

Posted: May 17, 2017 @  
3:00PM  
Amended: May 17, 2017 @  
4:30PM



# Georgetown

## Town Council Meeting Agenda

Meeting Date: Wednesday, May 24, 2017  
Location: Town Hall, 39 The Circle, Georgetown, DE  
Time: 7:00 PM Regular Meeting

---

Page

**1. PLEDGE OF ALLEGIANCE**

**2. INVOCATION**

**3. ADOPTION OF AGENDA**

**4. APPROVAL OF MAY 10, 2017 TOWN COUNCIL MINUTES**

A.

**5. OATH OF OFFICE**

**6. ORGANIZATION OF COUNCIL**

- 3
- A. Vice-Mayor  
[Info Sheet - Organization of Council - May 24 2017](#)
  - B. Secretary
  - C. Affirmation of Code of Ethics

**7. COMCAST FRANCHISE AGREEMENT**

4 - 22

[Comcast-Georgetown Cable Franchise Agreement](#)

**8. ANNUAL PRESENTATION OF FUNDING**

- A. Georgetown Ambulance Service - Station 93
- B. Georgetown Volunteer Fire Department - Station 77

**9. RESOLUTION #2017-05 - CHARTER AMENDMENT (REGISTRATION OF VOTERS, UNCONTESTED ELECTIONS)**

(added 5/17/17 as information determined necessary for inclusion)

23 - 24

[Resolution #2017-005 Charter Amendment](#)

**10. 3RD PRESENTATION & DECISION**

25 - 48

- A. Case #2017-01 Xergy Conditional Use Application  
[Case #2017-01 Xergy Inc Conditional Use Application](#)

**11. DEPARTMENTAL REPORTS**

- A. Gene Dvornick – Town Manager

**12. PUBLIC COMMENT**

**13. ADJOURNMENT**

TOWN COUNCIL  
AGENDA ITEM INFORMATION SHEET

Item: Organization of Council

Item No: 6A – Vice Mayor  
6B – Secretary  
6C – Affirmation of the Code of Ethics

Date: May 24, 2017

Per the Charter, Sections 2.5 and 2.1

At the annual meeting, **the Town Council shall organize and elect a Vice-Mayor**, who shall hold office for the term of one (1) year or until his/her successor shall be duly elected.

The **Town Council shall likewise select a Secretary** from their own number to serve until the organization meeting after the next Annual Municipal Election.

Annually, **Town Council members shall sign an Affirmation of the Code of Ethics** as presented by the Town of Georgetown at the Council Meeting in May each year when the Town Council elects the Secretary and Vice Mayor, as an acknowledgement of each Council member's continuing commitment to abide by the principles of this Code.

CABLE FRANCHISE AGREEMENT  
BETWEEN  
TOWN OF GEORGETOWN  
AND  
COMCAST OF DELMARVA, LLC

TABLE OF CONTENTS

Section 1. Definition of Terms ..... 2  
Section 2. Grant of Authority ..... 4  
Section 3. Construction and Maintenance of the Cable System..... 4  
Section 4. Service Obligations ..... 6  
Section 5. Fees and Charges to Customers..... 7  
Section 6. Customer Service Standards; Customer Bills; and Privacy Protection ..... 8  
Section 7. Oversight and Regulation by Franchise Authority ..... 8  
Section 8. Transfer of Cable System or Franchise ..... 10  
Section 9. Insurance and Indemnity ..... 10  
Section 10. System Description and Service..... 11  
Section 11. Enforcement and Revocation Proceedings ..... 12  
Section 12. Competitive Equity ..... 13  
Section 13. Miscellaneous Provisions ..... 15

## **FRANCHISE AGREEMENT**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the Town of Georgetown (hereinafter, “Town” or “Franchise Authority”) and Comcast of Delmarva, LLC (hereinafter, “Franchisee”).

The Town having determined that the financial, legal, and technical ability of the Franchisee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Franchisee for the construction, operation, and maintenance of a Cable System on the terms and conditions set forth herein.

