

**AGREEMENT REGARDING
MAGNOLIA TRANSPORTATION IMPROVEMENT DISTRICT**

BETWEEN

DELAWARE DEPARTMENT OF TRANSPORTATION,

KENT COUNTY,

AND

TOWN OF MAGNOLIA

PROJECT MANAGER: SARAH COAKLEY, AICP, PRINCIPAL PLANNER, DELDOT

THIS AGREEMENT, made and entered into this 21st day of February 2021, by and between the Delaware Department of Transportation, as First Party, hereinafter referred to as the **DEPARTMENT**, Kent County, as Second Party, hereinafter referred to as the **COUNTY**, and Town of Magnolia, as Third Party, hereinafter referred to as the **TOWN**.

WITNESSETH:

WHEREAS, the **DEPARTMENT**, the **COUNTY**, and the **TOWN** seek to establish a Transportation Improvement District, hereinafter referred to as the **TID**, in the Magnolia area, for the purpose of securing required improvements to transportation facilities in the TID,

NOW, THEREFORE, for and in consideration of the mutual covenants, hereinafter stipulated to be kept and performed, it is agreed between the parties as follows:

SECTION 1. GEOGRAPHIC BOUNDARIES

A. The boundaries of the **TID** are shown on Exhibit A, attached hereto, and are described as follows:

1. Participant Boundary. Beginning in the northwest, where Tidbury Creek intersects the western right-of-way line of South Dupont Highway, the boundary follows Tidbury Creek northeast to the St. Jones River, then follows the St. Jones River southeast to the western right-of-way line of SR1, then runs south along the western right-of-way line of SR1 to the western right-of-way line of Old Beach Rd., runs south along the western right-of-way line of Old Beach Rd. to the northern parcel line of parcel 8-00-12200-02-2500-00001, follows the northern parcel line of parcel 8-00-12200-02-2500-00001 west to the eastern parcel line of parcel 8-00-12200-01-3200-00001, follows the eastern parcel line of parcel 8-00-12200-01-3200-

00001 north to the southern right-of-way line of Buffalo Rd., then runs along the southern right-of-way line of Buffalo Rd. south to the northern parcel line of parcel 8-00-12200-01-3500-00001, then follows the northern parcel line of this parcel 8-00-12200-01-3500-00001 east to the western parcel line of parcel 8-00-12200-01-3200-00001, follows the western parcel line of parcel 8-00-12200-01-3200-00001 south to the northwest corner of parcel 8-00-12200-02-5100-00001, then follows the western and southern parcel lines of parcel 8-00-12200-02-5100-00001 to the northern right-of-way line of Barratt's Chapel Rd., then runs southeast along the northern right-of-way line of Barratt's Chapel Rd. to the western right-of-way line of Old Beach Rd., runs south along the western right-of-way line of Old Beach Rd. to the northern right-of-way line of Philip Barratt Dr., then runs along the northern right-of-way line of Philip Barratt Dr. to the southern parcel line of parcel 8-00-13100-01-0200-00001, then follows the southern parcel line of parcel 8-00-13100-01-0200-00001 west to the perennial stream, then follows the perennial stream west to Spring Creek, then follows Spring Creek west to Hudson Branch, follows Hudson Branch northwest to South Dupont Hwy., follows an intermittent stream north to a pond, then follows another intermittent stream north to the western parcel line of parcel 7-00-12000-01-4000-00001, follows the western and northern parcel lines of parcel 7-00-12000-01-4000-00001 to the eastern right-of-way line of Upper King Rd., then runs north along the eastern right-of-way line of Upper King Rd. to the southern municipal boundary of the Town of Woodside, then follows the southern, eastern, and northern Woodside municipal boundaries to the eastern municipal boundary of the Town of Camden, follows the eastern municipal boundary of the Town of Camden north to the point of beginning.

