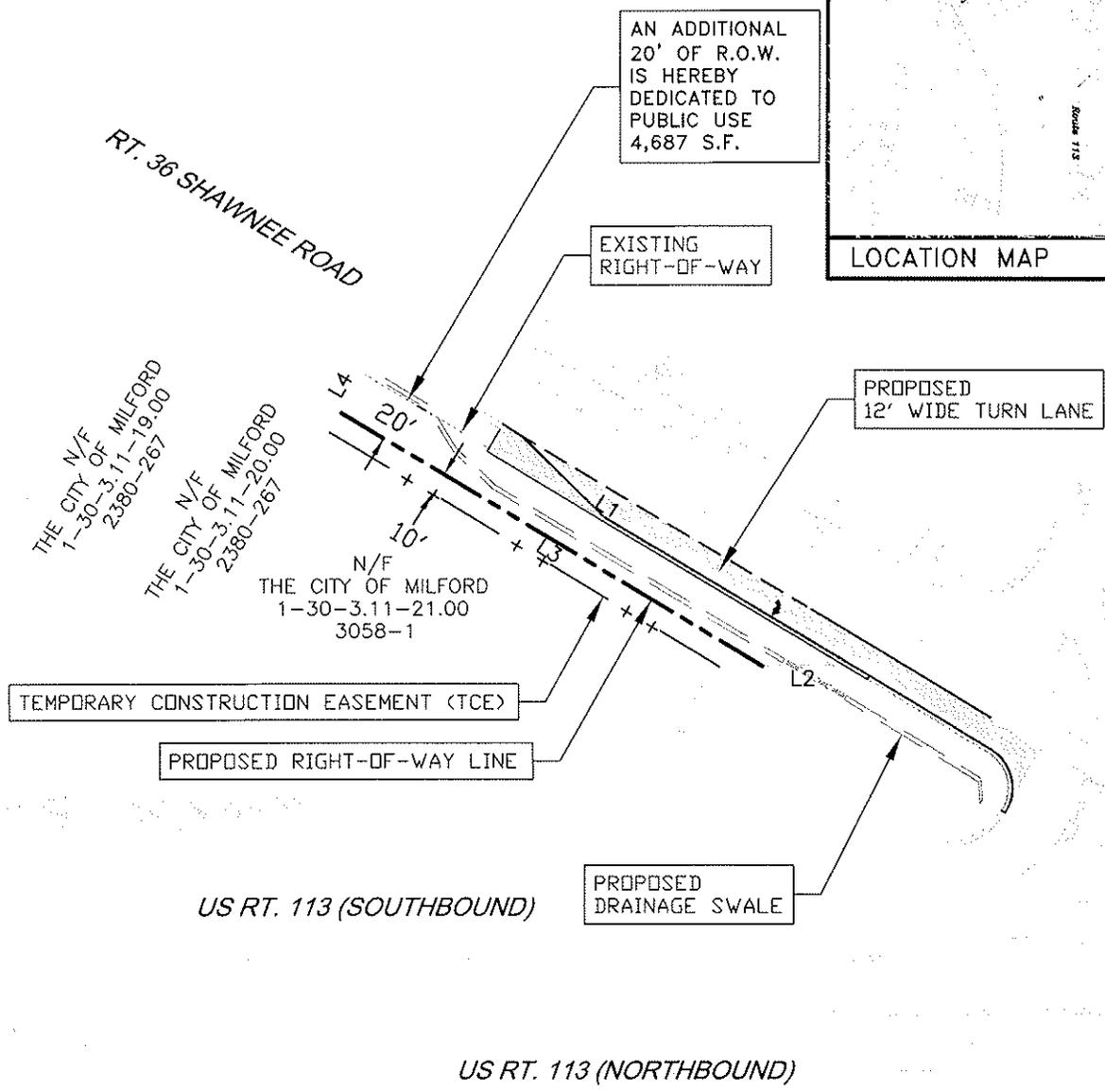
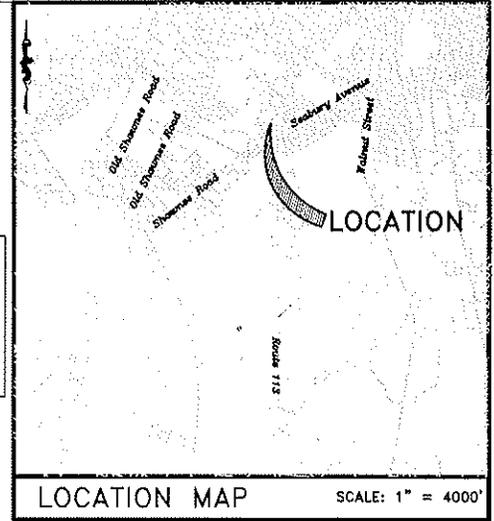
1) leaving said other City of Milford lands and running by and with said right-of-way line of Route 36, Shawnee Road, North 31 degrees 07 minutes 31 seconds East 250.47 feet to a point, thence running,

2) running through lands of, City of Milford, as recorded in said Office of the Recorder of Deeds in Deed Book 3058, Page 1, the following 2 courses and distances, South 00 degrees 41 minutes 50 seconds East 37.93 feet to a point, thence running,

3) South 31 degrees 07 minutes 31 seconds West 218.24 feet to a point on the northerly line of said other City of Milford lands, thence running,

4) running by and with said other City of Milford lands, North 58 degrees 52 minutes 29 seconds West 20.00 feet to the point and place of beginning; **CONTAINING** 4,687 square feet of land, more or less.

| LINE | BEARING       | DISTANCE |
|------|---------------|----------|
| L1   | N 31°07'31" E | 250.47'  |
| L2   | S 00°41'50" E | 37.93'   |
| L3   | S 31°07'31" W | 218.24'  |
| L4   | N 58°52'29" W | 20.00'   |



DAVIS, BOWEN & FRIEDEL, INC.  
ARCHITECTS, ENGINEERS & SURVEYORS

SALTSBURY, MARYLAND (410) 543-9091  
MILFORD, DELAWARE (302) 424-1441

CYPRESS HALL COMMERCIAL  
REQUEST FOR RIGHT-OF-WAY DEDICATION  
CITY OF MILFORD

EXHIBIT 1

PROJ. NO. : 1423A002J

DATE : DECEMBER 2010

SCALE: 1" = 80'

DWG. 1 of 1

# CITY OF MILFORD

## BOARD OF ADJUSTMENT MEMBERS

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Sam Johnson  
3 Year Term  
Appointed: 02/2010  
Term Expiration: 02/28/2013

Frank Bason  
2 Year Term  
Appointed: 02/2010  
Term Expiration: 02/28/2012

Keith Gramling  
1 Year Term  
Appointed: 02/2010  
Term Expiration: 02/28/2011

Vacant Position

Vacant Position

Tim Willard  
City Solicitor

Christine Crouch  
Recording Secretary

\*All terms begin 03/01

*All correspondence is to be mailed to:*

*Planning Commission  
c/o Planning Department  
201 S Walnut Street  
Milford, DE 19963*

**PUBLIC NOTICE**  
**City of Milford Fiber Optic Code**  
**Ordinance 2011-1**

NOTICE IS HEREBY GIVEN the following Ordinance is currently under review by City Council of the City of Milford:

ORDINANCE NO. 2011-1

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF MILFORD BY ADDING A NEW CHAPTER ENTITLED FIBER OPTICS.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Amend the Milford Code by adding a new Chapter entitled Fiber Optics to read as follows:

Section 1. General Conditions.

- (A) The City of Milford has installed fiber optic cables to improve internal networking capabilities and to provide telecommunication services to its electrical customers.
- (B) Of those fiber optic facilities, the city has the ability to license certain unused capacity within its communications network to enhance utilization and to obtain additional revenues.
- (C) Those customers who desire to utilize some of the city unused fiber optic must enter into a Fiber Use License Agreement in which the terms and conditions are contained therein.
- (D) All agreements are subject to the review of the City of Milford Electric Department Superintendent.
- (E) The Mayor of the City of Milford is hereby authorized to execute a Fiber Use License Agreement upon the approval of the Electric Department Superintendent.
- (F) Although the City of Milford will make every effort to provide customers with quality, reliable, continuous fiber optic service, the city makes no guarantees to system interruptions specifically caused by weather, earthquakes or any other conditions beyond its control.

Section 2. Fiber Optic Rates, Fees and Charges

- (A) Rates, Fees and Charges shall be in accordance with the following table:

(1) **Fiber Pricing** (Per Month/Per Fiber/Per Mile)

| <b><u>1-12 Fibers</u></b> | <b><u>Current</u></b> | <b><u>New</u></b> |
|---------------------------|-----------------------|-------------------|
| 1 Year Term               | \$75.90               | \$103.50          |
| 5 Year Term               | \$66.00               | \$90.00           |
| 10 Year Term              | \$59.40               | \$81.00           |
| 15 Year Term              | \$50.76               | \$72.90           |

|     | <u><b>13 or More Fibers</b></u>   | <u><b>Current</b></u> | <u><b>New</b></u>                  |
|-----|---|-----------------------|------------------------------------|
|     | 1 Year Term   | \$70.67               | \$96.36                            |
|     | 5 Year Term   | \$60.67               | \$82.73                            |
|     | 10 Year Term  | \$55.40               | \$75.54                            |
|     | 15 Year Term  | \$48.88               | \$70.20                            |
| (2) | <b>Drop Cable</b>   | \$2.20/ft             | (Pole to Building)                 |
| (3) | <b>Construction Cost (Labor)</b>  | \$3.00/ft             | (4 Men & 2 Bucket Trucks - 16 hrs) |
| (4) | <b>Splices (City)</b>   |                       |                                    |
|     | Splices & Trays   | \$40.00/splice        |                                    |
|     | Splice Enclosure  | \$1,000.00            |                                    |
| (5) | <b>Splices (Undercomm)</b>  |                       |                                    |
|     | Set up and splice designated strands of the 96 fiber loop to new cable using splice cases and trays provided by the City.         |                       |                                    |
|     | Splice Setup Per Location   | \$300.00              |                                    |
|     | Splice Per Strand   | \$25.00               |                                    |
| (6) | Set up and terminate designated strands of new cable at customer's location using new hardware and pigtails provided by Undercomm |                       |                                    |
|     | Termination Setup Per Location  | \$200.00              |                                    |
|     | Splice Pigtail Per Location   | \$34.00               |                                    |

Rates are subject to change annually.

### Section 3. Dates.

Introduction: January 10, 2011  
Adoption: January 24, 2011  
Effective: February 3, 2011

A complete copy of the Code of the City of Milford is available by request through the City Clerk's Office at Milford City Hall, 201 S. Walnut Street, Milford, DE 19963 or by accessing its website at [cityofmilford.com](http://cityofmilford.com)

By: Terri K. Hudson, CMC  
City Clerk

## FIBER USE LICENSE AGREEMENT

This Fiber Use Agreement is made and entered into as of JANUARY 1, 2011, between the City of Milford, a Delaware municipal corporation acting on behalf of its Telecommunications and Electric Utility (Licensor), and The State of Delaware (Licensee) having its principal office at Milford, DE.

### RECITALS

Licensor owns certain fiber optic facilities (Licensor's Facilities) and desires to license certain unused capacity on its Milford, Delaware metropolitan area fiber optic communications network to the Licensee to enhance utilization and to obtain additional revenues.

Licensee desires to expand its system within the Milford area, and in the interests of convenience and efficiency, Licensee finds that it prudent and economical to use space and capacity in existing facilities rather than to install additional facilities.

Licensor and Licensee believe that the interests of the public and the Parties will be well served by using some of Licensor's unused fiber optic capacity in accordance with the terms and conditions contained herein.

### AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants, agreements and undertakings contained herein, the Parties agree as follows:

#### **Article 1. Incorporation of Recitals**

The above reference recitals are incorporated in this Agreement as if fully set forth herein.

#### **Article 2. Grant of License**

- 2.1. Licensor hereby grants to Licensee, a license to use fibers along Licensor's fiber optic network ("Licensed Fibers"), as identified on Exhibit A, incorporated by this reference. The Licensor retains the right to use and otherwise license additional fibers along the Licensor's fiber optic network.

No use of Licensor's Facilities or payment of any charges required under this License shall create or vest in Licensee any easements or other ownership of property rights of any nature in the Licensed Fibers or in Licensor's Facilities.

- 2.2 Technical Specifications: A detailed specification of the Licensed Fibers is contained in

License Agreement by and between City of Milford and DHSS (Licensee).

Exhibit B, incorporated herein.

- 2.3 Testing and Acceptance of Licensed Fibers: Licensor has performed acceptance tests to ensure that the Licensed Fibers meet the technical specifications described in Exhibit B. Licensor shall provide Licensee with written results of such tests, if required by Licensee. If the Licensed Fibers fail to meet the specifications, Licensor shall repair or substitute fibers that meet the required tests and specifications, unless Licensee otherwise accepts the original fibers. Upon receipt of test results, if required, Licensee shall accept the Licensed Fibers and such date of acceptance shall be the Acceptance Date.
- 2.4 Access Points: Licensee shall have the right to access the Licensed Fibers at the access points ("Access Points") shown on Exhibit A, incorporated by this reference. If additional access to locations is required after initial installation, Licensee shall provide to Licensor seventy-two (72) hour notice prior to accessing the site(s). At splice location(s) where Licensor is accessing the fiber and possible disruption of licensed fiber may occur, Licensor will provide forty-eight (48) hour notice to Licensee prior to accessing the site(s).
- 2.4.1 Contractor: Licensee shall supervise its contractor ("Licensee's Contractor") in performing work regarding Licensee's connection to the Licensed Fibers. The authorization of Licensee's contractor shall be subject to Licensor's written approval, pursuant to an approved contractor list, which approval shall not be unreasonably withheld or delayed. The Licensee's Contractor shall strictly follow Licensor's approved specifications and methods in the performance of any work on the Licensor's Facilities. All costs of Licensee's connection to any of the Licensed Fibers including splicing, placing of manholes/handholes, etc. shall be paid by Licensee. Licensor shall have right to review work done for connection to Licensed Fibers. If defects or damage is found due to Licensee's contractor, the Licensee shall be held liable for all costs to correct damage or unsuitable work. Licensee's Contractor is not necessarily to be considered an agent of Licensor, nor under the control and/or direction of Licensor.

### **Article 3: Term**

- 3.1 The term of this Agreement and Licenses granted herein shall be five-years (5) from the date of the execution of this Agreement. At the end of the initial term of the agreement, Licensee shall have the right to renew this agreement for an additional 5 years at a mutually agreed to rate. The Licensor requires a minimum of 90 days written notice of cancellation of this agreement.
- 3.2 Immediately upon termination of this Agreement by the expiration of the term hereof or otherwise, Licensee shall peaceably quit and surrender the Licensed Fibers to Licensor in their original condition, with exception to reasonable wear and tear.

License Agreement by and between City of Milford and DHSS (Licensee).

**Article 4: Compensation**

4.1 **License Fee:** Licensee shall pay to Licensor for use of the Licensed Fibers a license fee subject to adjustments as provided below.

4.1.0 Fees will be prorated based on the date of signing of agreement. Fee is calculated by lease of 2 fibers at an individual fiber cost of \$66.00 dollars per fiber/mile/month, with a total ring distance of 17 (seventeen) miles.

*\$49.50(3/4 mile) x 2 fibers = \$99.00/month, \$99.00 x 60 months = \$5,940.00  
OR \$1,188.00/year*

4.1.1 Fees shall be paid annually, in advance, and shall be billed on the first business day of the calendar year for that year's lease at which time they will be considered due and payable.

4.1.2 No fees will be due until the Acceptance Date. If the Acceptance Date occurs after the beginning of a calendar year, the first year's fees shall be prorated from the Acceptance Date to December 31 of that year, however, the prorated fees shall be for that partial year only and are considered due and payable upon acceptance.

4.1.3 In the event of termination of this Agreement and License by the expiration of the term hereof or otherwise, Licensee shall pay a prorated portion of the fees due for the calendar year until the date of such termination. Any excess fees previously paid to Licensor shall be promptly refunded to Licensee upon termination, less any set-off for damages to the Licensed Facilities or unpaid fees and charges.

4.1.4 The annual fee for the Licensed Fiber will escalate based on the Dover/Milford Consumer Price Index (CPI) as published by the U.S. Department of Labor's Bureau of Labor Statistics, not to exceed 3% increase per year but not less than current year's fee.

4.1.5 A one-time engineering fee of \$500 (five-hundred dollars) will be charged for each splice location that Licensee accesses Licensor's fiber optic network. This fee covers only the documentation cost for this splice location. Installation costs are not included in this amount. This fee will be credited against the first years billing.

4.1.6 If Licensor installs the connection for Licensee, including but limited to splicing and/or material, from the Licensed Fibers to Licensee's network, Licensee will compensate Licensor for all time and material plus ten percent (10%).

***Installation Fee (One-time Charge): \$2,500.00***

License Agreement by and between City of Milford and DHSS (Licensee).

4.3 Ownership Of Access Points: Licensee will be responsible for all cost of material and installation of access points or splice points as listed in Exhibit C. At such time installation is complete at access/splice point(s) listed in Exhibit C, Licensee shall give sole ownership of such location, including but not limited to hand hole, and splice enclosure to Licensor. Licensee shall retain ownership of designated splice tray, which contains licensed fibers, but shall not have ownership of any fibers.

4.4 Restoration: Licensor shall provide at no cost, monthly standby emergency restoration services for the fiber optic network. In the event of an outage requiring emergency restoration, Licensor will pay the initial amount of the emergency restoration cost with Licensee reimbursing Licensor based on prorated fiber quantities as follows. Licensor shall pay the percentage amount to restore the fiber network based on total quantity of fibers minus fibers leased to Licensee divided by total fibers. Licensee shall be responsible for the percentage of restoration costs based on the amount of fiber presently leased to them in relation to total quantity of fibers.

#### **Article 5. Liens**

5.1 Licensee shall keep Licensor's Facilities and the Licensed Fibers free from all liens, including but not limited to mechanics liens, and encumbrances by reason of the use of the Licensed Fibers by Licensee.