### **SECTION 1 - Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§521 - 631 (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words used to refer to the masculine include the feminine, words in the plural number include the singular number, and likewise, words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined in the Cable Act or herein shall be given their common and ordinary meaning.

1.1. “Cable Service” or “Service” shall mean the one-way transmission to Subscribers of Video Programming or other Programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other Programming service.

1.2. “Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, and as further defined under Section 602 (7) of the Cable Act.

1.3. “Customer” or “Subscriber” shall mean a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee’s express permission.

1.4. “Effective Date” shall mean June 7, 2017.

1.5. “FCC” shall mean the Federal Communications Commission, or successor governmental entity thereto.

1.6. “Franchise” shall mean the initial authorization, or renewal thereof, issued by the Franchise Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.7. “Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

1.8. “Franchise Area” shall mean the present legal boundaries of the Town of Georgetown, as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means during the term of the Franchise, as per the requirements set forth herein.

1.9. “Franchise Authority” shall mean the Town of Georgetown or the lawful successor, transferee, designee, or assignee thereof.

1.10. “Franchisee” shall mean Comcast of Delmarva, LLC.

1.11. “Gross Revenue” shall mean revenue derived by the Franchisee from the operation of the Cable System in the Franchise Area to provide Cable Service, calculated in accordance with generally accepted accounting principles (“GAAP”). Gross Revenue includes monthly basic cable, premium and pay-per-view video fees, installation fees and subscriber equipment rental fees, and commercial leased access fees. Gross Revenue shall not include program launch support payments, revenue from advertising and home shopping, refundable deposits, late fees, investment income, nor any taxes, franchise fees, or other fees or assessments imposed or assessed by any governmental authority. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with generally accepted accounting principles, provided however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in the Gross Annual Revenues in the period so collected.

1.12. “Person” shall mean any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchise Authority.

1.13. “Public Buildings” shall mean those buildings owned or leased by the Franchise Authority for government administrative purposes, and shall not include buildings owned by Franchise Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

1.14. “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, park, bridge, waterway, dock, bulkhead, wharf, pier, other public ground or water subject to the jurisdiction and control of the Franchise Authority, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the Franchise Area, which shall entitle the Franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchise Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchisee to the use thereof for the purposes of installing, operating, and maintaining the Franchisee’s Cable System over poles, wires, cables, conductors, ducts,

conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and appurtenant to the Cable System.

1.15. “Standard Installation” shall mean the standard one hundred and fifty foot (150’) aerial Drop connection to the existing distribution system.

1.16. “Town” shall mean the town of Georgetown, a municipal corporation of the State of Delaware.

1.17 “Video Programming” or “Programming” shall mean the programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1.18. “Video Service Provider” or “VSP” shall mean any entity using the public rights-of-way to provide multiple Video Programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multi-channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

## **SECTION 2 - Grant of Authority**

2.1. **Franchise Grant.** The Franchise Authority hereby grants to the Franchisee a non-exclusive Franchise authorizing the Franchisee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to use, erect, install, construct, repair, alter, add to, inspect, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, underground conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and, including but not limited to, above ground enclosures, markers, and concrete pads, or other related property, equipment, or fixtures as may be necessary, useful, or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. **Term of Franchise.** The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act.

2.3. **Renewal.** Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act [47 U.S.C. §546], as amended.

## **SECTION 3 - Construction and Maintenance of the Cable System**

3.1. **Permits and General Obligations.** The Franchisee shall be responsible for obtaining all generally applicable permits, licenses, or other forms of approval or authorization prior to the commencement of any activity that materially disturbs the surface of any street, curb, sidewalk or other public improvement in the Public Way, or impedes vehicular traffic. The issuance of such permits shall not be unreasonably withheld, conditioned, or delayed.

Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All work shall be done by the Franchisee in accordance with FCC regulations. Notwithstanding the requirements herein, Franchisee shall not be required to obtain a permit for individual drop connections to Subscribers, servicing or installing pedestals or other similar facilities, or other instances of routine maintenance or repair to its Cable System. All transmission and distribution structures, poles, other lines, and equipment installed by the Franchisee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

3.2. Conditions of Street Occupancy.

3.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Franchisee shall, upon reasonable advance written notice from the Franchise Authority (which shall not be less than thirty (30) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchise Authority shall notify Franchisee of such funding and make available such funds to the Franchisee within a reasonable timeframe. In the event that funds are not available, Franchisee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

3.2.2. Relocation at Request of Third Party. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchise Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than thirty (30) business days advance written notice to arrange for such temporary relocation.

3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance as is practical.

3.2.4. Safety Requirements. The Franchisee shall undertake all necessary and appropriate commercial efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

3.2.5. Trimming of Trees and Shrubbery. The Franchisee shall have the authority to trim trees or other natural vegetative growth encroaching or overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and

expense. The Franchisee shall be responsible for any collateral, direct real property damage caused by such trimming.

3.2.6. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Agreement shall be construed to require the Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the Franchise Authority or private parties. Franchisee shall be given reasonable notice and access to the public utilities' facilities at the time that such are placed underground and shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. In the event that public and/or private funds are not available or do not cover the entire direct and actual cost of the relocation, Franchisee reserves the right to pass its costs, or in the case of partial reimbursement from public and/or private funds its incremental cost, through to its Subscribers in accordance with applicable law.

#### **SECTION 4 - Service Obligations**

4.1. General Service Obligation. The Franchisee shall make Cable Service available to every occupied residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) occupied residential dwelling units per mile with aerial cable or sixty (60) residential occupied dwelling units per mile with underground cable and is within one (1) mile as measured in strand footage from the nearest point on the Cable System trunk or feeder line from which a usable cable signal can be obtained. For purposes of this section, a home shall only be counted as a "dwelling unit" if such home is within two hundred seventy-five (275) feet of the public right of way. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes located within one hundred and fifty (150) feet of the Franchisee's distribution cable at the standard installation rate. Should, through new construction, an area within the Franchise Area meet the density requirements, Franchisee shall provide Cable Service to such area within one (1) year after it confirms that the density requirements have been met following notice from the Franchise Authority that one (1) or more residents has requested Service.

The Franchisee may elect to extend Cable Service to areas that do not otherwise qualify to receive Cable Service under this section if any resident or group of residents agree in writing to pay to Franchisee the cost of construction, including materials, labor, and the total cost of any easement(s) necessary to accomplish the proposed line extension. One half of the cost of construction shall be paid to the Franchisee prior to engineering and the balance shall be paid prior to commencement of construction.

4.2. Programming. The Franchisee shall offer to all Customers a diversity of Video Programming services in accordance with federal law.

4.3. No Unfair Discrimination. Neither the Franchisee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area; provided, however, Franchisee reserves the right to deny service for good cause, including but not limited to non-payment or theft of service, vandalism of equipment, or documented or founded harassment or abuse of Franchisee's employees or agents. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Franchisee are satisfied. Nothing contained herein shall prohibit the Franchisee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its customary business practice.

4.4. New Developments. The Franchise Authority shall provide the Franchisee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchise Authority agrees to require the developer, as a condition of issuing the permit, to give the Franchisee access to open trenches for deployment of cable facilities and at least fifteen (15) business days written notice of the date of availability of open trenches.

4.5. Prohibition Against Reselling Service. No Person shall sell, offer for sale, or resell, without the express prior written consent of the Franchisee, any Cable Service, program or signal transmitted over the Cable System by the Franchisee.

#### **SECTION 5 - Fees and Charges to Customers**

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Franchisee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations. Before any new or modified rate, fee, or charge is imposed, the Franchisee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

#### **SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection**

6.1. Customer Service Standards. The Franchise Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as

amended. The Franchisee shall comply in all respects with the customer service requirements established by the FCC.

6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (i) is not misleading and (ii) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Franchisee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622 (c) of the Cable Act [47 U.S.C. §542 (c)].