2. Facilities Boundary. The following state-maintained road segments are included in the facilities boundary: Lochmeath Way from South Dupont Hwy. to Voshells Mill/Star Hill Rd., Voshells Mill/Star Hill Rd. from Lochmeath Way to Rising Sun Rd., Sorghum Mill Rd. from Rising Sun Rd. to Tidbury Creek, Rising Sun Rd. from S. Old Mill Rd. to S. State St., S. State St. from Tidbury Creek to Magnolia town boundary, North Main St. and South Main St. in Town of Magnolia, Clapham Rd. from Magnolia town boundary to Buffalo Rd., Old Beach Rd. from Buffalo Rd. to Bowers Beach Rd., Locust Grove Rd. from Sorghum Mill Rd. to S. State St., Cypress Branch Rd. from Sorghum Mill Rd. to Ponderosa Dr., Ponderosa Dr. from S. State St. to Barkers Landing Rd., Walnut Shade Rd. from Woodside town boundary to Rising Sun Rd., Barney Jenkins Rd. from Upper King Rd. to Walnut Shade Rd., Millchop Ln. from Walnut Shade Rd. to Briarbush Rd., Briarbush Rd. from Walnut Shade Rd. to Woodlytown Rd., Banning Rd. from Briarbush Rd. to S. State St., South Dupont Hwy. from Lochmeath Way to Plymouth Rd., Howard St. from Evens Rd. to Fencepost Ln., Evens Rd. from the intermittent stream that forms part of the participant boundary to South Dupont Hwy., Irish Hill Rd. from South Dupont Hwy. to West Walnut St. in Town of Magnolia, Walnut St. in Town of Magnolia, Thorn St. in Town of Magnolia, Barkers Landing Rd. from Magnolia

town boundary to Trap Shooters Rd., Trap Shooters Rd., Woodlytown Rd. from Irish Hill Rd. to S. State St., Plaindealing Rd. from S. State St. to Ponderosa Dr., Plymouth Rd. from South Dupont Hwy. to Canterbury Rd., Barratts Chapel Rd. from Canterbury Rd. to Old Beach Rd., Canterbury Rd. from South Dupont Hwy. to Barratts Chapel Rd., Upper King Rd. from Woodside town boundary to South Dupont Hwy., Peachtree Run from Lochmeath Way to Irish Hill Rd., Fox Chase Rd. from Irish Hill Rd. to Hudson Branch, McGinnis Pond Rd. from Irish Hill Rd. to Hudson Branch, Lexington Mill Rd. from Irish Hill Rd. to McGinnis Pond Rd., Cedarfield Rd. from Lexington Mill Rd. to end of state maintenance, Autumn Moon Ln. from Walnut Shade Rd. to Woodlytown Rd., Anderson Rd. from Woodlytown Rd. to Irish Hill Rd., Sophers Row from Irish Hill Rd. to Clapham Rd., and Buffalo Rd. from Barratts Chapel Rd. to Clapham Rd.

- B. The **TID** shall have both a Participant (inner) Boundary and a Facilities (outer) Boundary. The purpose of having two boundaries is to better provide for adequate infrastructure on all sides of developments inside the Participant Boundary. All land developments requiring a subdivision or land development plan, except as described in Section 6, within the Participant Boundary and all State-maintained capital transportation facilities (roads, bridges, sidewalks, bus stops, etc.), except for stream crossings (bridges/culverts) located along the participant boundary, within the Facilities Boundary shall be subject to the terms of this agreement.
- C. The boundaries of the **TID** may be amended at any time by mutual agreement of the parties in the form of a supplement to this **AGREEMENT**.
- D. When updating their Comprehensive Plans, the **COUNTY** and the **TOWN** shall evaluate the need to amend the boundaries of the **TID**.

SECTION 2. TARGET HORIZON YEAR

- A. The Target Horizon Year for which land use is to be forecast in creating the TID is 2045.
- B. The Target Horizon Year may be amended at any time by mutual agreement of the parties in the form of a supplement to this **AGREEMENT**.
- C. When updating their Comprehensive Plans, the **COUNTY** and the **TOWN** shall evaluate the need to amend the Target Horizon Year of the **TID**.

SECTION 3. SERVICE STANDARDS

- A. The parties hereby agree to work together to develop a set of standards (Service Standards) for conditions in the TID in the Target Horizon Year, which the parties hereto shall, upon review and approval, adopt as an Appendix to this Agreement.

- B. Prior to incorporating Service Standards into this **AGREEMENT**, the parties agree to solicit public comment on proposed standards and consider the comments received.
- C. The Service Standards may be amended at any time by mutual agreement of the parties in the form of a supplement to this **AGREEMENT**, provided that the public is first afforded an opportunity to review and comment on the proposed amendment.
- D. When updating their Comprehensive Plans, the **COUNTY** and the **TOWN** shall evaluate the need to amend the Service Standards of the **TID**.