#### **Article 6. Licensee's Racks and Equipment**

6.1 As additional consideration, Licensee shall have the option to install racks and equipment, at its sole expense, within Licensor's Point of Presence, located at Access Points shown on Exhibit A with prior written approval by Licensor. Point of Presence is existing locations in which the Licensor's network has termination points for the fiber. The type and location of such racks and equipment and compensation, to Licensor for such, and any other terms specific to such installations shall be agreed to in writing between the Parties in separate agreement.

6.2 Said racks, as well as any and all electronic equipment installed therein, shall be and remain the sole and exclusive property of Licensee, and Licensor shall neither make any claim on or claim any property interest in such equipment so long as Licensee is not in default of this Agreement, nor shall Licensor permit any lien or other encumbrance upon Licensee's, equipment by Licensee or any third party.

License Agreement by and between City of Milford and DHSS (Licensee).

- 6.3 Said racks and any and all equipment placed thereon shall be installed in accordance with the technical specifications as specified in separate agreement.
- 6.4 Absent emergency situations, Licensee shall be able to access said racks and equipment during the term of the Agreement upon reasonable notice to Licensor and shall be solely responsible for their operation, maintenance and repair.
- 6.5 Upon termination of this License by the expiration of the term hereof or otherwise, Licensee shall immediately remove said racks as well as any and all electronic equipment installed thereon and shall leave the area in its original condition, reasonable wear and tear excepted.

#### **Article 7. Maintenance**

##### **7.1 Licensed Fibers**

7.1.1 Licensee agrees to pay all costs (time and material) of maintenance of the network if the required maintenance is caused by the Licensee's improper connection to the Licensed Fibers.

7.1.2 Licensor agrees to use reasonable efforts to perform such maintenance, if required. Subject to Force Majeure, Licensor will notify Licensee to respond to outage emergencies in connection with the Licensed Fibers per restoration agreement as stated previously in Article 4. Licensor shall notify Licensee of any outages at 302-255-9150. Licensee shall notify Licensor of any outages at 302-422-1110.

7.1.4 In the event of interruptions longer than 24 hours, Licensor will, as soon as is reasonably possible, provide alternate capacity to Licensee subject to availability within Licensor's Facilities. In the event of an interruption longer than 24 hours, Licensee shall be entitled to an abatement of its lease to be deducted from the next payment otherwise due under this agreement.

7.1.5 The period(s) of any interruption(s) shall be measured from the time Licensor actually receives notice, to the time the service is reported restored to the Licensor. Scheduled outages, for maintenance purposes, shall not be counted as interruptions. Scheduled outages shall be those outages of which Licensee has at least a fourteen (14)-day advance notice. The Licensor shall call Licensee at 302-255-9150 to schedule all maintenance operations and to report service interruptions.

7.1.6 Except in emergency situations, if the Licensor needs to repair or replace any of the Licensed Fibers to comply with the specifications stipulated in Exhibit B, the Licensor shall notify the Licensee in writing not less than fourteen (14) days prior to

License Agreement by and between City of Milford and DHSS (Licensee).

the time that the work will take place where the Licensee's use of the Licensed Fibers will be interrupted, and the estimated duration of the interruption. In the event of such a repair or replacement, the interruption will not be considered as one of the aforementioned interruptions. To the extent possible, Licensor and Licensee shall agree upon the times maintenance will be performed so as not to interfere with Licensee's business, however Licensor retains the right to perform maintenance on Licensed Fibers upon proper notification to Licensee without a mutual agreement between parties.

7.1.7 In the event of emergency situations, Licensor shall notify Licensee as soon as possible. In the event that Licensor's electrical and telecommunications service capacity and Licensee's telecommunications capacity are interrupted, restoration of Licensee's capacity shall be at all times, subordinate to restoration of Licensor's electrical and telecommunications capacity, unless otherwise previously agreed to in writing by both Parties. Should Licensor not be able to effect repairs within two hours after notice of the emergency, both parties agree to meet to determine methods to restore Licensee's fiber(s) including consideration of Licensor granting Licensee permission to make repairs to its connections or licensed fibers and to restore its capacity, as long as such restoration efforts do not interfere with Licensor's restoration activities. Both parties acknowledge that, in the event that an outage is caused by a natural disaster, weather, automobile accident or similar incident, which causes a simultaneous electrical power outage, that the electrical power must first be restored prior to the fiber network. It is further acknowledged by the Parties that as a Municipal Electric Utility, Licensor has a duty to provide electrical services to its customers, and that provision of said electrical services shall be Licensor's top priority.

7.2 Access Points: Licensee, at its sole expense, shall make and maintain its Access Points, as shown on Exhibit B unless such access point has become property of Licensor. Licensee however, at its sole expense shall be responsible for any items at the access point, which do not become property of the Licensor. Access by Licensee to the Licensed Fibers for purposes of repair, maintenance, or replacement of the connections shall be in accordance with procedures approved by Licensor, it being understood that such activities shall not conflict with Licensor's rightful use and/or operation of Licensor's Facilities. In the event both Licensor's electrical and telecommunication service capacity and Licensee's telecommunications capacity are interrupted, restoration of Licensee's capacity shall be at all times subordinate to restoration of Licensor's electrical and telecommunication capacity, unless otherwise agreed in advance by both Parties. Nonetheless, Licensor shall permit Licensee to make repairs to its connections to restore its capacity, as long as such restoration efforts do not interfere with Licensor's restoration activities.

License Agreement by and between City of Milford and DHSS (Licensee).

## **Article 8. Relocation**

### **8.1 Licensed Fibers**

8.1.1 Licensors shall make no changes in the location of the Licensed Fibers without sixty (60) days written notification to Licensee.

8.1.2 If for any reason, Licensor is required by any third party, including, but not limited to a government entity, to relocate any of the facilities used or required in providing the Licensed Fibers, Licensor shall give Licensee at least thirty (30) days, or as much time as Licensor reasonably can, prior written notice of any such relocation and Licensee shall be entitled to terminate this Agreement, without penalty, by giving at least thirty (30) days prior written notice to Licensor. If such notice does not terminate this Agreement, Licensor shall relocate the Licensed Fibers at Licensor's sole cost and expense. If Licensor desires, for any other reason, to relocate any of the facilities used or required in providing the Licensed Fibers, such relocation shall be undertaken at Licensor's sole cost and expense.

8.1.3 During relocation scheduled outages may occur. Licensor shall attempt to give Licensee at least thirty (30) days, or as much time as Licensor reasonably can, prior written notice of any such outages. Both parties acknowledge that, in the event of an outage caused by natural disaster, weather, automobile accident or similar capacity that causes a simultaneous power outage, that the power must be restored first prior to the fiber network. As a municipal electric utility, Milford has a duty to bring up electrical services as its' top priority.

### **8.2 Access Points**

8.2.1 Licensee shall make no changes in the location or configuration of the Access Points to the Licensed Fibers without the prior written consent and approval of Licensor.

8.2.2 In the event relocation of Licensor's Facilities and Access Points is required by any third party, any governmental agency, or in conjunction with the electric system needs of Licensor, all costs associated with such required relocation of Access Points, which are not paid by a third party shall be the sole responsibility of Licensor. In the event of such relocation requirement, Licensor shall use reasonable efforts to provide alternate locations for Access Points. Licensor shall give Licensee at least thirty (30) days, or as much time as Licensor reasonably can, prior written notice of any such relocation and Licensee shall be entitled to terminate this Agreement, without penalty, by giving at least thirty (30) days prior written notice to Licensor due to relocation.

8.3 Licensor agrees that any relocation required of the Licensed Fibers or Access Points shall be limited to the shortest practical route reasonably available. After any relocation is

License Agreement by and between City of Milford and DHSS (Licensee).

completed, Licensee's fee shall be adjusted accordingly with regard to the length of fiber used by Licensee.

**Article 9. Reclamation**

- 9.1 Subject to the terms, conditions and limitations set forth in this agreement, Licensor shall have the right to terminate from time to time the License of any or all of the Licensed Fibers on any or all segments of the network for use (and solely for use) directly by Licensor.
- 9.2 In the event that Licensor desires to reclaim any Licensed Fibers, Licensor shall give notice of such intent to Licensee at least twelve (12) months prior to the date of reclamation (Reclamation Notice). The Reclamation Notice shall identify each Licensed Fiber on each segment, which Licensor desires to reclaim, and the intended date of reclamation.
- 9.3 At any time following receipt of a Reclamation Notice, Licensee may initiate negotiations with Licensor as to possible alternatives to reclamation, including, for example, (1) greater compression of Licensee's traffic on the fibers within the network already in use by Licensor, (2) alternate or additional optoelectronic equipment, (3) alternate routes, and/or (4) installation of additional fibers along the network. Licensor and Licensee each shall conduct any such negotiations in good faith. The exact alternative(s) to reclamation (if any) and the allocation of the costs thereof between the parties shall be subject to mutual consent.
- 9.4 Unless otherwise agreed between Licensor and Licensee pursuant to paragraphs (9.2, 9.3) above, reclamation shall be effective on the date of reclamation set forth in the Reclamation Notice. Licensee shall be entitled to a fee adjustment with respect to the Licensed Fibers subject to the reclamation date.

**Article 10. Representations and Warranties**

- 10.1 Licensor represents that, to its knowledge, after due inquiry, it has the right and authority to enter into this agreement and grant the rights and Licenses contained herein.
- 10.2 Licensee represents that, to its knowledge, after due inquiry, it has all licenses, permits and rights authorizing it to enter into this Agreement.
- 10.3 Licensee is a municipally owned utility certified by the Board of Public Utilities in Delaware to provide electric and other services to Milford and some of the surrounding area.

**Article 11. Assignment and Transfer**

- 11.1 Unless specifically provided herein, Licensee shall not assign, transfer or sublet any of the privileges described in this Agreement without the prior written consent of the Licensor, said

License Agreement by and between City of Milford and DHSS (Licensee).

consent not to be unreasonably withheld, provided that Licensee may assign, transfer or sublet its rights hereunder to a parent, or wholly-owned affiliate or subsidiary company or purchaser of all or substantially all of its assets or stock without consent of the Licensor.

- 11.2 Licensee will not, directly or indirectly, or through a Controlled Affiliate of Licensee, transfer or sublet any of the privileges described in this Agreement to a third party for use as Energy-Related Services.

**Article 12. Indemnification**

- 12.1 To the extent allowed by Delaware law and without waiving sovereign immunity, Licensee does hereby release and agrees to indemnify, defend and save harmless the City of Milford and its agents from and against all claims, actions, causes of action, demands, judgments, costs, expenses and all damages of every kind and nature, incurred by or on behalf of any person or corporation whatsoever, predicated upon injury to or death of any person or loss of or damage to property of whatever ownership, including the parties to this Agreement and their employees, and arising out of or connected with, in any manner, directly or indirectly, the Licensee's operations or rights granted under this License.

**Article 13. Insurance**

- 13.1 To the extent allowed by Delaware law, Licensee agrees to insure or self-insure the use allowed herein consistent with the State of Delaware insurance policies and requirements for such uses.

**Article 14. Default**

- 14.1 In the event either Party shall fail to observe or perform any of the terms and provisions of this Agreement and such failure shall continue for a period of thirty (30) days after receipt of written notice from the non-defaulting party ("Default"), then the non-defaulting party may terminate this Agreement, provided however, that where such Default cannot reasonably be cured within such period, and the defaulting party has proceeded promptly to cure the same and is prosecuting such cure with diligence, the time for curing such Default shall be extended for an amount of time, not to exceed sixty (60) days, as may be necessary under the circumstances to complete such cure.

**Article 15. Termination**

Licensor may, at its sole discretion, terminate this License upon the conditions set forth for cause and at its discretion.

License Agreement by and between City of Milford and DHSS (Licensee).

- 15.1 For Cause, Without Illegality. Licensors may terminate this Agreement and may repossess the Licensed Fibers in the event that any payment or amount is not furnished the Licensors as set forth in Article 4 hereof, when due, upon giving fifteen days written notice to the Licensee of the Licensors' intention to terminate unless full and proper payment is made to the Licensors of all monies due on or before the expiration of the fifteen day period indicated in the notice. In like manner, upon thirty days written notice, the Licensors may terminate the License Agreement in the event any of the other terms of this Agreement other than involving violation of any penal law, have been violated, unless Licensee has fully rectified any such failure to conform to the conditions of the Agreement within such period.
- 15.2 For Cause, With Illegality. The Licensors may, at its sole discretion, terminate this License Agreement, effective immediately, upon the giving of written notice of termination, in the event that Licensee engages in, or permits, the violation, pursuant to the appropriate standard of proof provided by law, of any federal, state or city penal law or ordinance in the operation of said facility.
- 15.3 Surrender of Licensed Fibers Upon Termination On the License Expiration Date or any earlier termination of Licensee's rights to use any or all of the licensed fibers under this agreement, regardless of the reason for termination, Licensee shall promptly (1) remove all of its equipment and other property from Licensors' premises, and (2) peaceably quit and surrender the licensed fibers to Licensors in a condition consistent with condition of fiber and access points on the original acceptance date of this Agreement.

#### **Article 16. Renewal Provisions**

- 16.1 Licensee shall provide ninety (90) days notice of intent to renew Fiber Use Lease Agreement prior to date of expiration of current Agreement.

#### **Article 17. General Provisions**

- 17.1 Confidentiality If either Party provides confidential information to the other in writing and is identified as such, the receiving Party shall protect the confidential information from disclosure to third parties with the same degree of care afforded its own confidential and proprietary information. Neither Party shall, however, be required to hold confidential any information which becomes publicly available other than through the recipient, which is required to be disclosed by a governmental or judicial order, by statute, is independently developed by the receiving Party or which becomes available to the receiving Party or which becomes available to the receiving party without known restrictions from a third party.
- 17.2 Costs Except as otherwise expressly provided above, each party shall bear all of its own attorney's fees and other expenses related to this Agreement.

License Agreement by and between City of Milford and DHSS (Licensee).

- 17.3 No Third Party Beneficiaries. None of the terms or conditions in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the City or the Licensee receiving services or benefits under this Agreement shall be only an incidental beneficiary.
- 17.4 No Partnership The Parties acknowledge and agree that this Agreement does not create a partnership between, or a joint venture of, Licensor and Licensee.
- 17.5 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.
- 17.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of laws.
- 17.7 Severability. In the event any term, covenant or condition of this Agreement, or the application of such term covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms covenants and conditions of Agreement.
- 17.8 Force Majeure. Neither Party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control, including, but not limited to: acts of God, fire, flood or other catastrophes, adverse weather conditions, material or facility shortages or unavailability not resulting from such party's failure to timely place orders therefore, lack of transportation, the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions, national emergencies, insurrections, riots, wars, or strikes, lock-outs, work stoppages or other labor difficulties.
- 17.9 Waiver. No delay or omission by either party to exercise any right or power occurring upon non-compliance or failure of performance by the other Party shall impair that right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants, conditions or agreements to be performed by the other Party shall not be construed to be a general waiver of any such covenants, conditions or agreements, but the same shall be and remain at all times in full force and effect.
- 17.10 Headings The Article headings herein are for convenience and reference only, and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.
- 17.11 Notices. All notices, requests or other communications (other than those normally required during the installation process) under this Agreement or required by law shall be in writing and shall be hand-delivered, sent by overnight delivery service, mailed by first-class,

License Agreement by and between City of Milford and DHSS (Licensee).

registered or certified mail, postage prepaid and return receipt requested, or transmitted by telegram or facsimile, addressed as follows:

- 17.12 No Implied Representations. No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in this Agreement.
- 17.13 Integrated Agreement and Amendments. This Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. The parties shall only amend this Agreement in writing with the proper official signatures attached thereto.
- 17.14 During the term of this agreement, Licensee will have the opportunity to reexamine lease costs to determine if rates for Licensee are similar to other non-governmental or non-profit companies utilizing leased fiber. The examination and the modification of lease rate is based on Licensee providing documentation to prove that both Licensee and other party are providing like services to the City over the leased fiber. Licensor will have the right for review and adjustment of rate.
- 17.15 Both Licensor and Licensee are willing proceed with further negotiations on additional fiber build outs.

License Agreement by and between City of Milford and DHSS (Licensee).

IN WITNESS WHEREOF, the parties have hereunto placed their hand and seal this \_\_\_\_\_ day of, \_\_\_\_\_ 20\_\_.