6.3. Privacy Protection. The Franchisee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

### **SECTION 7 - Oversight and Regulation by Franchise Authority**

7.1. Franchise Fees. The Franchisee shall pay to the Franchising Authority a franchise fee in an amount equal to 3 percent (3%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Franchisee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each first, second and third calendar quarter (i.e., May 15, August 15, November 15) and sixty (60) days after the close of the calendar year (last day of February). Each franchise fee payment shall be accompanied by a report prepared by a representative of the Franchisee showing the basis for the computation of the Franchise Fees paid during that period.

#### 7.2. Franchise Fees Subject to Audit.

7.2.1 Upon notice pursuant to Section 13.2 herein, during Normal Business Hours at Franchisee's principal business office, the Franchising Authority shall have the right to inspect the Franchisee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Franchisee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Franchisee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Final Settlement Amount." For purposes of this Section, the term "Final Settlement Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Franchisee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In

the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.2.3. Any “Final Settlement Amount(s)” due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Franchisee within thirty (30) days from the date the parties agree upon the “Final Settlement Amount.” Once the parties agree upon a Final Settlement Amount and such amount is paid by the Franchisee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Franchisee’s books and records.

7.3. Oversight of Franchise. In accordance with applicable law, the Franchise Authority shall have the right to, at its sole cost and expense and upon reasonable prior written notice and in the presence of Franchisee’s employee, periodically inspect the construction and maintenance of the Cable System in the Franchise Area as necessary to monitor Franchisee’s compliance with the provisions of this Franchise Agreement.

7.4. Technical Standards. The Franchisee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76.601 et seq. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Franchisee shall comply with such altered, modified or amended standards within a commercially reasonable period after such standards become effective. The Franchise Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC rules.

7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Throughout the term of this Franchise Agreement, the Franchisee agrees that the Franchise Authority may review the Franchisee’s books and records in the Franchise Area as are reasonably necessary to monitor Franchisee’s compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Franchisee pursuant to this Agreement, at the Franchisee’s business office, during Normal Business Hours, and without unreasonably interfering with Franchisee’s business operations. All such documents that may be the subject of an inspection by the Franchise Authority shall be retained by the Franchisee for a minimum period of twenty-four (24) months.

7.5.2. File for Public Inspection. Throughout the term of this Franchise Agreement, the Franchisee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC’s rules and regulations.

7.5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchise Authority agrees to treat any information disclosed by the Franchisee as confidential and only to disclose it to those employees, representatives, and agents of the Franchise Authority that have a need to know in order to enforce this Franchise Agreement and who agree, through the execution of a non-disclosure agreement, to maintain the confidentiality of all such information. The Franchisee shall not be required to provide Customer information in violation of Section 631

of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Franchisee to be competitively sensitive. Franchisee may make proprietary or confidential information available for inspection, but not copying or removal of information by the Franchise Authority’s representative. In the event that the Franchise Authority has in its possession and receives a request under a state “sunshine,” public records, or similar law for the disclosure of information the Franchisee has designated as confidential, trade secret or proprietary, the Franchise Authority shall notify Franchisee of such request and cooperate with Franchisee in opposing such request.

#### **SECTION 8 - Transfer of Cable System or Franchise**

8.1. Neither the Franchisee nor any other Person may transfer the Cable System or the Franchise without prior written notice to the Franchise Authority. No prior notice shall be required, however, for: (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or in the Cable System in order to secure indebtedness, (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation, or (iii) the sale, conveyance, transfer, exchange or release of fifty percent (50%) or less of its equitable ownership. Within thirty (30) days of receiving a notice of transfer, the Franchise Authority may, in accordance with FCC rules and regulations, notify the Franchisee in writing of the additional information, if any, it requires regarding the legal, financial, and technical qualifications of the transferee or new controlling party.