SECTION 4. LAND USE AND TRANSPORTATION PLAN

- A. The parties agree to work together to create a Land Use and Transportation Plan, hereinafter referred to as an **LUTP** for the **TID**.
- B. The **COUNTY** and the **TOWN** shall supply to the **DEPARTMENT** a parcel-level land use forecast for the **TID** area, composed of the following components:
 - 1. Existing land use as of 2021.
 - 2. Development approved and/or recorded but not yet built as of that date, including any “sunset” provisions.
 - 3. Development expected or in the land development process but not approved as of that date.
 - 4. Development not yet proposed but projected by the Target Horizon Year, based on population and employment forecasts, and the current Comprehensive Plan and zoning map.
- C. The **DEPARTMENT** shall inventory the existing transportation network and programmed improvements thereto within the **TID** area, which inventory shall include the following information:
 - 1. Functional Class and Traffic Pattern Group;
 - 2. Numbers, assignments and widths of lanes at each intersection;
 - 3. Type of control at each intersection;
 - 4. Typical section and type of pavement on each road segment;
 - 5. Roadway geometry deficiencies in sufficient detail to determine whether the agreed upon Service Standards are met;
 - 6. Roadway capacity and Level of Service conditions (to the extent known) in sufficient detail to determine whether the agreed upon Service Standards are met;
 - 7. Presence, and frequency of transit service;
 - 8. Any bicycle and pedestrian facilities not covered under Item 4 above.as
- D. The **DEPARTMENT** shall forecast traffic on the study area road network for the Target

Horizon Year, shall determine what locations would need improvement to meet the Service Standards, in the year, and shall identify conceptually what improvements are needed in those locations.

- E. The **DEPARTMENT** shall assemble the information identified in Paragraphs B, C, and D above as the **LUTP**, which the parties hereto shall, upon review and approval, adopt as an Appendix to this Agreement.
- F. When updating their Comprehensive Plans, the **COUNTY** and the **TOWN** shall consider the need to update the **LUTP** and shall initiate that effort if the land use forecast for the **TID** area has changed significantly. The parties hereto shall, upon review and approval, readopt the revised **LUTP** as an Appendix to this Agreement.
- G. The **DEPARTMENT** shall provide an updated Exhibit C each time the **LUTP** is amended.

SECTION 5. TID CAPITAL TRANSPORTATION PROGRAM (TID-CTP)

- A. For the deficient locations identified in the adopted **LUTP**, the **DEPARTMENT** shall identify a set of projects needed to address those deficiencies and shall develop cost estimates for those projects. The **DEPARTMENT** shall update the cost estimates periodically as needed. Subject to review and approval by the **COUNTY** and the **TOWN**, this set of projects shall constitute the **TID** Capital Transportation Program (**TID-CTP**).
- B. The **COUNTY** and the **TOWN** shall, in odd numbered years to coincide with development of the DelDOT Capital Transportation Program, recommend projects from the **TID-CTP** for inclusion in the **DEPARTMENT**'s 6-year Capital Transportation Program. Inclusion of recommended projects shall be subject to the **DEPARTMENT**'s process for development of the 6-year program. Projects included in the **DEPARTMENT**'s 6-year Capital Transportation Program shall be eligible to receive funding from the **COUNTY** and the **TOWN** consistent with Paragraph 7D below, in addition to applicable State and Federal funds.

SECTION 6. DEVELOPMENTS EXCLUDED FROM PARTICIPATION

- A. Where a proposed development is determined by the **DEPARTMENT** and the **COUNTY** or the **TOWN** to be inconsistent with the land use element of the **LUTP**, and to generate sufficient traffic to warrant a Traffic Impact Study (TIS), the **DEPARTMENT** and the **COUNTY** or the **TOWN** shall require a TIS and, as necessary, off-site improvements in accordance with the **DEPARTMENT**'s Development Coordination Manual.
- B. The following land use applications listed in Subsection D. of Kent County Code Section 187-90.2 Adequate Public Facilities: Minor subdivisions; Land development plans involving an aggregate impervious cover of less than 5,000 square feet and not requiring

formal site plan review by the Regional Planning Commission; Revisions to recorded subdivision plans that do not result in the creation of additional lots; Minor changes or alterations to approved site plans in accordance with Section 187-42 of Kent County Code; and Conditional use applications not requiring site plan review.