**ATTEST:**

**CITY OF MILFORD**

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
LICENSEE

**ATTEST:**

\_\_\_\_\_  
MANAGER

*11/29/10 jmb*  
*Valencia L. Seng - P. 246*  
\_\_\_\_\_  
SECRETARY

\_\_\_\_\_  
DHSS

**APPROVED AS TO FORM:**

**APPROVED AS TO INSURANCE:**

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
RISK MANAGER

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_

My commission expires: \_\_\_\_\_  
Witness my hand and official seal

\_\_\_\_\_  
Notary Public

**CITY OF MILFORD  
FUND BALANCES REPORT**

Date: November 2010

|   |             |
|---|-------------|
| Cash Balance - General Fund Bank Balance  | \$3,179,799 |
| Cash Balance - Electric Fund Bank Balance | \$3,236,774 |
| Cash Balance - Water Fund Bank Balance    | \$855,469   |
| Cash Balance - Sewer Fund Bank Balance    | \$166,871   |
| Cash Balance - Trash Fund Bank Balance    | \$603,755   |

|                            | <u>General<br/>Improvement</u> | <u>Municipal<br/>Street Aid</u> | <u>Real Estate<br/>Transfer Tax</u> | <u>Water Bond<br/>Escrow</u> |
|----------------------------|--------------------------------|---------------------------------|-------------------------------------|------------------------------|
| Beginning Cash Balance     | 490,196                        | 668,895                         | 663,467                             | 412,633                      |
| Deposits                   |                                |                                 | 38,254                              |                              |
| Interest Earned this Month | 64                             | 101                             | 99                                  | 116                          |
| Disbursements this Month   | (63,898)                       |                                 | (47,503)                            |                              |
| Investments                |                                |                                 | 1,600,000                           |                              |
| Ending Cash Balance        | \$426,362                      | \$668,996                       | \$2,254,317                         | \$412,749                    |

|                            | <u>GF Capital<br/>Reserves</u> | <u>Water Capital<br/>Reserves</u> | <u>Sewer Capital<br/>Reserves</u> | <u>Electric<br/>Reserves</u> |
|----------------------------|--------------------------------|-----------------------------------|-----------------------------------|------------------------------|
| Beginning Cash Balance     | 717,480                        | 1,283,700                         | 548,066                           | 2,696,127                    |
| Deposits                   | 5,836                          |                                   |                                   |                              |
| Interest Earned this Month | 203                            | 376                               | 311                               | 781                          |
| Disbursements this Month   |                                | (2,715)                           | (1,240)                           |                              |
| Investments                | 1,000,000                      | 2,960,000                         | 2,245,000                         | 7,486,000                    |
| Ending Cash Balance        | \$1,723,519                    | \$4,241,361                       | \$2,792,137                       | \$10,182,908                 |

|                            | <u>Water<br/>Impact Fee</u> | <u>Sewer<br/>Impact Fee</u> | <u>Electric<br/>Impact Fee</u> |
|----------------------------|-----------------------------|-----------------------------|--------------------------------|
| Beginning Cash Balance     | 41,343                      | \$27,469                    | \$5,901                        |
| Deposits                   | 14,525                      | \$7,679                     |                                |
| Interest Earned this Month |                             |                             |                                |
| Disbursements this Month   |                             |                             |                                |
| Investments                | 850,000                     | \$625,000                   | \$250,000                      |
| Ending Cash Balance        | \$905,868                   | \$660,148                   | \$255,901                      |

INTEREST THROUGH THE FIFTH MONTH OF THE FISCAL YEAR:

|                          |        |                        |        |
|--------------------------|--------|------------------------|--------|
| General Fund             | 1,259  | Water Fund             | 612    |
| GF Capital Reserves      | 10,732 | Water Bond Escrow      | 249    |
| General Improvement Fund | 415    | Water Capital Reserves | 16,835 |
| Municipal Street Aid     | 567    | Water Impact Fees      | 0      |
| Real Estate Transfer Tax | 6,518  | Sewer Fund             | 204    |
| Electric Fund            | 2,374  | Sewer Capital Reserves | 13,896 |
| Electric Reserves        | 28,518 | Sewer Impact Fees      | 0      |
| Electric Impact Fees     | 0      | Trash Fund             | 525    |

TOTAL INTEREST EARNED TO DATE \$82,704

REVENUE REPORT

Page Two

Date: November 2010

42% of Year Expended

| ACCOUNT                               | AMOUNT BUDGETED     | MTD                | YTD                 | YTD%          |
|---------------------------------------|---------------------|--------------------|---------------------|---------------|
| Budgeted Fund Balance                 | 195,749             | 195,749            | 195,749             | 100.00%       |
| General Fund Capital Reserves         | 226,000             | 26,960             | 33,975              | 15.03%        |
| Property Transfer Tax-Capital         | 152,100             | 0                  | 122,436             | 80.50%        |
| Property Transfer Tax-Police          | 500,000             | 41,666             | 208,333             | 41.67%        |
| Real Estate Tax                       | 2,962,377           | 304                | 2,953,905           | 99.71%        |
| Business License                      | 35,000              | 300                | 4,295               | 12.27%        |
| Rental License                        | 85,000              | 250                | 950                 | 1.12%         |
| Building Permits                      | 30,000              | 10,139             | 40,494              | 134.98%       |
| Planning & Zoning                     | 40,000              | 0                  | 3,850               | 9.63%         |
| Misc. Revenues                        | 346,775             | 12,364             | 87,593              | 25.26%        |
| Transfers From                        | 3,215,480           | 267,958            | 1,339,784           | 41.67%        |
| Police Revenues                       | 289,000             | 15,579             | 64,187              | 22.21%        |
| Engineering & Inspection Fees         | 40,000              | 0                  | 1,500               | 3.75%         |
| <b>Total General Fund Revenues</b>    | <b>\$8,117,481</b>  | <b>\$571,269</b>   | <b>\$5,057,051</b>  | <b>62.30%</b> |
| Water Revenues                        | 2,139,312           | 182,157            | 1,025,550           | 47.94%        |
| Sewer Revenues                        | 1,966,956           | 145,504            | 813,976             | 41.38%        |
| Kent County Sewer                     | 1,400,000           | 98,273             | 565,923             | 40.42%        |
| Solid Waste Revenues                  | 1,085,702           | 90,606             | 453,005             | 41.72%        |
| Electric Revenues                     | 26,925,565          | 1,903,908          | 12,410,409          | 46.09%        |
| <b>TOTAL REVENUES</b>                 | <b>\$41,635,016</b> | <b>\$2,991,717</b> | <b>\$20,325,914</b> | <b>48.82%</b> |
| YTD Enterprise Expense                | 27,852              |                    |                     |               |
| YTD Enterprise Revenue                | 40,190              |                    |                     |               |
| LTD Carlisle Fire Building Permit Fee | 27,319              |                    |                     |               |

EXPENDITURE REPORT

Page Three

Date: November 2010

42% of Year Expended

| ACCOUNT                                   | AMOUNT<br>BUDGETED | MTD             | YTD              | YTD%          | UNEXPENDED<br>BALANCE |
|---|--------------------|-----------------|------------------|---------------|-----------------------|
| <b>City Manager</b>                       |                    |                 |                  |               |                       |
| Personnel                                 | 320,255            | \$24,689        | 128,814          | 40.22%        | 191,441               |
| O&M                                       | 124,730            | \$7,535         | 36,326           | 29.12%        | 88,404                |
| Capital                                   | 0                  | \$0             | 0                |               | 0                     |
| <b>Total City Manager</b>                 | <b>\$444,985</b>   | <b>\$32,224</b> | <b>\$165,140</b> | <b>37.11%</b> | <b>279,845</b>        |
| <b>Planning &amp; Zoning</b>              |                    |                 |                  |               |                       |
| Personnel                                 | 174,735            | \$13,494        | 66,499           | 38.06%        | 108,236               |
| O&M                                       | 51,176             | \$5,275         | 14,696           | 28.72%        | 36,480                |
| Capital                                   | 0                  | \$0             | 0                |               | 0                     |
| <b>Total P, C &amp; I</b>                 | <b>\$225,911</b>   | <b>\$18,769</b> | <b>\$81,195</b>  | <b>35.94%</b> | <b>144,716</b>        |
| <b>Code Enforcement &amp; Inspections</b> |                    |                 |                  |               |                       |
| Personnel                                 | 127,975            | \$9,707         | 49,741           | 38.87%        | 78,234                |
| O&M                                       | 62,245             | \$5,771         | 24,870           | 39.96%        | 37,375                |
| Capital                                   | 0                  | \$0             | 0                |               | 0                     |
| <b>Total P, C &amp; I</b>                 | <b>\$190,220</b>   | <b>\$15,478</b> | <b>\$74,611</b>  | <b>39.22%</b> | <b>115,609</b>        |
| <b>Tax Department</b>                     |                    |                 |                  |               |                       |
| Personnel                                 | 73,405             | \$5,942         | \$28,894         | 39.36%        | 44,511                |
| O&M                                       | 19,914             | \$1,589         | \$9,942          | 49.92%        | 9,972                 |
| Capital                                   | 0                  | \$0             | \$0              |               | 0                     |
| <b>Total Tax Department</b>               | <b>\$93,319</b>    | <b>\$7,531</b>  | <b>\$38,836</b>  | <b>41.62%</b> | <b>54,483</b>         |
| <b>Council</b>                            |                    |                 |                  |               |                       |
| Personnel                                 | 31,225             | \$2,207         | 10,645           | 34.09%        | 20,580                |
| O&M                                       | 26,840             | \$1,632         | 5,705            | 21.26%        | 21,135                |
| Council Expense                           | 17,000             | \$3,699         | 15,117           | 88.92%        | 1,883                 |
| Contributions                             | 436,734            | \$0             | 296,734          | 67.94%        | 140,000               |
| Codification                              | 2,500              | \$1,952         | 1,952            | 78.08%        | 548                   |
| Employee Recognition                      | 8,000              | \$250           | 250              | 0.00%         | 7,750                 |
| Insurance                                 | 16,920             | \$0             | 3,597            | 21.26%        | 13,323                |
| <b>Total Council</b>                      | <b>\$539,219</b>   | <b>\$9,740</b>  | <b>\$334,000</b> | <b>61.94%</b> | <b>205,219</b>        |
| <b>Finance</b>                            |                    |                 |                  |               |                       |
| Personnel                                 | 309,230            | \$23,561        | 123,065          | 39.80%        | 186,165               |
| O&M                                       | 60,900             | \$3,368         | 16,570           | 27.21%        | 44,330                |
| Capital                                   | 0                  | \$0             | 0                |               | 0                     |
| <b>Total Finance</b>                      | <b>\$370,130</b>   | <b>\$26,929</b> | <b>\$139,635</b> | <b>37.73%</b> | <b>230,495</b>        |
| <b>Information Technology</b>             |                    |                 |                  |               |                       |
| Personnel                                 | 160,595            | \$12,514        | 67,905           | 42.28%        | 92,690                |
| O&M                                       | 171,000            | \$20,868        | 50,109           | 29.30%        | 120,891               |
| Capital                                   | 27,000             | \$0             | 26,960           | 99.85%        | 40                    |
| <b>Total Information Technology</b>       | <b>\$358,595</b>   | <b>\$33,382</b> | <b>\$144,974</b> | <b>40.43%</b> | <b>213,621</b>        |

## EXPENDITURE REPORT

Page Four

Date: November 2010

42% of Year Expended

| ACCOUNT                                    | AMOUNT<br>BUDGETED       | MTD                     | YTD                    | YTD%          | UNEXPENDED<br>BALANCE  |
|--|--------------------------|-------------------------|------------------------|---------------|------------------------|
| <b>Police Department</b>                   |                          |                         |                        |               |                        |
| Personnel                                  | 3,457,955                | \$287,040               | 1,345,851              | 38.92%        | 2,112,104              |
| O&M  | 440,245                  | \$45,337                | 195,675                | 44.45%        | 244,570                |
| Capital                                    | 162,500                  | \$0                     | 95,476                 | 58.75%        | 67,024                 |
| <b>Total Police</b>                        | <b>\$4,060,700</b>       | <b>\$312,377</b>        | <b>\$1,637,002</b>     | <b>40.31%</b> | <b>2,423,698</b>       |
| <b>Streets &amp; Grounds Division</b>      |                          |                         |                        |               |                        |
| Personnel                                  | 399,605                  | \$30,955                | 153,914                | 38.52%        | 245,691                |
| O&M  | 386,551                  | \$23,613                | 127,996                | 33.11%        | 258,555                |
| Capital                                    | 91,000                   | \$0                     | 0                      |               | 91,000                 |
| Debt Service                               | 46,445                   | \$0                     | 0                      | 0.00%         | 46,445                 |
| <b>Total Streets &amp; Grounds</b>         | <b>\$923,601</b>         | <b>\$54,568</b>         | <b>\$281,910</b>       | <b>30.52%</b> | <b>641,691</b>         |
| <b>Parks &amp; Recreation</b>              |                          |                         |                        |               |                        |
| Personnel                                  | 468,165                  | \$31,876                | 195,543                | 41.77%        | 272,622                |
| O&M  | 242,415                  | \$22,839                | 130,798                | 53.96%        | 111,617                |
| Capital                                    | 54,615                   | \$0                     | 7,015                  | 12.84%        | 47,600                 |
| <b>Total Parks &amp; Recreation</b>        | <b>\$765,195</b>         | <b>\$54,715</b>         | <b>\$333,356</b>       | <b>43.56%</b> | <b>431,839</b>         |
| <b>Engineering &amp; Inspections</b>       |                          |                         |                        |               |                        |
| Personnel                                  | 162,225                  | \$12,684                | 63,987                 | 39.44%        | 98,238                 |
| O&M  | 70,981                   | \$2,995                 | 20,431                 | 28.78%        | 50,550                 |
| Capital                                    | 0                        | \$0                     | 0                      |               | 0                      |
| <b>Total Engineering &amp; Inspections</b> | <b>\$233,206</b>         | <b>\$15,679</b>         | <b>\$84,418</b>        | <b>36.20%</b> | <b>148,788</b>         |
| <b>Less Interdepartmental Revenue</b>      | <b><u>(\$87,600)</u></b> | <b><u>(\$7,300)</u></b> | <b><u>(36,500)</u></b> | <b>41.67%</b> | <b><u>(51,100)</u></b> |
| <b>Net Engineering &amp; Inspections</b>   | <b>\$145,606</b>         | <b>\$8,379</b>          | <b>\$47,918</b>        | <b>32.91%</b> | <b>97,688</b>          |
| <b>Total General Fund</b>                  |                          |                         |                        |               |                        |
| <b>Operating Budget</b>                    | <b>\$8,117,481</b>       | <b>\$574,092</b>        | <b>\$3,278,577</b>     | <b>40.39%</b> | <b>4,838,904</b>       |

## EXPENDITURE REPORT

Page Five

Date: November 2010

42% of Year Expended

| ACCOUNT                                   | AMOUNT<br>BUDGETED  | MTD                | YTD                 | YTD%          | UNEXPENDED<br>BALANCE |
|---|---------------------|--------------------|---------------------|---------------|-----------------------|
| <b>Water Division</b>                     |                     |                    |                     |               |                       |
| Personnel                                 | 207,695             | \$15,634           | 81,316              | 39.15%        | 126,379               |
| O&M                                       | 1,200,927           | \$72,318           | 415,827             | 34.63%        | 785,100               |
| Capital                                   | 640                 | \$0                | 0                   | 0.00%         | 640                   |
| Debt Service                              | 730,050             | \$0                | 0                   | 0.00%         | 730,050               |
| <b>Total Water</b>                        | <b>\$2,139,312</b>  | <b>\$87,952</b>    | <b>\$497,143</b>    | <b>23.24%</b> | <b>1,642,169</b>      |
| <b>Sewer Division</b>                     |                     |                    |                     |               |                       |
| Personnel                                 | 207,695             | \$15,631           | 81,287              | 39.14%        | 126,408               |
| O&M                                       | 1,103,611           | \$103,730          | 410,830             | 37.23%        | 692,781               |
| Capital                                   | 0                   | \$0                | 0                   | 0.00%         | 0                     |
| Debt Service                              | 655,650             | \$0                | 0                   | 0.00%         | 655,650               |
| <b>Sewer Sub Total</b>                    | <b>\$1,966,956</b>  | <b>\$119,361</b>   | <b>\$492,117</b>    | <b>25.02%</b> | <b>1,474,839</b>      |
| Kent County Sewer                         | 1,400,000           | \$98,664           | 566,314             | 40.45%        | 833,686               |
| <b>Total Sewer</b>                        | <b>\$3,366,956</b>  | <b>\$218,025</b>   | <b>\$1,058,431</b>  | <b>31.44%</b> | <b>2,308,525</b>      |
| <b>Solid Waste Division</b>               |                     |                    |                     |               |                       |
| Personnel                                 | 338,080             | \$22,833           | 112,252             | 33.20%        | 225,828               |
| O&M                                       | 679,622             | \$56,540           | 288,757             | 42.49%        | 390,865               |
| Capital                                   | 68,000              | \$0                | 0                   | 0.00%         | 68,000                |
| <b>Total Solid Waste</b>                  | <b>\$1,085,702</b>  | <b>\$79,373</b>    | <b>\$401,009</b>    | <b>36.94%</b> | <b>684,693</b>        |
| <b>Total Water, Sewer<br/>Solid Waste</b> |                     |                    |                     |               |                       |
|   | <b>\$6,591,970</b>  | <b>\$385,350</b>   | <b>\$1,956,583</b>  | <b>29.68%</b> | <b>4,635,387</b>      |
| <b>Electric Division</b>                  |                     |                    |                     |               |                       |
| Personnel                                 | 1,049,515           | \$75,584           | 376,241             | 35.85%        | 673,274               |
| O&M                                       | 2,013,055           | \$115,058          | 648,878             | 32.23%        | 1,364,177             |
| Transfer to General Fund                  | 2,500,000           | \$208,334          | 1,041,667           | 41.67%        | 1,458,333             |
| Capital                                   | 195,000             | \$3,227            | 6,587               | 3.38%         | 188,413               |
| Debt Service                              | 667,995             | \$0                | 63,998              | 9.58%         | 603,997               |
| <b>Electric Sub Total</b>                 | <b>\$6,425,565</b>  | <b>\$402,203</b>   | <b>\$2,137,371</b>  | <b>33.26%</b> | <b>4,288,194</b>      |
| Power Purchased                           | 20,500,000          | \$1,486,562        | 8,857,802           | 43.21%        | 11,642,198            |
| <b>Total Electric</b>                     | <b>\$26,925,565</b> | <b>\$1,888,765</b> | <b>\$10,995,173</b> | <b>40.84%</b> | <b>15,930,392</b>     |
| <b>TOTAL OPERATING<br/>BUDGET</b>         |                     |                    |                     |               |                       |
|   | <b>\$41,635,016</b> | <b>\$2,848,207</b> | <b>\$16,230,333</b> | <b>38.98%</b> | <b>25,404,683</b>     |