#### **SECTION 9 - Insurance and Indemnity**

9.1. **Insurance.** Throughout the term of this Franchise Agreement, the Franchisee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the Franchise Authority certificates of insurance designating the Franchise Authority and its officers, boards, commissions, councils, elected officials, and employees as additional insureds and demonstrating that the Franchisee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury or property damage. The Franchisee shall provide workers’ compensation coverage in accordance with applicable law.

9.2. **Indemnification.** The Franchisee shall indemnify, defend and hold harmless the Franchise Authority, its officers and employees acting in their official capacities from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that directly arise out of the Franchisee’s construction, operation, maintenance, or removal of the Cable System, including, but not limited to, reasonable attorneys’ fees and costs, provided that the Franchise Authority shall give the Franchisee timely written notice of its obligation to indemnify and defend the Franchise Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. The Franchise Authority agrees that it will take all necessary action to avoid a default judgment and not prejudice the Franchisee’s ability to defend the claim or action. If the Franchise Authority determines that

it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchise Authority.

9.2.1 Franchisee shall not be required to indemnify the Franchise Authority for negligence or misconduct on the part of the Franchise Authority or its officials, boards, commissions, agents, or employees, including any loss or claims related to PEG access Channels in which the Franchise Authority or its designee participates, subject to Applicable Law.

### **SECTION 10 - System Description and Service**

10.1. System Capacity. During the term of this Agreement, the Franchisee's Cable System shall be capable of providing Video Programming with reception available to its customers in the Franchise Area in accordance with the Cable Act.

10.2. Cable Service to School Buildings. Upon request, the Franchisee shall provide, at no cost to the Franchise Authority, Basic Cable Service and Standard Installation at one (1) outlet to each public grade school (K-12) building, not including "home schools," located in the Franchise Area within one hundred twenty-five (125) feet of the Franchisee's distribution cable. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred twenty-five (125) feet distance of the cable plant and service for more than one (1) drop in each building. For the purposes of this section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, and does not include "home schools."

10.3. Cable Service to Governmental and Institutional Facilities. Upon request, the Franchisee shall provide, at no cost to the Franchise Authority, Basic Cable Service and Standard Installation at one outlet to each Public Building located in the Franchise Area within one hundred twenty-five (125) feet of the Franchisee's distribution cable. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred twenty-five (125) feet distance of the cable plant and service for more than one (1) drop in each building. Public Buildings are those buildings owned or leased by the Franchise Authority for government administrative purposes, and shall not include buildings owned by Franchise Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

### **SECTION 11 - Enforcement and Revocation Proceedings**

11.1. Notice of Violation or Default and Opportunity to Cure. In the event the Franchise Authority believes that the Franchisee has not complied with the material terms of the Franchise, it shall notify the Franchisee in writing with specific details regarding the exact nature of the alleged non-compliance or default.

11.1.1. Franchisee's Right to Cure or Respond. The Franchisee shall have forty-five (45) days from the receipt of the Franchise Authority's written notice: (i) to respond to the Franchise Authority, contesting the assertion of non-compliance or default; or (ii) to cure

such default; or (iii) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate commercially reasonable steps to diligently remedy such default and notify the Franchise Authority of the steps being taken and the projected date that the cure will be completed.

11.1.2. Public Hearings. In the event the Franchisee fails to respond to the Franchise Authority's notice or in the event that the alleged default is not remedied within forty five (45) days or the date projected by the Franchisee, the Franchise Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchise Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchise Authority shall notify the Franchisee in advance, in writing of the time and place of such meeting and provide the Franchisee with a reasonable opportunity to be heard.

11.1.3. Enforcement. Subject to applicable federal and state law, in the event the Franchise Authority, after such public hearing, determines that the Franchisee is in default of any material provision of the Franchise, the Franchise Authority may: (i) seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or (ii) in the case of a substantial default of a material provision of the Franchise, initiate revocation proceedings in accordance with the following:

(a) The Franchise Authority shall give written notice to the Franchisee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Franchisee, including two or more instances of substantial non-compliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the non-compliance. The Franchisee shall have ninety (90) business days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchise Authority has not received a response from the Franchisee or upon receipt of the response does not agree that the allegations of non-compliance have been or will be resolved, it may then seek revocation of the Franchise at a public hearing. The Franchise Authority shall cause to be served upon the Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request revocation of the Franchise.