SECTION 7. INFRASTRUCTURE FEE PROGRAM

- A. The **COUNTY** or the **TOWN** shall require that any activity requiring a subdivision or site plan, except as provided in Section 6, within the Participant Boundary of the **TID** participate in the improvement of transportation facilities within the Facilities Boundary of the **TID** in accordance with the current **LUTP** and this **AGREEMENT**. The **DEPARTMENT** and the **COUNTY** or the **TOWN** shall require that the manner and extent of that participation be documented on the recorded subdivision or site plan and in a recorded infrastructure recoupment agreement with the developer. The manner of participation shall be through the payment of a fee, right-of-way dedication or the construction of physical improvements identified in the TID-CTP, or some combination thereof. The extent of participation shall be in accordance with Paragraph E below. The **COUNTY** shall collect any fees prior to issuance of building permits. The schedule for construction of physical improvements shall be specified on the recorded subdivision or site plan and in the recorded infrastructure recoupment agreement with the developer and shall be subject to approval by the **DEPARTMENT** and the **COUNTY** or the **TOWN**.
- B. Dedication of rights-of-way in lieu of some or all of the fee shall be by agreement between the developer and the **DEPARTMENT**, with payment of the fee being required if any party is not amenable to the proposed dedication. The value of the rights-of-way to be dedicated shall be determined in accordance with **DEPARTMENT** policies and regulations. The creditable area shall be determined based on highway plans acceptable to the **DEPARTMENT** and shall exclude the standard dedications provided in **DEPARTMENT**'s Development Coordination Manual, rights-of-way for any proposed subdivision streets and any lands needed to accommodate the site entrance.
- C. Design and/or Construction of physical improvements in lieu of some or all of the fee shall be by agreement between the developer, the **DEPARTMENT**, and the **COUNTY** or the **TOWN**, with payment of the fee being required if any party is not amenable to the proposed construction. If a developer seeks to design and/or construct physical improvements in lieu of paying the fee, the developer shall be required to obtain a minimum of three bids for the work. The bids shall be subject to review and approval by the **DEPARTMENT**. Credit toward the fee shall be based on the developer's payments to the selected contractor. Design and Construction of improvements required by the **DEPARTMENT** and the **COUNTY** or the **TOWN** as part of the development's entrance construction or on-site infrastructure, e.g. subdivision streets, and curb ramps, turn lanes, acceleration lanes at development entrance, shall not be creditable toward the fee. At their discretion, the **DEPARTMENT** and the **COUNTY** or the **TOWN** may require

improvements beyond the site entrance to correct an unsafe condition that they find would be created or worsened by the proposed development. Such improvements may include, but are not limited to, the addition or widening of shoulders, and/or the construction of a shared-use path or sidewalk along the development's frontage. In that case, the cost of that work shall be determined by the **DEPARTMENT**, using the Shared-Use Path and Sidewalk Fee Calculation Form for those items and current comparable contract bid prices as a guide for other items, and shall be creditable toward the fee.

- D. The **COUNTY** shall create and administer a separate account or accounts expressly for the purpose of managing the funds needed to pay for design and construction costs of work identified in the **TID-CTP** under the terms of this **AGREEMENT**. The account shall be funded by Infrastructure Fee payments from developers as called for by this **AGREEMENT**. The **COUNTY** shall, at the **DEPARTMENT**'s request, transfer funding from the **TID** account to the **DEPARTMENT** for the design and/or construction of the improvements identified in the **TID-CTP**.
- E. Developers shall participate in the improvement of transportation facilities within the Facilities Boundary of the **TID** in accordance with the current **LUTP** as follows:
1. In the Target Horizon Year, the **LUTP** shows that a total number of trips will be generated within the Participant Boundary of the **TID** in an average weekday evening peak hour. The total estimated cost to construct the improvements identified in the **TID-CTP** can also be determined. Development within the Participant Boundary of the **TID** can be grouped into broad land use categories, each with an associated trip generation per square foot or per dwelling unit. The **DEPARTMENT**, the **COUNTY**, and the **TOWN** will establish per unit costs for residential development and per square foot costs for non-residential development. Therefore, for each subdivision or site plan, the **COUNTY** or the **TOWN** shall require participation consistent with the established rates in Exhibit D, which amounts shall be adjusted annually as set forth in paragraph F below. Where there is a question as to how to characterize a specific development, the **COUNTY** or the **TOWN** shall refer to the **LUTP** and may consult the **DEPARTMENT** as necessary.
 2. Improvements by the **DEPARTMENT**'s Division of Maintenance and Operations are excluded from the **TID-CTP** and are not eligible for funding through the Infrastructure Fee Program
 3. For those intersections that overlap with the Little Heaven TID facilities boundary, only those improvements triggered by the future land use in this Magnolia TID are eligible for participation in this Magnolia TID.