**INTERSERVICE DEPARTMENTS REPORT**

Page Six

Date: November 2010

42% of Year Expended

| ACCOUNT                                | AMOUNT<br>BUDGETED | MTD           | YTD              | YTD%          | UNEXPENDED<br>BALANCE |
|--|--------------------|---------------|------------------|---------------|-----------------------|
| <b>Garage</b>                          |                    |               |                  |               |                       |
| Personnel                              | 129,330            | 5,094         | 25,976           | 20.09%        | 103,354               |
| O&M                                    | 76,450             | 2,977         | 24,743           | 32.36%        | 51,707                |
| Capital                                | 0                  | 0             | 0                |               | 0                     |
| <b>Total Garage Expense</b>            | <b>\$205,780</b>   | <b>8,071</b>  | <b>\$50,719</b>  | <b>24.65%</b> | <b>155,061</b>        |
| <b>Public Works</b>                    |                    |               |                  |               |                       |
| Personnel                              | 162,980            | 13,021        | 64,759           | 39.73%        | 98,221                |
| O&M                                    | 162,602            | 11,882        | 51,154           | 31.46%        | 111,448               |
| Capital                                | 20,000             | 0             | 0                |               | 20,000                |
| <b>Total Public Works Expense</b>      | <b>\$345,582</b>   | <b>24,903</b> | <b>\$115,913</b> | <b>33.54%</b> | <b>229,669</b>        |
| <b>Meter Department-Water</b>          |                    |               |                  |               |                       |
| Personnel                              | 118,479            | 8,670         | 46,945           | 39.62%        | 71,534                |
| O&M                                    | 108,372            | 3,564         | 17,388           | 16.04%        | 90,984                |
| Capital                                | 100,000            | 0             | 0                | 0.00%         | 100,000               |
| <b>Total Water Meter Expense</b>       | <b>\$326,851</b>   | <b>12,234</b> | <b>\$64,333</b>  | <b>19.68%</b> | <b>262,518</b>        |
| <b>Meter Department-Electric</b>       |                    |               |                  |               |                       |
| Personnel                              | 225,995            | 17,580        | 88,405           | 39.12%        | 137,590               |
| O&M                                    | 163,667            | 3,513         | 28,375           | 17.34%        | 135,292               |
| Capital                                | 0                  | 0             | 0                |               | 0                     |
| <b>Total Electric Meter Expense</b>    | <b>\$389,662</b>   | <b>21,093</b> | <b>\$116,780</b> | <b>29.97%</b> | <b>272,882</b>        |
| <b>Billing &amp; Collections</b>       |                    |               |                  |               |                       |
| Personnel                              | 434,621            | 33,002        | 168,539          | 38.78%        | 266,082               |
| O&M                                    | 169,051            | 11,116        | 69,767           | 41.27%        | 99,284                |
| Capital                                | 0                  | 0             | 0                |               | 0                     |
| <b>Total Billing &amp; Collections</b> | <b>\$603,672</b>   | <b>44,118</b> | <b>\$238,306</b> | <b>39.48%</b> | <b>365,366</b>        |
| <b>City Hall Cost Allocation</b>       |                    |               |                  |               |                       |
| Personnel                              | 0                  | 0             | 0                |               | 0                     |
| O&M                                    | 54,200             | 3,949         | 22,306           | 41.15%        | 31,894                |
| Capital                                | 0                  | 0             | 0                |               | 0                     |
| <b>Total City Hall Cost Allocation</b> | <b>\$54,200</b>    | <b>3,949</b>  | <b>\$22,306</b>  | <b>41.15%</b> | <b>31,894</b>         |

ALL COSTS SHOWN ON PAGE 6 ARE ALSO INCLUDED IN THE VARIOUS DEPARTMENTS LISTED ON PAGES 3-5 OF THE EXPENDITURE REPORT WHO UTILIZE THE SERVICES OF THE DEPARTMENTS LISTED ABOVE. INTERSERVICE FUNDS ARE ENTIRELY FUNDED BY OTHER CITY DEPARTMENTS.

*MILFORD CITY COUNCIL*  
*MINUTES OF MEETING*  
*December 10, 2010*

A Committee Chair Meeting was held in the Joseph Ronnie Rogers Council Chambers at City Hall at 201 South Walnut Street, Milford, Delaware on Friday, December 10, 2010.

IN ATTENDANCE: Mayor Joseph R. Rogers  
Public Works Committee Chairman Owen S. Brooks, Jr.  
Finance Committee Chairman S. Allen Pikus  
Economic Development Committee Chairman Garrett L. Grier III  
  
Councilwoman Katrina Wilson (via telephone)

City Manager David W. Baird  
City Clerk/Recorder Terri K. Hudson

ALSO: Consultant Randy Duplechain, P.E., Davis, Bowen and Friedel, Incorporated

The meeting began at 8:10 a.m.

City Manager David Baird stated that he called the meeting to discuss the water project proposed to go out on Mills Property. He said there have been some issues and questions regarding the easements that are necessary for the city to move forward with the associated test well projects. In the meantime, DeIDOT is trying to finalize its easement requirements for the Route 30 Overpass. Mr. Duplechain and Mr. Baird wanted to brief the Committee Chairs of the Economic Development Committee, Finance Committee and Public Works Committee in addition to any other council members who wanted to attend.

Mr. Baird distributed a packet he prepared which will become part of these minutes.

Mr. Baird referenced the documents in the package, one being the proposed agreement the city prepared regarding the easements, the maps outlining the specific easements being proposed, some correspondence between the city and Key Properties Group as well as some cost estimates proposed for the project which he had provided to city council previously.

He then asked Mr. Duplechain to frame the project and where it stands.

Mr. Duplechain then referenced a map showing the latest alignment where DeIDOT is talking about building the overpass. Currently, a rights in/rights out is proposed on the east side that will access the overpass. The same thing will occur through the Hall property on the west side. The access will be in the southerly portion of the Hall property which is a piece of property recently annexed where a commercial development is planned.

He also referenced the new access road that will connect to the overpass that will come out onto Route 30 and cross over.

Mr. Duplechain noted there are a number of planned improvements including the area at the intersection of Wilkins Road and Route 1 will be raised to accommodate the overpass. A number of changes will occur at this location and the houses along the south side of Wilkins Road have been purchased or are in the process of being purchased.

He pointed out the property between Route 30 and Route 1 north of Wilkins Road that is a small commercial piece and is owned by Fannin and included in the discussion with the easements.

In 2003, they began discussing the water project as well as the funding. They have reviewed several potential locations for the well and treatment facility. There were a couple of potential locations of which one was on the Hall commercial piece. The piece of property at the northeast corner of Route 1 and Cedar Neck Road was also considered for potential purchase and placement. The third option was to place the facility on the property east of Route 1 which is owned by the Fannin and formerly known as the Mills Property.

In addition to obtaining the properties that are necessary for the facilities on the Mills property, the easements were also needed to get the utilities to the Hall property. This would serve the area south along Route 30 as that area grows. The easements are necessary from Fannin to accommodate future utilities along Route 30. Mr. Duplechain feels that is where we are having a slight logjam.

Mr. Duplechain then advised the easement document was submitted and shows each individual easement needed. He explained they were initially willing to provide those easements, but as the city has gotten more into it, they have become somewhat reluctant to provide them.

When asked specifically who Mr. Duplechain was referring to, Mr. Baird advised their conversations have been with Dave Hitchens from the Key Properties Group.

Mr. Baird added that they have been discussing this for months. He noted the last document in the packet which is a preliminary draft of the description of the easements provided to them in May. That was based on their request. It simply outlines the different easements that were needed. The city manager emphasized that we have been very specific regarding the proposed easements going back to the spring of 2010.

Mr. Pikus asked if Mr. Baird and Mr. Duplechain feel they simply do not want to provide the easements; Mr. Duplechain explained we have had discussions and originally, we had asked for all the easements up front and we are getting some push-back right now that they do not want to provide them. He said our concern is we need those assurances and if we do not get them now, we need something to show we can get them. However, we prefer to have them now and do not want to be in the situation we were in with Hearthstone and the sewer easements to West Shores which is Mr. Baird's concern.

Mr. Grier advised that he and Mr. Pikus sat in on a meeting last week and Mr. Hitchens indicated they were unable to provide those easements because of the bank, the state and DeDOT.

Mr. Baird advised he is hearing the same statements. He said water needs to be extended from where it currently exists at Hearthstone all the way over to the Mills Property. There are a series of easements needed to do that and though the city does not want all of them, but one or two need to be agreed upon. We have a multimillion dollar investment over on the east side of Route 1 and there is no way to connect to our existing water system.

The city manager said that is the only thing we are trying to prevent from happening. He is looking for assurances the city will be able to connect. Though that could be in a number of forms, the city manager felt it was best for the city to put an agreement together which states "the city is going to put test wells on the Mills Property, the city is going to build all the infrastructure for the water on the Mills Property in the area shown and we are going to build all the pipe connecting it". In return, Mr. Baird said we are only asking for easements. If for some reason, the test wells indicate we cannot put the water plant or wells there, then the

agreement would become null and void and all the easements would go away. He said they would not be required to dedicate the easements until it was 30 or 60 days after we had determined the water quality on the Mills site was good.

Mr. Pikus asked for clarification that if the test determines the site is appropriate, is it at that point we would want the easements; Mr. Baird stated yes. He noted the draft agreement says 30 days but we would be negotiable with that; 60 or 90 days would also work though we just want the assurance.

Mr. Duplechain said the agreement would be needed before the design work begins. Mr. Baird agreed explaining we are asking for the easements to be in place before the design begins because that is the time the city would start spending real money. There will be some money associated with the test wells, but part of that is the development of the project. Depending on the magnitude and what is found, it could be between \$20,000 and \$60,000 depending on what is needed. However, that is part of what we do as a utility.

It was noted they are meeting with DelDOT this morning. Mr. Baird felt it was important to bring this group up to speed on this issue prior to the meeting that he and Mr. Duplechain have scheduled this afternoon.

Mr. Baird then referred to a letter dated September 15<sup>th</sup> from Mr. Fannin which grants permission to the city and/or its agent to establish a temporary well testing site on the lands known as the Mills Farm, of which the location will be determined in advance.

Mayor Rogers recalled the meeting on September 14<sup>th</sup> which was followed with a letter dated September 15<sup>th</sup> at which time everything appeared to be agreeable. Mr. Hitchens had indicated the city was slowing the process down and the mayor explained that we needed to make sure everything was in line. The initial agreement was needed to proceed and we would address the rest as it was needed. Mr. Baird confirmed that is correct.

Mr. Baird then pointed out that we are just about ready to complete our economic development strategy and this was a major component of that. This property and those east of Route 1 were heavily supported in that strategy as well as the city providing utilities to serve this area as an added attraction to make this property more shovel-ready.

It was agreed that Mr. Hitchens appeared very supportive when the Southeast Master Plan was discussed when the Office of State Planning Coordination, DelDOT and the Department of Agriculture was present.

Mayor Rogers asked Mr. Baird and Mr. Duplechain to meet and find out specifically what the problem is. Mr. Baird reiterated that he wanted to make sure the information was shared with everyone present at this meeting.

Mr. Pikus said it is his impression that the city wants to ensure this is the correct place for the well and if so, then the easements are needed. Mr. Duplechain agreed stating we just need the agreements in place.

Mr. Baird then referenced the draft agreement noting that paragraph c states that this agreement shall be contingent upon the successful results of the proposed test well program for both water quality and quantity as determined by the city and the approval by USDA of the Mills Farm well and treatment site and associated water main extension. He said when you read further into d, it states that the transfer of easements and property dedications to the city shall occur within one month of the satisfactory determination of the above items C1 and C2. In order for the city to finalize the said easements, developer shall provide to the city the boundary surveys of each of the following parcels.

The city manager explained they have provided the surveys though there was one in question. Mr. Duplechain confirmed that has since been received.

Mr. Baird agrees they have been moving forward but the agreement only states the city will have the ability to get those easements if the well site is good and is USDA approved. He said we have had conversations with the USDA who does not object to it. Some additional permitting will need to be done though it is not insurmountable; some of the preliminary work is underway.

Mr. Duplechain advised that has not been started other than the discussion that occurred though the environmental portion of the application had to be redone because it was originally to be on the Cedar Hall site.

It was confirmed the city needs nothing from them with the exception of the intent to give us the easements if we determine the well will go on that site. Mr. Duplechain pointed out there may be some confusion because they were asked to sign the agreement before the test well was done.

Mr. Baird said if this group is in agreement, he and Mr. Duplechain will proceed and ask for a commitment for the easements on those conditions which means the easements would not be needed until those conditions are met.

With no further business, the meeting concluded at 8:45 a.m.

Respectfully submitted,

Terri K. Hudson, CMC  
City Clerk

Attachment: Council Packet prepared by City Manager on 12/10/10

Prepared by: City of Milford

**UTILITY AGREEMENT  
SOUTHEAST MILFORD  
SUSSEX COUNTY, DELAWARE**

This Utility Agreement (“Agreement”) is dated this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the

**City of Milford**, a municipal corporation  
of the State of Delaware, hereinafter the “**City**”

**-AND-**

**MBT Land Holdings, LLC,  
Edgar F. Isaacs II,  
Key Properties Group, LLC,  
MG Development, LLC,**  
hereinafter collectively referred to as the “**Developers**”

**WHEREAS**, it is the desire of the **City** to expand its water and sewer systems to better serve the Southeastern portion of the city; and

**WHEREAS**, the **City** is in need of sufficient property and associated easements of the size and location necessary to accommodate such future improvements; and

**WHEREAS**, it is the desire of the **Developers** to dedicate property and easements associated with these improvements to the **City** in exchange for extension of the water distribution system to incorporated properties west of Route 1.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants herein contained, the parties hereto agree as follows:

A. The **City** shall pay for the design and construction of the following water system improvements utilizing funds provided in part or in whole by USDA Rural Development:

1. Installation of one (1) test well for the purpose of determining the water quality and long term production capacity of the aquifers at the Mills Farm property. *Results of the water quality and capacity testing will be the basis for determining the feasibility for installation of the additional improvements listed below,*
2. Installation of a minimum of one (1) production well and associated treatment facilities on the Mill Farm property which will meet all City and State

regulations/requirements,

3. Installation of one (1) elevated storage tank on the Mill Farm property of the size determined by the City to meet present and future needs,

4. Installation of approximately 10,000 linear feet of 10 inch, 12 inch and 14 inch water main extending from the existing Hearthstone Manor Residential development south and east along the alignment (as generally shown on Exhibit A) to the a aforementioned wells, treatment and storage facilities on the Mills Farm property.

B. In exchange for the water service extension the **Developers** agree to provide the **City** with the following Easements/Dedications at no cost to the **City**:

**1. MBT Land Holdings, LLC Parcel No. 3-30-12.00-11.00 (Mills Farm):**

a. Dedicate to the **City** approximately 6.5 acres of land and an approximately 1,600 foot long 50 foot wide Right-of-Way along the southwesterly boundary of the property as depicted on the attached Exhibit B.

b. Provide an approximately 400 foot long 50 foot wide utility easement extending from the northwesterly corner of the above parcel northwest to the abutting Edgar F. Isaacs property as depicted on the attached Exhibit B.

**2. Edgar F. Isaacs II Parcel No. 3-30-12.00-4.00:**

a. Provide a 50 foot wide utility easement beginning at the southwestern corner of the property at Cedar Neck Road and extending east along the existing woods line for a distance of approximately 3,200 feet to the abutting MBT Land Holdings property as depicted on the attached Exhibit C.

**3. Key Properties Group, LLC Parcel No. 3-30-11.00-405.00:**

a. Provide a 20 foot wide approximately 500 foot long utility easement 40 feet from northerly Right-of-Way line of Wilkins Road as shown on the attached Exhibit D.

4. **MG Development, LLC Parcel 3-30-11.00-408.00:**
  - a. Provide a 60 foot wide utility easement from the northerly Right-of-Way line of Wilkins Road as shown on the attached Exhibit E.
  
5. **Key Properties Group, LLC Parcel No. 3-30-15.00-58.00**
  - a. Dedicate to the **City** a 50 foot by 50 foot area for the installation of a wastewater pumping station located along the eastern boundary approximately 90 feet north of the southeastern corner of the property as depicted on the attached Exhibit F.
  
  - b. Provide a 40 foot wide utility easement along the eastern boundary extending north from the aforementioned pump station parcel approximately 750 feet and terminating at the property line of the adjacent parcel, tax map number 3-30-15.00-59.01 depicted on the attached Exhibit F.
  
  - c. Provide a 30 foot wide utility easement from the northern side of the property line adjacent to tax map parcel number 3-30-15.00-58.04 and continuing along the eastern boundary of the property then turning west and continuing along the northern boundary of the property for a total length of approximately 3,350 feet, terminating at the northwestern property line adjacent to City of Milford parcel number 3-30-15.00-58.02 as depicted on the attached Exhibit F.
  
  - d. Provide a 40 foot wide utility easement along the eastern boundary extending south from the aforementioned pump station parcel approximately 90 feet and terminating at the southern property line adjacent to tax map parcel number 3-30-15.00-50.11 as depicted on the attached Exhibit F.
  
6. **Key Properties Group, LLC Parcel No. 3-30-15.00-58.01:**
  - a. Provide a 30 foot wide utility easement along the eastern boundary fronting on Cedar Creek Road, Delaware Route 30 as depicted on Exhibit F.
  
7. **Key Properties Group, LLC Parcel No. 3-30-15.00-58.04:**

a. Provide a 30 foot wide utility easement along the eastern boundary fronting on Cedar Creek Road, Delaware Route 30 as depicted on Exhibit F.

**8. Key Properties Group, LLC Parcel No. 3-30-15.00-84.00 & 125.00: (Hearthstone Manor)**

a. Provide a 20 foot wide utility easement along the southwest side of Homestead Boulevard from Wilkins Road northwest approximately 600 feet to the center of the circle as depicted on the attached Exhibit G.

b. Provide a 30 foot wide utility easement beginning at the southeastern corner of the property and extending northwest approximately 650 feet, then reducing to a width of 20 feet and continuing northwest approximately 1,550 feet to a point then continuing northeast approximately 1,800 feet to a point then continuing northwest along the eastern boundary of the property fronting on Delaware State Route 30 approximately 900 feet to the northeast corner of the property as depicted on the attached Exhibit H.

C. This agreement shall be contingent upon:

1. The successful results of the proposed test well program for both water quality and quantity as determined by the **City** and;
2. The approval by USDA of the Mill Farm well and treatment site and associated water main extension.