(b) At the designated public hearing, the Franchise Authority shall give the Franchisee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the State of Delaware, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Franchisee within ten (10) business days. The decision of the Franchise Authority shall be in writing and shall be delivered to the Franchisee by certified mail. The Franchisee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchise Authority "de novo" and to modify or reverse such decision as justice may require.

11.2. Technical Violation. The Franchise Authority agrees that it is not its intention to subject the Franchisee to penalties, fines, forfeitures or revocation of the Franchise for so-

called “technical” breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

11.2.1. in instances or for matters where a violation or a breach of the Franchise by the Franchisee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.2.2. where there existed circumstances reasonably beyond the control of the Franchisee and which precipitated a violation by the Franchisee of the Franchise, or which were deemed to have prevented the Franchisee from complying with a term or condition of the Franchise.

11.3. No Removal of System. Franchisee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Franchisee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act, or any portion thereof [47 U.S.C. §541(b)].

## **SECTION 12 - Competitive Equity**

12.1. Purposes. The Franchisee and the Franchise Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchise Area; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to residents of the Franchise Area; promote local communications infrastructure investments and economic opportunities in the Franchise Area; and provide flexibility in the event of subsequent changes in the law, the Franchisee and the Franchise Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

12.2. New Video Service Provider.

12.2.1. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider (“VSP”) (i) enters into any agreement with the Franchise Authority to provide video services to subscribers in the Franchise Area, or (ii) otherwise begins to provide video services to subscribers in the Franchise Area (with or without entering into an agreement with the Franchise Authority), the Franchise Authority, upon written request of the Franchisee, shall permit the Franchisee to construct and operate its Cable System and to provide video services to subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Franchisee and the Franchise Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Franchisee submits a written request to the Franchise Authority.

12.2.2. If there is no written agreement or other authorization between the new VSP and the Franchise Authority, the Franchisee and the Franchise Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Franchisee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the Franchise Area.

12.3. Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchise Authority may request from or impose on a VSP providing video services to subscribers in the Franchise Area, the Franchise Authority agrees that, notwithstanding any other provision of law, upon Franchisee's written request the Franchise Authority shall: (i) permit the Franchisee to provide video services to subscribers in the Franchise Area on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity and parity between the Franchisee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the Franchise Area. The Franchise Authority and the Franchisee shall implement the provisions of this Section within sixty (60) business days after the Franchisee submits a written request to the Franchise Authority. Notwithstanding any provision of law that imposes a time or other limitation on the Franchisee's ability to take advantage of the changed law's provisions, the Franchisee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

12.4. Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the Franchise Area under Sections 12.2 or 12.3 shall supersede this Agreement, and the Franchisee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchise Authority, without penalty or damages.

### **SECTION 13 - Miscellaneous Provisions**

13.1. Force Majeure. The Franchisee shall not be held in default under, or in non-compliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such non-compliance or alleged defaults occurred or were caused by lightning strike, earthquake, flood, tidal wave, unusually severe rain, ice or snow storm, hurricane, tornado, or other catastrophic act of nature; riot, war, labor disputes, environmental restrictions, failure of utility service or the failure of equipment or facilities not belonging to Franchisee, denial of access to facilities or rights-of-way essential to serving the Franchise Area necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Franchisee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to

service or monitor their own utility poles on which the Franchisee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

13.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchise Authority:

Town of Georgetown  
39 The Circle  
Georgetown, DE 19947  
Attention: Town Manager

To the Franchisee:

Comcast of Delmarva, LLC  
7850 Walker Drive, 2nd Floor  
Greenbelt, MD 20770  
Attention: Government Affairs Department

With copies to:

Comcast Cable Northeast Division  
676 Island Pond Rd.  
Manchester, NH 03109  
Attention: Government Affairs Department

13.3. Entire Agreement. This Franchise Agreement and any exhibits or addendums hereto constitute the entire agreement between the Franchise Authority and the Franchisee and supersedes all prior or contemporaneous agreements, ordinances, representations, or understandings, whether written or oral, of the parties regarding the subject matter hereof. Any agreements, ordinances, representations, promises or understandings or parts of such measures that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

13.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

13.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State where the Franchise Area is located, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of such State, as applicable to contracts entered into and performed entirely within the State.