- F. While transportation improvement projects await construction funding, the costs of constructing the project will escalate at the rate of inflation for highway construction projects. The amounts paid by developers, therefore, shall be subject to an increase of up to four percent (4%) per year, not compounded, beginning on January 31, 2023 and increasing by the established amount on January 31 of each year thereafter. The actual amount of the increase shall be set by DelDOT in January of each year based upon the change in the Consumer Price Index (CPI) for Delaware Region during the previous year. The established rate shall not exceed four percent (4%) in any one year and escalation shall only apply to contributions unpaid on January 31 of each year.

SECTION 8. TRANSITIONAL RULES FOR DEVELOPMENTS PRIOR TO EXECUTION OF THIS AGREEMENT

- A. The property owner and/or developer of any subdivision or site plan, submitted to the **DEPARTMENT** and/or the **COUNTY** or the **TOWN** before the effective date of this **AGREEMENT**, may request participation in the **TID** for that subdivision or land development plan, in lieu of completing a Traffic Impact Study and/or making off-site contributions.
- B. Should existing Record Plan transportation improvement requirements conflict with the requested participation in the **TID**, the **DEPARTMENT**, the **COUNTY**, the **TOWN**, and the Property Owner shall work together to expedite the modification(s) to the Record Plan notes. The revision will be a ministerial review, incorporating the **TID** participation into the Record Plan notes. The **DEPARTMENT**, the **COUNTY**, and the **TOWN** review fees for this reconciliation will be considered satisfied from the initial Record Plan Review fees. For any other changes requiring a resubdivision plan and review, the associated fees will be the responsibility of the legal owner.

SECTION 9. MONITORING PROGRAM

- A. The **DEPARTMENT** shall monitor traffic volumes within the Facilities Boundary of the **TID** and shall report to the **COUNTY** and the **TOWN** in calendar year 2027 and at regular intervals not to exceed every 5 years their findings and their recommendations as to what improvements in the **TID-CTP** are needed at the time of the report and what improvements in the **TID-CTP** are likely to be needed in the next six years.
- B. The extent of the monitoring effort shall be at the **DEPARTMENT**'s discretion but the **DEPARTMENT** will accommodate reasonable requests from the **COUNTY** or the **TOWN** for the inclusion of specific information.

SECTION 10. PUBLIC INVOLVEMENT

Absent a specific agreement to the contrary, to the extent that a public meeting, workshop or hearing is needed pertaining to procedural matters relating to this **AGREEMENT**, said public meeting, workshop or hearing shall be publicized and hosted by the **COUNTY** or the **TOWN**. The **DEPARTMENT** shall send appropriate representatives to such events as necessary. For specific improvements to be made in the **TID**, the **DEPARTMENT**'s Public Involvement Process shall govern.

SECTION 11. SCOPE OF AGREEMENT

This **AGREEMENT** constitutes the sole understanding by and between the **DEPARTMENT**, the **COUNTY**, and the **TOWN**, and nothing outside of this **AGREEMENT** shall be construed as an alteration, modification and/or revision hereof. This **AGREEMENT** shall not be modified except in writing subscribed by all parties.

SECTION 12. SUCCESSOR AND ASSIGNMENTS


The **DEPARTMENT**, the **COUNTY**, and the **TOWN** each binds itself, its successors, legal representatives, agents, employees, officers, and assigns, to each other to this Contract.

SECTION 13. LAWS OF DELAWARE

This **AGREEMENT** and the terms thereof shall be construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties hereunto have caused this **AGREEMENT** to be executed in quadruplicate, the date and year first above written.

FOR THE DELAWARE DEPARTMENT OF TRANSPORTATION:



Nicole Majeski, Cabinet Secretary

DATE: 2/10/22

ATTEST:



Charlanne Thornton, Director, Finance

DATE: 2/10/22


APPROVED AS TO FORM:



George Lees, Deputy Attorney General

DATE: 02-08-2022

FOR KENT COUNTY:



Michael J. Petit de Mange, AICP, County Administrator

DATE: 02-01-2022

FOR TOWN OF MAGNOLIA:

James R. Frasier

DATE: 2/21/2022

JAMES R. FRASIER, MAYOR

(Name, Title)

Exhibit A to accompany Magnolia TID Agreement