D. Transfer of easements and property dedications to the **City** shall occur within one month (thirty (30) days) of the satisfactory determination of the above items C1 & C2. In order to finalize said easements/dedications the **Developers** shall provide to the **City** the boundary surveys of each of for the following parcels:

MBT Land Holdings, LLC - (Parcel No. 3-30-12.00-11.00) (Mills Farm)  
Edgar F. Isaacs, II Farm - (Parcel No. 3-30-12.00-4.00)  
Key Properties Group, LLC - (Parcel No. 3-30-11.00-405.00)  
MG Development LLC - (Parcel 3-30-11.00-408.00)  
Key Properties Group, LLC -- (Parcel No. 3-30-15.00-58.00)  
Key Properties Group, LLC -- (Parcel No. 3-30-15.00-58.01)  
Key Properties Group, LLC -- (Parcel No. 3-30-15.00-58.04)  
Key Properties Group, LLC-- (Parcel No's 3-30-15.00-84.00 & 125.00)  
(Hearthstone Manor)

E. Project design shall not begin until such time as all easements/dedication documents have been executed by the **Developers**, approved by Milford City Council and dully recorded in the Sussex County Recorder of Deeds office, Georgetown Delaware.

F. Miscellaneous

1. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs and assigns.
2. This Agreement cannot be modified, supplemented or altered in any respect except by writing signed by the parties hereto, or their respective successors, heirs or assigns.
3. This Agreement shall be governed by, and construed under, 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.
4. 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:

**MBT Land Holdings, LLC**

Witness:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Name:

Title: \_\_\_\_\_

**MG Development, LLC**

Witness:

\_\_\_\_\_  
Name:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Key Properties Group, LLC**

Witness:

\_\_\_\_\_  
Name:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Edgar F. Isaacs, II**

Witness:

\_\_\_\_\_  
Name:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**City of Milford**

Witness:

\_\_\_\_\_  
Name:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Oct 2010



**50' Utility Easement (+/- 400 Ft.)**

**MBT Land Holdings LLC.**  
3-30-12.00-11.00

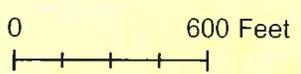
**+/- 6.5 Acres**

**50' ROW (+/- 1,600 Ft.)**

**Shops Road**

March 2007  
Aerial Photograph  
Courtesy of the Delaware DataMIL

**Exhibit B**



**MBT Land Holdings LLC.**  
**City of Milford**  
Sussex County, Delaware



Oct 2010



*Edgar F. Isaacs II*  
3-30-12.00-4.00

*Cedar Neck Road*

*Beaver Dam Road*

**50' Utility  
Easement  
(±12,200 Ft.)**

**±16.5 Acres**

March 2007  
Aerial Photograph  
Courtesy of the Delaware DataMIL

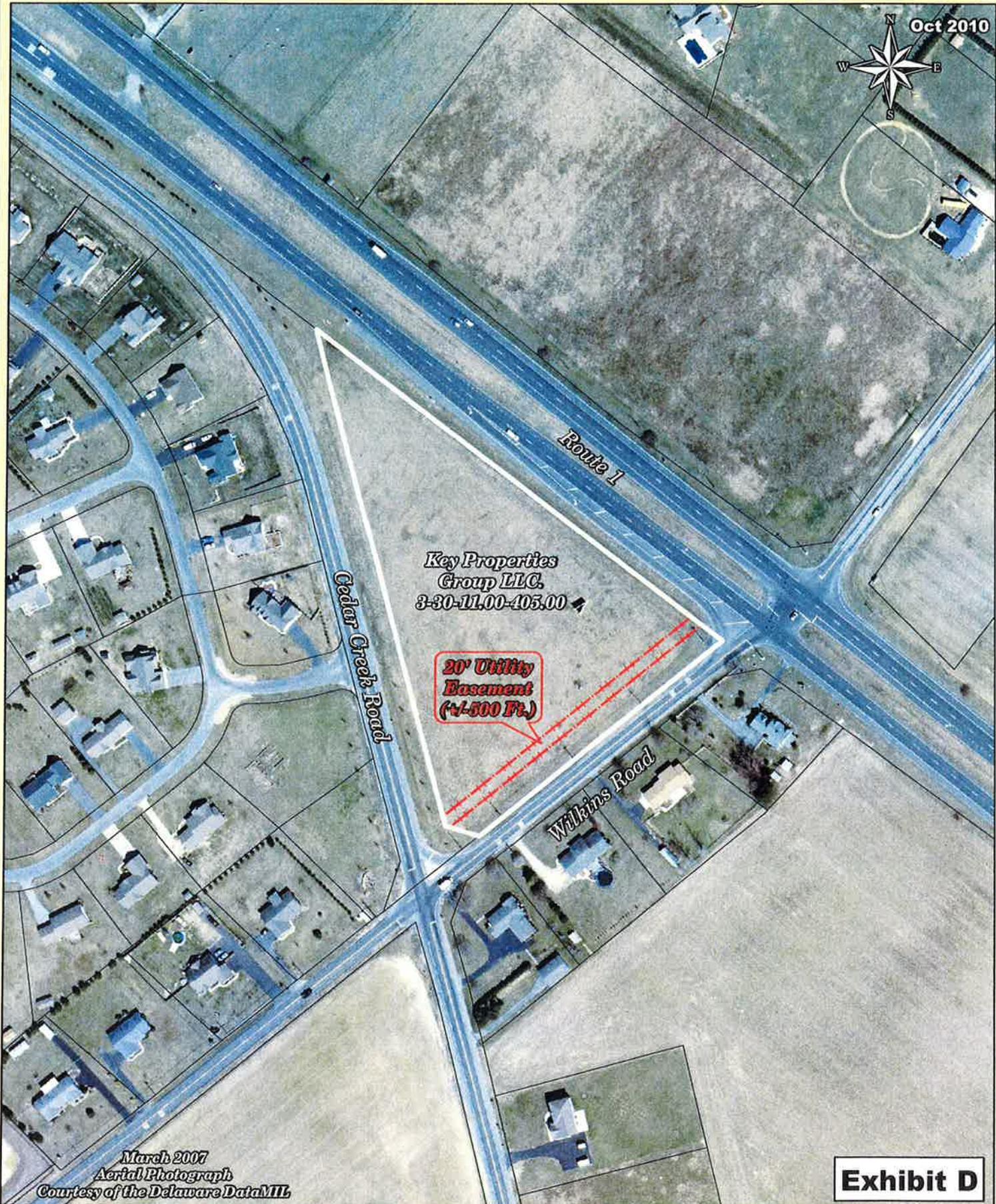
**Exhibit C**

0 600 Feet  
|-----|-----|-----|-----|

**Edgar F. Isaacs II Property**  
*City of Milford*  
*Sussex County, Delaware*



Oct 2010



*Key Properties  
Group LLC.  
3-30-11.00-405.00*

**20' Utility  
Easement  
(+/- 500 Ft.)**

*Cedar Creek Road*

*Route 1*

*Wilkins Road*

*March 2007  
Aerial Photograph  
Courtesy of the Delaware DataMIL*

**Exhibit D**

0 200 Feet  
|-----|-----|-----|-----|

**Key Properties Group LLC**  
*City of Milford*  
*Sussex County, Delaware*



Oct 2010



MG Development LLC  
3-30-11.00-403.00

60' Utility  
Easement  
(±100 Ft.)

March 2007  
Aerial Photograph  
Courtesy of the Delaware DataMIL

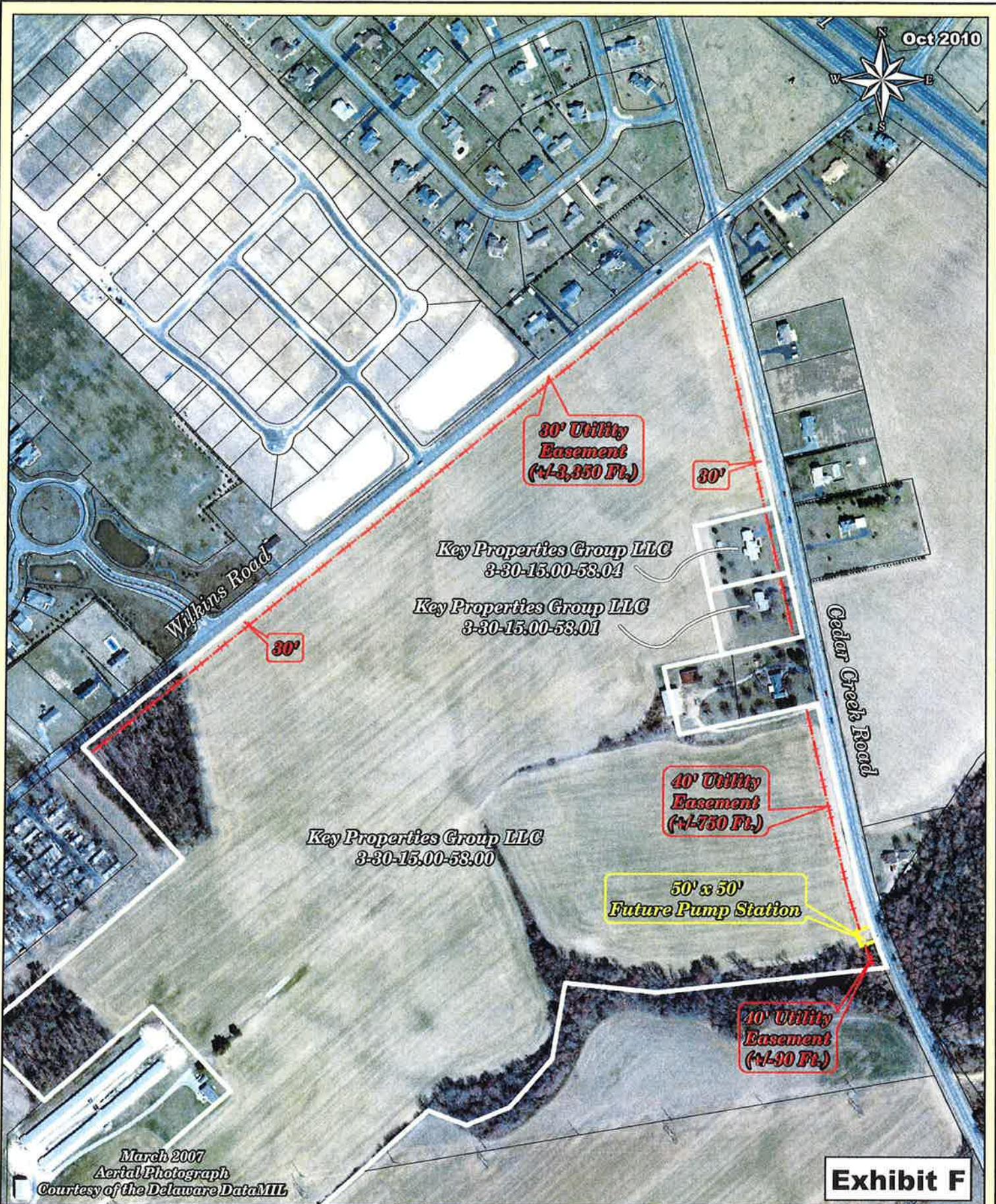
**Exhibit E**

0 200 Feet  
|-----|

**MG Development LLC**  
City of Milford  
Sussex County, Delaware



Oct 2010



Wilkins Road

Cedar Creek Road

**30' Utility Easement**  
(~3,350 Ft.)

30'

Key Properties Group LLC  
3-30-15.00-53.04

Key Properties Group LLC  
3-30-15.00-53.01

30'

Key Properties Group LLC  
3-30-15.00-53.00

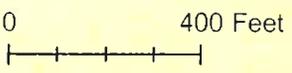
**40' Utility Easement**  
(~750 Ft.)

**50' x 50'**  
**Future Pump Station**

**10' Utility Easement**  
(~90 Ft.)

March 2007  
Aerial Photograph  
Courtesy of the Delaware DataMIL

**Exhibit F**



**Key Properties Group LLC**  
*City of Milford*  
Sussex County, Delaware



Oct 2010



Key Properties Group LLC  
3-30-15.00-125.00

Homestead Blvd.

Wilkins Road

20' Utility  
Easement  
(~1-650 Ft.)

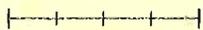
March 2007

Aerial Photograph

Courtesy of the Delaware Data III

Exhibit G

0 200 Feet



Key Properties Group LLC  
City of Milford  
Sussex County, Delaware



Oct 2010



**20' Utility Easement**  
(~1,900 Ft.)

**20' Utility Easement**  
(~1,300 Ft.)

**Key Properties Group LLC**  
3-30-15.00-84.00

**20' Utility Easement**  
(~1,550 Ft.)

**30' Utility Easement**  
(~650 Ft.)

**Key Properties Group LLC**  
3-30-15.00-125.00

Route 1

Williams Road

March 2007  
Aerial Photograph  
Courtesy of the Delaware DataMIL

**Exhibit H**

0 500 Feet  
+ + + + +

**Key Properties Group LLC**  
City of Milford  
Sussex County, Delaware



**Water Main Extension to Well & Treatment Site  
Preliminary Cost Estimates  
Milford, Delaware  
September 17, 2010**

| DESCRIPTION   | QUAN  | U/M | UNIT  | TOTAL                 |
|---|-------|-----|---|-----------------------|
| <b>Option 1: Thawley Property:</b>  |       |     |   |                       |
| <b>14 Inch Water Main</b><br>(Tank & Well Facility to 12 Inch Main)               | 200   | LF  | \$60.00   | \$12,000.00           |
| <b>12 Inch Water Main</b><br>(From Thawley Site to West Shore In Wilkens Rd. ROW) | 2,650 | LF  | \$65.00   | \$172,250.00          |
| <b>10 Inch Water Main</b><br>(Connection to West Shores)                          | 50    | LF  | \$55.00   | \$2,750.00            |
| <b>24 Inch Jack and Bore:</b>   |       |     |   |                       |
| Under Route 1   | 200   | LF  | \$400.00  | \$80,000.00           |
| Under Route 36  | 150   | LF  | \$350.00  | \$52,500.00           |
| Stub to Hall Commercial under Wilkins Road  | 50    | LF  | \$350.00  | \$17,500.00           |
| <b>Hydrant Assemblies</b>   | 5     | EA  | \$3,500.00  | \$17,500.00           |
| <b>Gate Valves:</b>   |       |     |   |                       |
| 14 inch   | 1     | EA  | \$2,800.00  | \$2,800.00            |
| 12 inch   | 8     | EA  | \$2,100.00  | \$16,800.00           |
| 10 inch   | 1     | EA  | \$1,800.00  | \$1,800.00            |
| Traffic Control Estimate  | 1     | LS  | \$50,000.00   | \$50,000.00           |
|   |       |     | Subtotal  | \$425,900.00          |
| <b>Property Purchase: (9.0 +/- Acres)</b><br>(Site Elevation = 34.00 +/-)         | 1     | LS  | \$750,000.00  | \$750,000.00          |
|   |       |     | Restoration (20%)                                       | \$85,180.00           |
|   |       |     | Contingency (15%)                                       | \$63,885.00           |
|   |       |     | Survey, Design, Permitting, C.A. & Inspection Est.(20%) | \$85,180.00           |
|   |       |     | <b>TOTAL</b>  | <b>\$1,410,145.00</b> |



| DESCRIPTION | QUAN | U/M | UNIT | TOTAL |
|-------------|------|-----|------|-------|
|-------------|------|-----|------|-------|

**Option 3: MBT Land Holdings Property:**

|   |       |    |  |                       |
|---|-------|----|--|-----------------------|
| <b>14 Inch Water Main</b><br>(Tank & Well Facility to 12 Inch Main)               | 50    | LF | \$60.00  | \$3,000.00            |
| <b>12 Inch Water Main</b><br>(From MBT Site to Cedar Neck Road)                   | 3,900 | LF | \$50.00  | \$195,000.00          |
| <b>12 Inch Water Main</b><br>(From Beaver Dam Road to Route 1)                    | 2,600 | LF | \$65.00  | \$169,000.00          |
| <b>12 Inch Water Main</b><br>(Across Route 1 to West Shores in Private Easements) | 2,250 | LF | \$55.00  | \$123,750.00          |
| <b>10 Inch Water Main</b><br>(Connection to West Shores)                          | 100   | LF | \$55.00  | \$5,500.00            |
| <b>14 Inch HDPE Direction Bore Under Branch</b>                                   | 450   | LF | \$210.00   | \$94,500.00           |
| <b>24 Inch Jack and Bore:</b>   |       |    |  |                       |
| <b>Under Route 1</b>  | 200   | LF | \$400.00   | \$80,000.00           |
| <b>Under Route 36</b>   | 100   | LF | \$350.00   | \$35,000.00           |
| <b>Under Cedar Neck Road</b>  | 60    | LF | \$350.00   | \$21,000.00           |
| <b>Under Wilkins Road</b>   | 160   | LF | \$350.00   | \$56,000.00           |
| <b>Stub to Hall Commercial under Wilkins Road</b>                                 | 50    | LF | \$350.00   | \$17,500.00           |
| <b>Hydrant Assemblies</b>   | 12    | EA | \$3,500.00   | \$42,000.00           |
| <b>Gate Valves:</b>   |       |    |  |                       |
| <b>14 inch</b>  | 1     | EA | \$2,800.00   | \$2,800.00            |
| <b>12 Inch</b>  | 17    | EA | \$2,100.00   | \$35,700.00           |
| <b>10 Inch</b>  | 1     | EA | \$1,800.00   | \$1,800.00            |
| <b>Tank Height Additional Cost</b>  | 12    | FT | \$3,500.00   | \$42,000.00           |
| <b>Traffic Control Estimate</b>   | 1     | LS | \$65,000.00  | \$65,000.00           |
|   |       |    | Subtotal   | \$989,550.00          |
| <b>Property Purchase: (5.0 +/- Acres)</b><br>(Site Elevation = 22.00 +/-)         | 1     | LS | \$0.00   | \$0.00                |
| <b>Private Utility Easement Property Purchase:</b>                                | 1     | LS | \$0.00   | \$0.00                |
|   |       |    | Restoration (10%)  | \$98,955.00           |
|   |       |    | Contingency (15%)  | \$148,432.50          |
|   |       |    | Survey, Design, Permitting, C.A. & Inspection Est. (20%) | \$197,910.00          |
|   |       |    | <b>TOTAL</b>   | <b>\$1,434,847.50</b> |

## FILE MEMO

Date: May 14, 2010

RE: Proposed Southeast Milford Utility Easements and Land Dedications on lands of Key Properties Group, LLC and Edgar F. Isaacs, II.