13.6. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchise Authority and the Franchisee, which amendment shall be authorized on behalf of the Franchise Authority through the adoption of an appropriate resolution or order by the Franchise Authority, as required by applicable law.

13.7. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

13.8. Captions. Captions to sections throughout this Franchise Agreement are solely to facilitate the reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

13.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, which Franchisee may have under federal or state law unless such waiver is expressly stated herein.

13.10. Incorporation by Reference

13.10.1. All presently and hereafter applicable conditions and requirements of federal, State and generally applicable local laws, including but not limited to the rules and regulations of the FCC and the State where the Franchise Area is located, as they may be amended from time to time, are incorporated herein by reference to the extent not enumerated herein. However, no such general laws, rules, regulations and codes, as amended, may alter the obligations, interpretation and performance of this Renewal Franchise to the extent that any provision of this Renewal Franchise conflicts with or is inconsistent with such laws, rules or regulations.

13.10.2. Should the State, the federal government or the FCC require Franchisee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Franchise Authority and Franchisee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

13.11. Calculation of Time. Where the performance or doing of any act, duty, matter, payment, or operation is required hereunder and the period of time or duration for the performance or doing thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first day and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

13.12. Annexation. Upon ninety (90) days written notice, any additions of territory to the Franchise Authority, by annexation or other legal means, contiguous to the Franchise Area, shall thereafter be subject to all the terms of this Agreement as though it were an extension made hereunder related to the Cable System located or operated within said territory.

13.13. Authority to Execute. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

REMAINDER OF PAGE LEFT BLANK UNTIL SIGNATURE PAGE.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the last date set forth below:

Franchise Authority:

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

Print Name: Bill West

Title: Mayor

Date: \_\_\_\_\_

Franchisee:

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

Print Name: Mary McLaughlin

Title: Regional Senior Vice President

Date: \_\_\_\_\_



## RESOLUTION 2017- 005

### AMENDING THE CHARTER OF THE TOWN OF GEORGETOWN, BEING CHAPTER 14, VOLUME 79, OF THE LAWS OF DELAWARE, BY AMENDING THE PROCEDURE FOR REGISTRATION FOR GEORGETOWN MUNICIPAL ELECTIONS AND AMENDING PROCEDURES FOR HANDLING UNCONTESTED ELECTIONS

#### CHANGES IN THE MUNICIPAL REGISTRATION PROCEDURE

WHEREAS, state law has been amended so as to allow for the administration of registration for municipal elections under agreement with the Department of Elections for Sussex County (15 Del. C., Sec. 7554); and

WHEREAS, it is necessary to amend the Charter of the Town of Georgetown so as to adopt such change;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Georgetown that:

- a. The first paragraph of Section 3.4.2 of the Charter of the Town of Georgetown be deleted;
- b. The deleted paragraph be replaced with the following paragraph:

“Registration of voters in Georgetown municipal elections shall be administered and conducted by agreement with and pursuant to regulations promulgated by the Department of Elections for Sussex County.”

#### HANDLING UNCONTESTED ELECTIONS

WHEREAS, the previous Charter revision contained a scrivener error omitting two paragraphs relating to uncontested elections;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Georgetown that:

- a. Section 3.4.3 of the charter of the Town of Georgetown have the following two paragraphs added:

“In the event that no person files for office for which an election is to be held within the time set forth in Section 3.3 of this Charter, the incumbent shall be deemed to be reelected for a full term and it shall not be necessary to have an election.”