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Per our meeting on April 15, 2010 please find below a description of the anticipated easement areas needed to extend utilities to the proposed properties. We are requesting the utility easements on following properties as illustrated on the attached exhibit and as described below:

I. Vreeland Farm – (3-30-15.00-58.00)

- A. A 50 foot by 50 foot area for the installation of a wastewater pumping station located along the eastern boundary approximately 90 feet north of the southeastern corner of the property. Total area to be dedicated to the City to be approximately 0.057 acres.
- B. A 40 foot wide utility easement off of the eastern boundary extending north from the aforementioned pump station outparcel approximately 335 feet, then reducing to a width of 30 feet and continuing north along the eastern boundary for a distance of approximately 370 feet terminating at the property line of the adjacent parcel, tax map number 3-30-15.00-59.01. Said 30 foot wide utility easement begins again on the northern side of the property line adjacent to tax map parcel number 3-30-15.00-58.04 and continues along the eastern boundary of the property then turns west and continues along the northern boundary of the property for a total length of approximately 2,580 feet, then reducing to a width of 20 feet and continuing west for a length of approximately 770 feet and terminating at the northwestern property line adjacent to tax map parcel number 3-30-15.00-58.02. Total area of easement to be approximately 2.73 acres.
- C. A 30 foot wide utility easement off of the eastern boundary extending south from the aforementioned pump station outparcel approximately 90 feet terminating at the southern property line adjacent to tax map parcel number 3-30-15.00-50.11. Total area of easement to be approximately 0.062 acres.

II. Key Properties Group, LLC – (3-30-15.00-58.01)

A 30 foot wide utility easement along the eastern boundary fronting on Cedar Creek Road, Delaware Route 30. Total area of easement to be approximately 0.16 acres.

III. Key Properties Group, LLC – (3-30-15.00-58.04)

A 30 foot wide utility easement along the eastern boundary fronting on Cedar Creek Road, Delaware Route 30. Total area of easement to be approximately 0.13 acres.

IV. Commercial Property – (3-30-11.00-405.00)

A 20 foot wide utility easement along the southern boundary fronting on Wilkins Road. Total area of easement to be approximately 0.23 acres.

V. Edgar F. Isaacs, II Farm – (3-30-12.00-4.00)

A 50 foot wide utility & access easement beginning at the southwestern corner of the property running along the existing woods line for a distance of approximately 2,325 feet to a 400 foot by 400 foot area for the installation of a potable water well and treatment facility and a wastewater pumping station. Said 50 foot wide utility & access easement shall be used for the installation of a proposed water main and wastewater forcemain and shall also be used as temporary access to the well, treatment and pumping station site until such time as the property is developed and access can be provided within the development. Total area to be dedicated to the City is 5.90 acres.

V. Hearthstone Manor – (3-30-15.00-84.00 & 125.00)

A 30 foot wide utility easement beginning at the southeastern corner of the property running northwest along the eastern boundary of the property adjacent to the West Shores subdivision for a distance of approximately 745 feet, then reducing to a width of 20 feet and continuing northwest along said boundary to a point thence continuing northeast along the southern boundary of the property adjacent to the West Shores subdivision to a point thence continuing north along the entire eastern boundary of the property fronting on Delaware State Route 30. Total area of easement to be approximately 2.34 acres.

In order to finalize the easement areas and descriptions, please provide us with the boundary surveys for the following parcels:

Vreeland Farm – (3-30-15.00-58.00)  
Key Properties Group, LLC – (3-30-15.00-58.01)  
Key Properties Group, LLC – (3-30-15.00-58.04)  
Commercial Property – (3-30-11.00-405.00)  
Edgar F. Isaacs, II Farm – (3-30-12.00-4.00)  
Hearthstone Manor – (3-30-15.00-84.00 & 125.00)

Also, please provide current site plans for the unimproved portions of the Hearthstone Manor site that are in the vicinity of the proposed easements so we can try to avoid any potential conflicts.

Lastly, we are requesting permission to drill a test well on the Edgar F. Isaacs Farm for determining the water quality and production capacities of the aquifers at the site. The location of said test well will be coordinated with the current property owner. Please provide us contact information for the appropriate person to coordinate the location of the test well.

Please note that the easements and property dedications as described above are based on approximated property lines and are being provided to illustrate the areas needed for the currently proposed utility routing. These areas are general in nature and are subject to change based on the actual property boundaries, future rights-of-way acquisitions by the Delaware Department of Transportation and/or any potential utility conflicts.

By signing below, Key Properties Group, LLC agrees to provide the proposed easements, property dedications, boundary surveys and site plans requested above at no cost to the City of Milford and to work with the City to finalize and record said dedications in an expeditious manner.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed Name**



Mayor, City of Milford

September 15, 2010

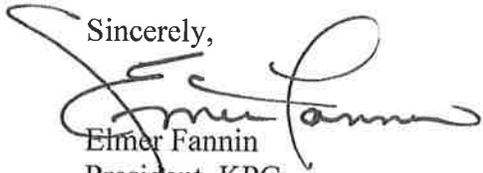
Mr. Rogers,

This letter grants permission to the City of Milford and/or its agents to establish a temporary water well testing site on the lands known as the Mills Farm. The location of the testing site will be determine in advance of the actual work and coordinated with DB&F.

The well site is designated for water quality testing. The well site materials [ pipe etc.] shall be removed from the property upon completion of testing and the affected testing area restored to its original condition.

All companies/persons directly involved with the on-site drilling activities are required to have appropriate and adequate insurance.

Sincerely,



Elmer Fannin  
President, KPG

cc: City Manager, David Baird  
Councilman, Garrett Grier  
Dave Hitchens



OFFICE OF THE CITY MANAGER  
302.424.8395, FAX 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

[www.cityofmilford.com](http://www.cityofmilford.com)

September 15, 2010

Mr. Dave Hitchens  
Key Properties Group, LLC  
610 Marshall Street  
Milford, Delaware 19963

RE: Proposed Water Project—Mills Farm

Dear Mr. Hitchens:

Thank you for Mr. Fannin's letter to Mayor Rogers authorizing the City to proceed with a test well on the lands known as the Mills Farm.

As we discussed during our telephone conversation this afternoon, the City and our consulting engineers from Davis, Bowen and Friedel would like to meet with you and finalize the location of the test well. In addition, the City is looking for confirmation from Mr. Fannin of his intentions regarding the permanent location for the utilities and the easements along all of his properties that will be necessary to facilitate the extension of water, sewer and electric utilities.

Please let me know at your earliest convenience on a possible meeting date and time. On behalf of the City, I would like to thank you for your cooperation as we move forward on this project.

Sincerely,

A handwritten signature in blue ink that reads "David W. Baird".

David W. Baird  
City Manager

cc: Mayor Rogers



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November 24, 2010

Mr. Dave Hitchens  
Key Properties Group, LLC  
610 Marshall Street  
Milford, Delaware 19963

RE: Utility Easements

Dear Mr. Hitchens:

I wanted to follow-up to our meeting on November 1 and your letter of November 11 regarding the utility easements for the City's upcoming projects.

The City does not object to your request for separate utility agreements for each parcel. Please coordinate with Randy Duplechain at Davis, Bowen & Friedel, Inc. regarding the specific information needed and signature party for each agreement.

When we last spoke, you indicated the mortgage holders on the properties were requiring additional information prior to the granting of any easements or transfer of property. I trust Key Properties Group is working to meet these requirements so that we can move forward with the execution of the easement agreements. As I stated during our last conversation, all of the easements will need to be executed prior to the City beginning any work, including the installation of the test wells, in this area.

I am in full agreement with your comment that the installation of this infrastructure is vital to the future success of this area and the entire City. With this being said, I am sure you will be able to have the easement agreements executed by Tuesday, December 7, 2010 so the City can move forward with the installation of test wells.

As always, I look forward to working with you on this project and should you have any further questions or comments, please do not hesitate to contact me at anytime.

Sincerely,

A handwritten signature in blue ink that reads "David W. Baird".

David W. Baird  
City Manager



Randy B. Duplechain P.E.  
Davis, Bowen and Friedel, Inc.

November 11, 2010

Dear Randy,

As a follow-up to our conversation yesterday, I changed the width of the utility easement listed on page 2 under B. 2 named Edgar F. Isaacs II No. 3-30-12.00-4.00 to 20 feet. This change reflects the easement width standard established in Hearthstone Manor and other developments in the City. As we move forward with the infrastructure provisioning processes, we will be addressing the issues related to each parcel. Sewer and water infrastructure East of Route 1 is the number priority and water testing on the Mills farm should commence as soon as possible.

We require a 'Utility Agreement' for each parcel denoted in the document discussed on November 1, 2010.

If you have any questions, I can be reached on 424-4364.

Sincerely,

A handwritten signature in cursive script that reads 'Dave'.

David R. Hitchens  
VP, KPG

*Randy,  
as an aside, we will  
need to know the 'actual'  
required acreage for the  
well & tower site on the  
Mills farm & we will  
size the utility acreage  
accordingly - This info  
is required for the  
"bank release of lands"  
Thanks Dave*

*MILFORD CITY COUNCIL  
MINUTES OF MEETING  
December 13, 2010*

The Monthly Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, December 13, 2010.

PRESIDING: Mayor Joseph Ronnie Rogers

IN ATTENDANCE: Councilpersons Steve Johnson, Garrett Grier III, S. Allen Pikus, Owen Brooks, Jr., Douglas Morrow, James Starling, Sr. and Katrina Wilson

ALSO: City Manager David Baird, Police Chief Keith Hudson and City Clerk/Recorder Terri Hudson

CALL TO ORDER

Mayor Rogers called the Monthly Meeting to order at 7:01 p.m.

INVOCATION AND PLEDGE

The Pledge of Allegiance followed the invocation given by Councilman Starling.

APPROVAL OF MINUTES

Motion made by Mr. Pikus, seconded by Mr. Grier to approve the minutes of the November 8 and 22, 2010 Council Meetings as presented. Motion carried.

RECOGNITION

*Proclamation 2010-22/George Day Week*

The city clerk read the following proclamation into record as Mayor Rogers presented the proclamation:

*WHEREAS, GEORGE DAY is a resident whose personal goal is to enhance and preserve a clean, well-maintained community; and*

*WHEREAS, GEORGE DAY walks the streets of Milford finding ways to tackle safety and appearance concerns to prevent them from becoming bigger problems; and*

*WHEREAS, GEORGE DAY has provided countless hours of volunteer services that include litter pickup, landscaping maintenance, right-of-way cleaning, trash container storage, damaged and illegal sign removal and ensuring proper flag etiquette throughout the city; and*

*WHEREAS, GEORGE DAY is always willing to help, often by way of an unexpected act such as picking up and placing one's newspaper on their front step to contributing to a community project.*

*NOW THEREFORE, I, Joseph Ronnie Rogers, by virtue of the authority vested in me as Mayor of the City of Milford, Delaware, do hereby proclaim the week of December 12 through December 18, 2010 as GEORGE DAY WEEK in the City of Milford. I encourage all city staff and residents to acknowledge this Good Samaritan for his tremendous contribution to our community and his dedication to making our city a more beautiful and kind community in which to live, work and play.*

*BE IT FURTHER PROCLAIMED that GEORGE DAY be awarded a Key to the City as a symbol of our appreciation and for becoming Milford's own "HOMETOWN HERO" by making a difference and bringing together the true spirit of our community throughout the year.*

Mayor Rogers then recognized the Lions Club Members and asked them to come forward noting that Lucy Mehl had asked that Mr. Day be recognized. He then thanked Mr. Day for the many things he does emphasizing what an honor it is to acknowledge him.

Mr. Day then addressed council stating he does these things because of his father and mother, his Scout Master /Sunday School teacher and the military. He said he is mission-oriented and when he has a goal, he will carry it through.

He also thanked the city manager for his help in having a tree removed that was interfering with city electric wires.

Mayor Rogers then recognized former State Senator Robert Voshell, Downtown Milford President Irvin Ambrose and former City Manager Richard Carmean.

**POLICE REPORT**

Mr. Morrow moved to accept the police report as submitted by Chief Hudson, seconded by Mr. Starling. Motion carried.

*City Manager Report*

Mr. Baird then read the following report into record:

***Solid Waste & Recycling***

*On August 1, the City Solid Waste Department began the collection of curbside recycling. During the month of November, the Solid Waste Department collected 452.16 tons (385.12 tons of Solid Waste; 29.55 tons of Recycling and 37.49 tons of yard waste).*

|               | <i>Recycling Tons</i> | <i>Recycling Rate</i> |
|---------------|-----------------------|-----------------------|
| <i>Nov-09</i> | <i>31.85</i>          | <i>7.70%</i>          |
| <i>Nov-10</i> | <i>29.55</i>          | <i>7.12%</i>          |

*Earlier this year, SB234 was signed into law and part of the legislation establishes diversion rates of 50% by January 1, 2015 for Municipal Solid Waste being disposed of at the landfill.*

|                 | <i>Recycling</i> | <i>Solid Waste</i> | <i>Yard Waste</i> | <i>Total</i>   | <i>Diversion Rate</i> |
|-----------------|------------------|--------------------|-------------------|----------------|-----------------------|
| <i>2009</i>     | <i>442.44</i>    | <i>4684.38</i>     | <i>-</i>          | <i>5126.82</i> | <i>8.63%</i>          |
| <i>2010 YTD</i> | <i>403.50</i>    | <i>4303.16</i>     | <i>37.49</i>      | <i>4744.15</i> | <i>9.29%</i>          |

***Impact Fee Waivers***

*Since the waiver of impact fees was implemented in June, the City has waived \$131,196 in fees. This waiver has allowed property owners in Milford to retain this money and has helped to support a total investment of \$7,331,538 (based on building permit values) during the months of June through November.*

***N. Front St. Sewer Project***

*This project is substantially completed and the City is working with the Contractor to address punch list items for the job. You will recall the City provided an additional 45 days to complete the job and the contractor utilized 43 of the 45 days and that included inclement weather days. The City will be working to close out the project over the next few weeks and I will provide a more detailed report on the project to City Council at your next meeting. The work you will see in the area now is part of the Kent County By-Pass force main project.*

***Board of Adjustment Hearing—Peoples Place***

*The Board of Adjustment considered an application to allow a two-foot variance over the six-foot limitation which would allow an eight-foot fence to be constructed in R-2 zone on N. Walnut Street. The request was unanimously approved.*

#### ***Water Tower Maintenance***

*The City is soliciting bids for pressure washing and spot painting on the 10<sup>th</sup> Street Water Tower to remove the staining that is visible. Both the engineers and painting contractors have advised the City not to undertake a complete painting until all of the water can be removed from the tanks. Based on the water demand in the City, we have been advised to wait until the new tower constructed before we paint the existing towers.*

#### ***Electric Utility Rate Comparison***

*Mr. Baird referenced the Residential Utility Rate Comparison from DEMEC for December 2010 emphasizing Milford is the lowest municipal provider for 1,000 kWh on the residential side though we are 27% higher than Delaware Cooperative.*

#### ***City Holidays***

*City offices will be closed on Friday, December 24 and Monday, December 27 in observance of Christmas Eve and Christmas Day. City Offices will also be closed on Friday, December 31 in observance of New Year's Day.*

#### ***Circle of Light***

*Since the presentation during the Nov. 22 workshop, Circle of Light has announced plans for its operations during the winter months. Councilwoman Wilson will be providing an update on their efforts.*

When asked if it would pay to enter into a contract to maintain the water towers on an annual basis, Mr. Baird advised there will be an up-front cost which council must weigh though it should be considered. Mr. Pikus recalled Public Works Chairman Brooks suggesting that the lease fees received for antenna space be used to offset any maintenance costs. Mr. Baird advised that currently, those revenues go into the general fund though that should be discussed during the upcoming budget hearings.

Ms. Wilson then followed up on the Circle of Light program. She reported a meeting was held last week at which time it was announced the temporary shelters would open January 17<sup>th</sup> thru March 31<sup>st</sup> at the Nazarene Church at Route 113 and Tenth Street. Volunteers and donations are needed in addition to toiletries and similar items. A number of local agencies are partnering with the Circle of Light though they are still in need of monetary donations.

She advised that approximately 70 churches were sent announcements though only seven were present at this most recent meeting.

The shelter will host sixteen people—eight men and eight women with consideration given to children. People are needed to man the facility and volunteers are needed to cook two meals a day. Each day requires a new check-in/check-out process. A facility in Dover, who has offered this service for a number of years is helping train individuals in Milford.

She asked that the city provide some assistance by way of volunteer time or money and suggested it be taken from the discretionary fund.

When Ms. Wilson reported that air mattresses would be used for bedding, Mr. Pikus asked if cots were needed. Ms. Wilson advised that air mattresses were preferred because they did not require a great deal of storage.

Mr. Pikus then reported the National Guard storage facility has a large number of folding cots they want to dispose of; Ms. Wilson will forward that information to the Circle of Life.

Joe Palermo of 5 Misty Vale Court, Meadows at Shawnee, then announced the Milford Lions Club has been in contact with Reverend Kevin Bowers and are planning to provide a large donation to the program.

Mr. Pikus moved to accept the city manager report, seconded by Mr. Brooks. Motion carried.

## COMMITTEE REPORT

*Finance Committee-Monthly Report*

Chairman Pikus reported that through the fourth month of Fiscal Year 2010-2011 with 33% of the fiscal year having passed, 41.63% of revenues have been received and 32.16% of the operating budget expended. Of those revenues, building permits are over 100%. Mr. Pikus feels the city is in good shape which he attributes to good fiscal management.

*Finance Committee-Acceptance of Fiscal Year 2009-2010 City of Milford Audit*

Mayor Rogers asked Finance Director Jeff Portmann to comment on the recent audit.

Mr. Portmann explained an audit is a financial statement that represents the City of Milford at the end of the fiscal year, which in this case, occurred on June 30, 2010. The auditors will come in and attest to those numbers by verifying those numbers/records are correct. He reported the audit is an unqualified opinion with no findings which means the auditors have no issues with the city and he has no issues with them.

With no questions or comments, Mr. Pikus moved to accept the Annual Audit for the year ending June 30, 2010 and the October Finance Report, seconded by Mr. Grier. Motion carried with no one opposed.

## COMMUNICATIONS

*Community Christmas Dinner*

Mr. Starling reported that for the sixth year, St. Paul's United Methodist Church, headed by Reverend Jeanel Starling will sponsor another dinner at the Masonic Lodge on Christmas Day from noon through 4:00 p.m. Members of the church cook and serve the meal to the less fortunate. Those that are unable to travel will have their meals delivered. He added it is also a good way for those living alone to have Christmas dinner with other people.

He asked that he be contacted with names of anyone in this situation. Donations are still being accepted.

## UNFINISHED BUSINESS

*Introduction of Ordinance 2010-20/Water Code Amendment*

The following ordinance was officially introduced, with its adoption projected at the December 28<sup>th</sup> meeting:

*ORDINANCE 2010-20  
Chapter 222-Water*

*AN ORDINANCE TO AMEND THE CODE OF THE CITY OF MILFORD, CHAPTER 222 THEREOF, ENTITLED WATER, For the purpose of PROHIBITING CERTAIN TYPES OF PRIVATE WATER WELLS.*

*WHEREAS, water services are available to businesses and residences within the City of Milford; and*

*WHEREAS, it is necessary that these services be utilized and that for health and safety purposes, persons within the City of Milford are not allowed to build and maintain separate water wells except as defined herein.*

*NOW, THEREFORE, the City of Milford hereby ordains:*

*Section 1. Subsection 3 of Chapter 222, Water, of the Code of the City of Milford is hereby amended by adding the following definitions:*

*AGRICULTURAL WELL— A well used for the watering of livestock, poultry, aquaculture uses, or solely for the watering*

*of household yards and gardens or for other purposes related to farming in general but not including the irrigation of lands or crops. Water is not used for human consumption or to service a dwelling.*

*DEWATERING WELL—A well used to remove ground water for construction of footings, sewer lines, building foundations, elevator shafts, etc.*

*DOMESTIC WELL—A well primarily used for potable non-public water supply purposes and which may be used for non-potable purposes, excluding heat pump supply.*

*HEAT PUMP CLOSED LOOP WELL—A sealed and pressurized loop of pipe containing a heat exchange solution which is circulated below the earth's surface and utilizes groundwater for the purpose of heat transfer.*

*HEAT PUMP RECHARGE WELL—A well constructed and primarily used for injecting ground water source heat pump effluent back into an aquifer, and which may be used for other non-potable water supply purposes provided prior written approval is obtained from the City.*

*HEAT PUMP SUPPLY WELL—A well constructed primarily to obtain ground water as a source for heat pump supply purposes and which may not be used for other purposes such as domestic water supply.*

*INDUSTRIAL WELL—A well which is used in the processing, washing, packaging, or manufacturing of a product excluding food and beverages.*

*IRRIGATION WELL—A well which is used for the watering of lands or crops other than household lawns and gardens.*

*MONITOR WELL—A well installed for the sole purpose of the determination of subsurface conditions and collecting ground water samples.*

*OBSERVATION WELL—A well used for the sole purpose of determining ground water levels.*

*POTABLE WATER--Any water which is in compliance with all the primary health related drinking water standards specified in the Delaware Regulations Governing Public Drinking Water Systems and the US EPA Safe Drinking Water Act, and is acceptable for human consumption.*

*PUBLIC WELL—A well which is used to supply water to more than three dwelling units; twenty-five (25) or more employees; in the manufacture of ice, foods, or beverages; to the public in food washing, processing, or preparation in a plant, restaurant, or other facility.*

*TEST WELL—A well installed to ascertain the lithology and water transmission properties of an aquifer or geologic materials and which may be used to determine water quality; a well which is not used on a permanent basis.*

*Section 2. Chapter 222, Water, of the Code of the City of Milford is hereby amended by adding the following section:*

*§222-32 Wells.*

*A. Except as provided in this section, no person shall install, construct, develop, maintain, or use any type of well within the City limits and/or the area served by the City's water system.*

*B. Upon the issuance of a permit by the City, the following types of wells are allowed to be installed, constructed, developed, maintained and used within the City limits and/or the area served by the City's water system.*

- 1. Any well lawfully in existence at the time of enactment of this ordinance, provided, however, the size of such wells shall not be expanded.*
- 2. Agricultural wells on properties of three or more acres (The intended use of agricultural wells in the City of Milford is for irrigation of open space, public grounds, school grounds, parks and recreational playing fields)*

3. *Domestic wells when the property is not located within 200 feet of the City's water system.*
4. *Heat pump wells are permitted for the conservation of natural resources and energy.*
5. *Dewatering, observation, monitoring and test wells are permitted in accordance with State regulations.*
6. *Public, Industrial or Irrigation wells are permitted upon approval of City Council.*

*Section 3. Dates.*

*Introduction to City Council: 12-13-10*

*Projected Adoption Date: 12-28-10*

*Projected Effective Date: 01-08-11*

Mr. Baird recalled this ordinance being discussed at the last council meeting. It reinstates the prohibition on private wells within the city though there are some situations in which they would be permitted.

He thanked Public Works Director Brad Dennehy and City Engineer Mark Mallamo for working with the state so the ordinance coincides with their regulations.

*Mispyllion Life Ring Project*

Mayor Rogers recalled the program previously presented by Carlisle Fire Company in memory of Dee'Jion Fullman who drowned in the Mispyllion River this past year. In order to purchase the life ring station, Mr. Baird asked council to approve \$536, in addition to the cost of the plaque, and recommended funding from the council expense account.

Mr. Pikus moved for approval of the funding of the ring and plaque, seconded by Mr. Starling to be paid from the city council account. Motion carried with no one opposed.

Mr. Starling then reported that donations are steadily coming in for the scholarship programs for children to take swimming lessons at the Boys and Girls Club.

*Approval of Agreement/Rotary Area 4 Can Do Too Playground*

The city manager recalled the city partnering with the Rotary Club District 7630 to build a playground for special needs children in the Tony Silicato Park. The agreement outlines the Rotary Club's and the city's responsibilities for the park. The Rotary Club is raising the funds though the city has been working with them on the design and logistics. In return, the city agrees to take care any maintenance associated with the facility, both day to day and long term.

The Rotary Clubs are establishing a fund that will be used for the maintenance and will be included in their fundraising efforts. The agreement allows them to create a separate entity for the fundraising. It will also allow them to file for their 501c3 nonprofit status with the IRS. Once that is in place, they will kick off the formal fundraising project. Their goal is to raise \$200,000 which they are very confident can be accomplished.

Mr. Brooks moved for approval of the Rotary Can Do Too Playground agreement, seconded by Mr. Morrow. Motion carried by unanimous roll call (6-0) with Mr. Pikus abstaining due to being President of the local Rotary Club.

**NEW BUSINESS**

*Bid Award/Demolition of 201, 203, 205 and 207 N.W. Front Street Properties*

Mr. Baird introduced Building Inspector Don Williams to present the proposal to council. Mr. Williams then provided an update on 203, 205 and 207 Northwest Front Street properties owned by Daniel Bond and/or Spyros Doukas.

He advised the properties were condemned and posted on January 20, 2010. Mr. Doukas appealed the decision of the condemnation. Following a few hearings, on November 18<sup>th</sup>, the Board of Appeals confirmed the condemnation. At that time, the board gave Mr. Doukas an opportunity to submit, within 90 days, restoration plans prepared by a design

professional with the name of the contractor and the time lines. Additionally, associated costs could not exceed 50% of the property value per the City of Milford Code.

Since only the plans were submitted for the board to consider, the demolition by the city will proceed pursuant to the January 20<sup>th</sup> condemnation notice.

He emphasized that on November 19<sup>th</sup>, the day after the decision was made, notices were again served to both owners with both properties posted giving 30 days to vacate and demolish such structures. If the structures are not demolished after the 30 days, the city is prepared to move forward with the demolition, place liens on the properties, then bill each property owner. If the fees are not collected within the specified time frame, it will be handled in the same manner as a tax lien.

In preparation of the city moving forward to demolish the structures, Mr. Williams said he obtained three quotes. To get the three quotes, they chose three random contractors that were reputable and had been around for awhile. He then came up with a scope of work in which the contractors were asked to provide him a quote on the following work:

- \*Demolishing all the structures on the two lots (203-205-207) (one is basically already down).
- \*Identifying, removing and disposing of any asbestos dealing with these structures.
- \*Removing all debris from properties including the blocks from basements (to prevent it from being pushed in and covered over).
- \*Fill in basements with clean fill dirt as necessary; top with 6" of top soil and plant grass seed/straw.
- \*Finished area should have positive drainage to prevent any standing water.
- \*Install silt fence as necessary to prevent dirt from washing into street (along N.W. Second & Church Streets)

As a result, the following three contractors provided bids:

|   |              |
|---|--------------|
| Clark's General Contractors, Incorporated | \$14,640.00  |
| Eastern Shore Demolition and Construction | \$46,799.00  |
| John Macklin & Sons                       | \$42,558.96. |

Mr. Williams then verified the Clark proposal because it is substantially lower than the other two bids. Mr. Clark signed the contract which is awaiting the city's signature to proceed. The inspector emphasized that all three proposals were based on the same scope of work he had prepared.

The building inspector noted the Clark proposal is the only one with limited fill dirt as he only allotted for 17 loads of fill dirt and 3 loads of topsoil. Therefore, he expects a slight increase if 19 or 20 loads of fill dirt are required. He also did not address the asbestos though Mr. Williams had two separate demolition contractors go through it and neither found any sign of asbestos. However, that does not guarantee it does not exist in the wall. If found, there will be an additional cost of the survey and its removal though it will be minimal and nothing compared to the \$32,000 difference between his quote and the other two.

He said his main concern is if he needs to close the street down. At this time, he indicated he is comfortable with moving the fence currently aligning it and placing it inside the street line. That would handle a falling brick and would prevent it from hitting a passing car. The other concern is the chimney. Due to the heat, it may be a little more brittle and a worst case scenario would be to task someone with closing the street for five to ten minutes to allow enough time to pull the chimney down.

Mr. Williams will look at the possibility of totally closing the street only should that be needed. He is contacting DelDOT and will follow up with phone calls to 911, the police department and fire department. Should the street need to be closed, he wants to be prepared with DelDOT. He made contact with the police department to discuss what would need to be done if the tenant remained there. He was informed they must be given advance warning though they can be arrested for trespassing if they refuse to leave.

At this time, both owners are in agreement the city should take down the entire structure versus trying to coordinate

between the two parties and separate properties.

Mr. Bond has contacted Mr. Williams indicating it should be demolished and is prepared to pay his entire share of any associated costs.

Mr. Williams confirmed that December 19<sup>th</sup> is the thirtieth day and on Monday, December 20<sup>th</sup>, he is prepared to contact the low bidder and advise them we are proceeding. He expects the actual demolition to begin the first week in January.

When asked how to cost allocate the fee, Mr. Williams advised that he will ask the contractor to provide the proportions though he expects it will be 1/3 and 2/3. Both parties agreed that was fair because 2/3 still exists and 1/3 is already down.

Mr. Pikus asked if we are covered enough for overruns because the difference between the two contracts and the lowest one is substantial, which to him is a concern. Mr. Williams then advised that he had received a fourth bid for \$9,000 though he had used that individual previously and chose not to use him again. Mr. Williams advised that Mr. Clark has been in business for 37 years. He has heard a lot about him though he has never used him.

Mr. Pikus asked for verification we are covered for overruns noting the bid is considerably low at \$14,000. He asked if it is possible to hit \$10,000 or \$20,000 in overruns. Mr. Williams said he does not foresee that and from his own experience anticipates at most, it may be a couple thousand dollars more.

Mr. Pikus asked if the city would be responsible for paying the road guards. Mr. Williams said he is unsure if that would be the city's or Mr. Clark's responsibility and is still working the details out. He is comfortable with the proposal and if there is a small cushion of up to \$20,000, that would be more than adequate. He does not see any additional problem other than the dirt/asbestos reiterating that two people went through the entire structure and were unable to find any. They actually used crowbars though that does not ensure the one untouched wall did not have some.

Ms. Wilson wants to make sure we do not wait until December 19<sup>th</sup> to inform the individual still living there and hopes they have another place to stay. Mr. Pikus advised the tenant is a relative of the property owner.

Mr. Williams advised they will handle it in the same manner as they did the previous demolition where the tenant was provided help in relocating. However, in this case, the tenant is a relative of the owner and there is a plan to move the person though he does not know when or how that will happen.

He concluded by stating that if he has not received any notices prior to December 19<sup>th</sup>, he plans to move forward with the demolition by signing the contract. He will let the tenant and both owners know exactly what his plan is and inform them, that as of January 3, 2011, the building will be demolished. At that time, anyone still there will be arrested and their contents destroyed.

Ms. Wilson said she is not familiar with this situation, but she knows it took a lot of work, planning and money to find a decent place for the other tenant to relocate.

Mr. Baird reiterated the owners have exhausted their appeal process through the city. However, there is still a possibility they could file in the state court system. We have not heard anything specific though we have received some indications of their intent. At this point, nothing short of a court order will stop the demolition. If that appears, it will be addressed at that time.

Mr. Baird then recommended council authorize \$20,000 for the project and award the contract to Jack Clark. We would then have the additional \$5,000 as a contingency. Between those two funding sources of funds along with Mr. Bond being ready to pay his share immediately, the city manager feels we will have adequate money.

Mr. Pikus moved to award the bid to Jack Clark in the amount of \$14,640 contingent upon the property owners not demolishing the properties within the time frame established by the Board of Appeals and authorize up to \$20,000 to be paid from the General Fund Capital Reserve Account, seconded by Ms. Wilson.

Mr. Pikus verified that this money will be reimbursed by these owners and that account repaid; Mr. Baird stated that is correct.

Motion carried by unanimous roll call vote.

Mr. Pikus also confirmed that any overruns will be billed to the property owners; Mr. Baird stated that is also correct.

*Solid Waste/Yard Waste Collections/2011 Trash & Recycling Collections*

Mr. Baird recalled the changes to the Delaware Solid Waste Authority's requirements and regulations at the transfers stations and landfills as has been previously discussed. He said they will still accept yard waste though it will have to be segregated.

Public Works Director Brad Dennehy then reminded council that 50% landfill diversion is required by 2015 per a recently adopted state law. He said one element of the bill involves recycling which the city has taken over; effective January 1<sup>st</sup>, DSWA will no longer accept yard waste mixed in with regular trash pickup.

Mr. Dennehy stated there are three components—leaves, limbs and everything else. He said we are doing a good job picking the leaves up at the curbs. We are using our chipper for the limbs though that requires the customer call and make the request. He said we have made out well getting rid of the chips with the local farmers who allow us to dump them for free.

He reported that they recently met with Blessing Farms who agreed to allow the city to dump all leaves and yard waste debris for \$20 a ton at their site at Argos Corner versus sending it to DSWA for \$80 a ton. Though it is a bit further to travel than the transfer station, the \$60 savings will be worth it.

The public works director feels the problem is how to handle the balance of the debris. One of several options considered was to purchase separate containers which would come at a cost of \$250,000 to \$300,000.

Instead, during a six-month trial period beginning January 1<sup>st</sup>, any yard debris such as dead flowers, weeds, shrubbery clippings, etc. will be collected by the solid waste department on Wednesdays. Residents should place these items in a separate 33 gallon container (as are available at Ace hardware, Lowes, Wal-Mart etc.). He said that any containers too heavy for our crews to lift into the back of the garbage trucks will not be picked up.

Mr. Dennehy emphasized that if a lot of complaints are received, other options will need to be considered.

At a recent DNREC meeting, it was reported some grant money is available for these transition programs. When asked if the city could purchase yard containers with the grant money, Mr. Dennehy received a mixed reaction. He explained they are pushing the recycling component and view yard waste as a separate issue that DSWA has regulated. Regardless, an application is being submitted with the hope it can be used to purchase yard containers.

A brochure will be mailed to residents explaining these procedures and providing contact information.

When asked if the information would be provided in the utility bills, and Mr. Dennehy confirmed the brochures would be sent to all trash customers in the city.

Mr. Dennehy said they also considered a compostable bag instead of a container. But DSWA nor Blessing will accept them because they get churned up in the machinery which is the reason no one is using them in the State of Delaware.

When asked if there is a public relations plan to ensure our citizens are informed of these changes, Mr. Dennehy explained the city does as much as possible to provide this information but a lot of people do not read or ever see it. He agrees it is an ongoing effort and there will always be customers who are unaware of the change.

Mr. Dennehy and Mr. Baird met with Milford Chronicle Editor Gwen Guerke who is also writing an article on the issue.

The public works director then referred to the 2011 Recycling and 2011 Holiday Trash Schedule.

The city manager then added that though Blessings is not a Milford business, it is a local business and this waste will be used as part of their operation.

Mr. Baird stated it would be difficult to find another Delaware town that is as far along with this effort, not just with the yard waste, but the overall solid waste program, as the goals established by the general assembly and DNREC are met. He feels Milford will become a leader in comparison to the other municipalities up and down the state.

It was confirmed that leaves are to be placed on the inside of the curbs and not on the street or blocking a sidewalk.

Mr. Brooks moved to adopt the new plan for yard waste disposal, seconded by Mr. Morrow. Motion carried by unanimous roll call vote.

*Introduction of Ordinance 2010-21/Conditional Use/Silicato-Wood Partnership LLC*

The following ordinance was officially introduced. A public hearing is scheduled on January 24, 2011 after it is heard by the Planning Commission at their monthly meeting on December 21, 2010:

*ORDINANCE 2010-21  
Conditional Use/Silicato-Wood Partnership LLC*

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILFORD, DELAWARE AUTHORIZING A CONDITIONAL USE PERMIT FOR DALE McCALISTER ON BEHALF OF SILICATO-WOOD PARTNERSHIP LLC TO ALLOW A BILLBOARD IN A C-3 DISTRICT AT 108 SILICATO PARKWAY, MILFORD, DELAWARE. TAX MAP MD-16-174.15-01-01-05; 3.42 +/- acres.*

*Whereas, the City of Milford has been requested by Dale McCalister on behalf of Silicato-Wood Partnership LLC to allow a conditional use for a billboard; and*

*Whereas, the Planning Commission reviewed the application at a public hearing on December 21, 2010 and has presented the item to be considered by the City Council; and*

*Whereas, the City Council held an advertised public hearing on January 24, 2011 to allow public comment on the application.*

*Now, Therefore, the City of Milford hereby ordains:*

*Section 1. Upon the adoption of this ordinance, Silicato-Wood Partnership LLC is hereby granted a conditional use permit to allow a billboard in accordance with the application, approved plans and any conditions set forth;*

Monthly Council Meeting

Page 10

December 13, 2010

*Section 2. Construction or operation shall be commenced within one year of the date of issuance or the conditional use permit becomes void.*

*Section 3. Dates.*

*Introduction to City Council: 12-13-10*

*Planning Commission Review & Public Hearing: 12-21-10*

*City Council Review & Public Hearing 01-24-11*

*JJID/North Front Street Sewer Project/Change Order No. 5*

Mr. Baird presented Change Order No. 5 for the North Front Street Sewer Project. This change order totals \$3,706.12 and is associated with labor and equipment costs as a result of replacing approximately 160 feet of existing storm drain and a catch basin. He also referenced the additional justification provided by our engineers at Davis, Bowen and Friedel which was included in the packet.

He emphasized that both the contractor, the city and our engineers are all in agreement this is a justified change order request. This will increase the value of the contract and bring the total contract to \$809,955.53. The original contract price was \$790,195.00. He noted there has been an overall increase of \$19,755.00.

Mr. Baird advised that since the contract is substantially completed and we are now working through the punch list items, another change order will be prepared to address any loose ends and could require some additional negotiations.

Mr. Pikus said that with the increases, is the bond still adequate; Mr. Baird answered yes. Mr. Pikus asked if the contract continues to increase and it is over and above the original cost of \$790,195, will any additional appropriations be needed. Mr. Baird said it should not though we are unsure how it will play out. However, the final change order will include some deducts from the contract price that are due the city and some possible increases. At this point, he expects the deducts to be higher than the increases coming from the contractor which could bring it back down though that is not guaranteed.

Mr. Brooks pointed out that though there is an additional \$19,775 in costs but that included an additional 20 feet of line. Mr. Baird said change order 2 provided for some additional feet of gravity sewer that was replaced and was not part of the original contract. This corrects 160 feet of storm drain and catch basin not originally planned. Therefore, the city is the beneficiary of these additional improvements.

Mr. Dennehy then explained that our designers did not know there was a storm pipe running east to west down Front Street. The storm drain was not connected to the catch basin so there were two existing storm pipes in the ground and a third one no one was aware of. It was full of water when they ripped it out of the ground. They ended up having to install a new catch basin and connect all the pipes together.

He said that in this change order, we actually got the contractor to furnish the materials free of charge with the city only paying for the labor and equipment. In this incident, it benefitted the city.

Mr. Pikus moved to approve Change Order No. 5 as presented, seconded by Mr. Brooks. Motion carried by unanimous roll call vote.

## FINANCE REPORT

Addressed earlier (see Committee Reports).

### *Executive Session*

Mr. Pikus moved to go into Executive Session pursuant to Pursuant to 29 Del. C. §10004(b)(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed and Pursuant to 29 Del. C. §10004(b)(2) Preliminary discussions on site acquisitions for any publicly funded capital improvements, seconded by Mr. Grier. Motion carried.

Mayor Rogers recessed the Council Meeting at 8:16 p.m. to go into a closed session.

### *Return to Open Session*

Council returned to open session at 8:43 p.m.

### *Executive Session Matter*

Mr. Pikus moved for approval and proceed with the item as was discussed in Executive Session, seconded by Mr. Grier. Motion carried by unanimous roll call vote.

ADJOURN

Mayor Rogers adjourned the Monthly Council Meeting at 8:44 p.m.

Respectfully submitted,

Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL  
MINUTES OF MEETING  
December 28, 2010*

The Milford City Council held a Public Hearing on Tuesday, December 28, 2010 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware to hear the application of:

*Davis, Bowen and Friedel, Incorporated on behalf of Shore Realty LLC requesting the Minor Subdivision of one parcel into two parcels in a C-3 District at 941 N. DuPont Boulevard (Milford Landing Subdivision, Lot 1A), Milford, Delaware. Tax Parcel MD-16-174.00-01-05.02-00; Area of Petition 1.66 +/- Acres.*

PRESIDING:                   Honorable Mayor Joseph Ronnie Rogers

IN ATTENDANCE:       Councilpersons Steve Johnson, Garrett Grier III, S. Allen Pikus, Jason Adkins,  
Owen Brooks, Jr., Douglas Morrow and Katrina Wilson

ALSO:                        City Manager David Baird, Police Chief Keith Hudson and City Clerk/Recorder  
Terri Hudson

Mayor Rogers called the Public Hearing to order at 7:03 p.m.

City Planner Gary Norris advised council this is a simple subdivision needed for financing purposes and would separate the existing Rita's Water Ice site from the larger parcel that houses the strip mall.

The planning commission reviewed the application and recommended approval by a vote of 7-0.

Mr. Brooks questioned the comments made by Commissioner Marvin Sharp regarding property taxes, Mr. Norris explained that this would create two separate parcels, thus the city would receive two tax bills.

Tim Metzner of Davis, Bowen and Friedel, Incorporated, presented the application on behalf of the owner, reiterating the application was needed for financing purposes. There are no plans for building on that site at this time. Any future plans would need to come back before the planning commission and/or city council for additional approvals.

No one from the public had any comments or questions.

Mr. Pikus moved for approval of the Minor Subdivision of one parcel into two parcels in a C-3 District at 941 N. DuPont Boulevard owned by Shore Realty, seconded by Mr. Grier. Motion carried by unanimous roll call vote.

With no further business, the Public Hearing was adjourned by Mayor Rogers at 7:10 p.m.

Respectfully submitted,

Terri K. Hudson, CMC  
City Clerk

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*December 28, 2010*

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Tuesday, December 28, 2010.

PRESIDING:           Honorable Mayor Joseph Ronnie Rogers

IN ATTENDANCE:   Councilpersons Steve Johnson, Garrett Grier III, S. Allen Pikus, Jason Adkins,  
Owen Brooks, Jr., Douglas Morrow and Katrina Wilson

ALSO:                City Manager David Baird, Police Chief Keith Hudson and City Clerk/Recorder  
Terri Hudson

CALL TO ORDER

Mayor Rogers called the Council Meeting to order at 7:10 p.m.

INVOCATION AND PLEDGE

The Pledge of Allegiance followed the invocation given by Councilwoman Wilson.

COMMUNICATIONS

Mayor Rogers thanked the city workers responsible for clearing the snow over the Thanksgiving weekend as well as this past weekend.

Nothing new to present.

UNFINISHED BUSINESS

*Adoption of Ordinance 2010-20/Chapter 222-Water/Prohibits Certain Types of Private Wells*

Mayor Rogers recalled that this ordinance has been reviewed and discussed by council at two previous meetings.

Mr. Pikus asked if we have received any additional applications noting the minimum size parcel needed is three acres. Mr. Baird advised that one application has been submitted that meets the three-acre requirement which makes it eligible. He said there may be other properties that qualify, though it would be rare.

The city manager emphasized it does not permit wells in a concentrated area because of the three-acre requirement.

When asked the difference in this ordinance and the previous ordinance that prohibited wells, Mr. Baird stated he is unsure because he was not familiar with the original ordinance. However, this ordinance is more specific because it coincides with the regulations imposed by DNREC. This ordinance also allows some exceptions to the prohibition of private water wells in the city.

He added that the ordinance also permits any wells that exist lawfully today though they are unable to be expanded. Mayor Rogers asked if those wells fail, will they be allowed to be replaced or repaired; Mr. Baird explained that our existing water ordinance mandates that any failing wells be connected to the city water system. If they are within 200 feet of the city's water system, they are required to connect. However, any agricultural well permitted under this ordinance would be allowed to be repaired or replaced.

Mr. Adkins asked to clarify his objections to this ordinance noting he would prefer it be permissive to have irrigation wells. Though he is a minority with this opinion, the two conflicting issues he sees are whether they would impact our

aquifer and the ability to have water within the city. He noted that general irrigation wells are more shallow than the wells the city uses. The second concern is the possibility of connecting into the city system which could contaminate the city water supply. Mr. Baird agreed adding that is referred to as a cross connection which is a connection between a private water supply and a public water supply.

Mr. Adkins understands but pointed out that anyone wanting to install a well would be required to get a permit so their flow could be monitored. He feels that if anyone is going to cross-connect, they will most likely do it anyway. He feels that irrigation wells add to the aesthetics of the community and should be permitted on private property.

Mr. Pikus moved to adopt Ordinance 2010-20, seconded by Mr. Brooks:

*ORDINANCE 2010-20  
Chapter 222-Water*

*AN ORDINANCE TO AMEND THE CODE OF THE CITY OF MILFORD, CHAPTER 222 THEREOF, ENTITLED WATER, For the purpose of PROHIBITING CERTAIN TYPES OF PRIVATE WATER WELLS.*

*WHEREAS, water services are available to businesses and residences within the City of Milford; and,*

*WHEREAS, it is necessary that these services be utilized and that for health and safety purposes, persons within the City of Milford are not allowed to build and maintain separate water wells except as defined herein.*

*NOW, THEREFORE, the City of Milford hereby ordains:*

*Section 1. Subsection 3 of Chapter 222, Water, of the Code of the City of Milford is hereby amended by adding the following definitions:*

*AGRICULTURAL WELL—A well used for the watering of livestock, poultry, aquaculture uses, or solely for the watering of household yards and gardens or for other purposes related to farming in general but not including the irrigation of lands or crops. Water is not used for human consumption or to service a dwelling.*

*DEWATERING WELL—A well used to remove ground water for construction of footings, sewer lines, building foundations, elevator shafts, etc.*

*DOMESTIC WELL—A well primarily used for potable non-public water supply purposes and which may be used for non-potable purposes, excluding heat pump supply.*

*HEAT PUMP CLOSED LOOP WELL—A sealed and pressurized loop of pipe containing a heat exchange solution which is circulated below the earth's surface and utilizes groundwater for the purpose of heat transfer.*

*HEAT PUMP RECHARGE WELL—A well constructed and primarily used for injecting ground water source heat pump effluent back into an aquifer, and which may be used for other non-potable water supply purposes provided prior written approval is obtained from the City.*

*HEAT PUMP SUPPLY WELL—A well constructed primarily to obtain ground water as a source for heat pump supply purposes and which may not be used for other purposes such as domestic water supply.*

*INDUSTRIAL WELL—A well which is used in the processing, washing, packaging, or manufacturing of a product excluding food and beverages.*

*IRRIGATION WELL—A well which is used for the watering of lands or crops other than household lawns and gardens.*

*MONITOR WELL—A well installed for the sole purpose of the determination of subsurface conditions and collecting ground water samples.*

*OBSERVATION WELL—A well used for the sole purpose of determining ground water levels.*

*POTABLE WATER--Any water which is in compliance with all the primary health related drinking water standards specified in the Delaware Regulations Governing Public Drinking Water Systems and the US EPA Safe Drinking Water Act, and is acceptable for human consumption.*

*PUBLIC WELL—A well which is used to supply water to more than three dwelling units; twenty-five (25) or more employees; in the manufacture of ice, foods, or beverages; to the public in food washing, processing, or preparation in a plant, restaurant, or other facility.*

*TEST WELL—A well installed to ascertain the lithology and water transmission properties of an aquifer or geologic materials and which may be used to determine water quality; a well which is not used on a permanent basis.*

*Section 2. Chapter 222, Water, of the Code of the City of Milford is hereby amended by adding the following section:*

*§222-32 Wells.*

*A. Except as provided in this section, no person shall install, construct, develop, maintain, or use any type of well within the City limits and/or the area served by the City's water system.*

*B. Upon the issuance of a permit by the City, the following types of wells are allowed to be installed, constructed, developed, maintained and used within the City limits and/or the area served by the City's water system.*

- 1. Any well lawfully in existence at the time of enactment of this ordinance, provided, however, the size of such wells shall not be expanded.*
- 2. Agricultural wells on properties of three or more acres (The intended use of agricultural wells in the City of Milford is for irrigation of open space, public grounds, school grounds, parks and recreational playing fields)*
- 3. Domestic wells when the property is not located within 200 feet of the City's water system.*
- 4. Heat pump wells are permitted for the conservation of natural resources and energy.*
- 5. Dewatering, observation, monitoring and test wells are permitted in accordance with State regulations.*
- 6. Public, Industrial or Irrigation wells are permitted upon approval of City Council.*

*Section 3. Dates.*

*Adoption Date: 12-28-10*

*Effective Date: 01-07-11*

Motion carried by a 6-1 vote with Mr. Adkins casting the sole dissenting vote because he favors irrigation wells.

## NEW BUSINESS

*Adoption of Amended City of Milford Cafeteria Plan*

*Adoption of Amended Dependent Care Assistance Plan*

*Adoption of Amended Health Flexible Spending Arrangement Plan*

City Manager Baird referenced the three documents explaining the benefits provided by the city's plan administrators that amend and restate the city's cafeteria plan. The amendments also bring the Dependent Care Assistance and Health Flexible Spending Account plans into compliance with new federal law. Adoptions of these amendments are required by December 31, 2010.

The cafeteria plan addresses the various health insurance options offered to city employees; the dependent care plan allows an employee to have pre-taxed dollars deducted from their paychecks throughout the year for daycare assistance to be reimbursed as needed; the flexible spending plan qualifies as a medical expense reimbursement plan through pre-taxed

dollars deducted and paid out as requested by the employee.

Ms. Wilson moved to adopt the Amended City of Milford Cafeteria Plan, Amended Dependent Care Assistance Plan and Amended Health Flexible Spending Arrangement Plan, seconded by Mr. Morrow. Motion carried by unanimous roll call vote.

*Appointment of City Solicitor*

Mr. Baird advised this is a follow-up to previous discussions held with city council. Mr. Baird and Mayor Rogers met with City Solicitor Tim Willard this past week and at that time, he submitted a letter (included in the December 28, 2010 council packet) stating that he is resigning his position as city solicitor as of January 1, 2011 (corrected year).

Mayor Rogers thanked Mr. Willard for his years of service to the city noting that he offered to continue to assist the city and new solicitor as needed.

Motion by Mr. Pikus, seconded by Mr. Adkins to appoint Attorney David N. Rutt and Moore and Rutt, P.A. as the City Solicitor for the City of Milford effective January 1, 2011. Motion carried by unanimous roll call vote.

Mr. Rutt was in attendance and when asked if he wished to comment, Mr. Rutt thanked Mayor Rogers and members of council for this opportunity. He said he is looking forward to the experience and expects it will be a strong working relationship.

ADJOURN

With no further business, Mayor Rogers adjourned the Council Meeting at 7:27 p.m.

Respectfully submitted,

Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
December 28, 2010

The Milford City Council met in Workshop Session on Tuesday, December 28, 2010 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING:               Honorable Mayor Joseph Ronnie Rogers

IN ATTENDANCE:       Councilpersons Steve Johnson, Garrett Grier III, S. Allen Pikus, Jason Adkins,  
Owen Brooks, Jr., Douglas Morrow and Katrina Wilson

ALSO:                    City Manager David Baird, Police Chief Keith Hudson and City Clerk/Recorder Terri  
Hudson

The Workshop Session convened at 7:27 p.m.

*Board of Adjustment Members/Term Expiration*

The current Board of Adjustment terms are as follows:

Chair-Sam Johnson  
3 Year Term  
Appointed: 02/2010  
Term Expiration: 02/28/2013

Frank Bason  
2 Year Term  
Appointed: 02/2010  
Term Expiration: 02/28/2012

Keith Gramling  
1 Year Term  
Appointed: 02/2010  
Term Expiration: 02/28/2011

Mr. Baird advised our ordinance allows for up to five members though two vacant seats were never appointed. Since the board was re-established last February, the new members were appointed with staggered terms. Any subsequent reappointments will be for full three-year terms.

It was noted that Mr. Gramling's term expires the end of February. The item will be placed on the January 10<sup>th</sup> agenda for action.

The city manager also suggested that should council wish to expand the board to five members, that be discussed at that time as well. If council chooses to fill those vacancies, both should be filled to keep the board with an uneven number of members. If not, it should be kept at three members.

Mr. Pikus asked if Mr. Gramling has expressed a desire to be reappointed. Mr. Baird said from previous conversations, he anticipates he would like to continue in this position. However, he will follow up with Mr. Gramling to verify that.

When asked by Mr. Brooks how the new system is working out, the city manager reported they have only had two meetings since the appointment.

City Planner Gary Norris then commented that it is working out very well adding the three members are very conscientious. All three attended a training session for Board of Adjustment members sponsored by University of

Delaware after they were first appointed. He said they are very professional during the meetings and learned a great deal from the training.

When asked how he feels about the two vacancies, Mr. Norris said that in his opinion, the three positions are adequate to handle the current case load.

It was determined that when three members establish a board, only two members are needed for a quorum.

Mayor Rogers then pointed out the Board of Adjustment always had three members and there was never a problem in the past. However, he agrees that city council has the right to appoint two additional members, though that would not need to be done at this point and could be considered at a later time if necessary.

Mr. Morrow recommends it be kept at three members but suggests that Mr. Gramling be contacted to ensure he wants to continue to serve. Mr. Brooks agreed noting the system is working.

Mayor Rogers reiterated the reappointment will be added to the January 10<sup>th</sup> meeting noting that Sam Johnson has a great deal of experience which has been extremely beneficial to this board. Both Mr. Bason and Mr. Gramling are very open-minded and attentive to these issues.

Mayor Rogers will follow up with Mr. Gramling to verify his intentions.

With no further business, the Workshop Session concluded at 7:35 p.m.

Respectfully submitted,

Terri K. Hudson, CMC  
City Clerk