“In the event that only one person files or is nominated for office for which an election is to be held within the time set forth in Section 3.3 of this Charter, the person who files or who is nominated shall be deemed to be elected for a full term and it shall not be necessary to have an election.”

**RESOLVED** by the Town Council of the Town of Georgetown, Delaware on the 24<sup>th</sup> day of May, A.D., 2017.

---

William E West, Mayor

---

Steve M Hartstein, Secretary

Adoption: May 24, 2017

DRAFT



# Town of Georgetown Review Application



Check Type of Review Requested	Copies
Category II Plan Review	
Category I Site Plan - Preliminary	5
Category I Site Plan - Final	11
<input checked="" type="checkbox"/> Conditional Use	8
Historic Review	18
Subdivision/RPC Review - Conceptual	8
Subdivision/RPC Review - Preliminary	11
Subdivision/RPC Review - Final	18
Utility Review	18
Zoning Amendment	2
Other:	18

All packages to include number of copies shown:

- Review Application
- Plans / Prints
- Supportive Materials
- One PDF of Site Plan

Note: One 11 x 17 copy of complete site plan to be provided with application packages.

Property Information	
Sussex County Tax Map/Parcel:	135 14.2 110.00
Project Location:	310 N RACE ST
Property Size/Dimension:	
Project Title/Name:	Xerby
Current Zoning District:	DB1
Proposed Zoning (if applicable):	N/A
Current Property Use:	OFFICE / GARAGE Storage
Proposed Property Use:	XERBY, INC

Current Property Owner Information	
Current Owner Name:	BAMAD BAHAR Xerby/INC
Phone Number:	302 218 4279
Fax Number:	
Email Address:	BAMDAD B @ AOL.COM
Mailing Address:	120 N RACE ST
City, State, Zip Code:	Georgetown DC 20147

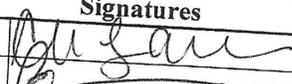
Engineer / Surveyor Information	
Company Name:	Don F Taylor PE
Contact Name:	Don Taylor
Phone Number:	610-2637-9236
Fax Number:	
Email Address:	DTAYLOR PE @ AOL.COM
Mailing Address:	20296 BUNDICKS Branch LN
City, State, Zip Code:	Milton DC 20148

Developer Information	
Company Name:	
Contact Name:	
Phone Number:	
Fax Number:	
Email Address:	
Mailing Address:	
City, State, Zip Code:	

Designated Primary Contact	
Contact Name:	Christine Atkins
Phone Number:	302 245 3223
Fax Number:	
Email Address:	Christine.Atkins@servicegeneral.net
Mailing Address:	120 N Race St
City, State, Zip Code:	Georgetown De 19047

Please read and certify the following:

1. I have supplied all the information listed on this form and that statements contained in any papers or plans submitted as part of this application are true and correct.
2. This project was designed in accordance with the plan requirements in the Comprehensive Plan, Zoning Code, Design Standards as well as the Construction Standards for the Town of Georgetown.
3. I, or an agent on my behalf, will attend all public hearings/meetings necessary for this project in order to answer any questions to the best of my ability in respect to the present and future needs, health, safety, morals, convenience, order, prosperity and general welfare of the inhabitants of Georgetown.
4. I understand that any incomplete applications will not move forward in the review process and I will be notified in writing after a thorough review has been completed by the Planning Department.
5. It is understood that the Planning Department processes all applications in the order in which they were received. Each application will continue in the process once eligibility and the appropriate reviews have been completed.
6. I understand that only the designated primary contact listed on this application will receive any and all review comments, meeting information and correspondence to and from the Town of Georgetown.
7. I understand that the Engineer will be billed for the professional services rendered from the Town Engineer and/or the Town Solicitor, as required for my application, unless I notify the Town Planning Department in writing advising otherwise.

Signatures	
Designated Primary Contact	
Developer	
All Current Property Owners	
Parcel -	
Parcel -	
Parcel -	

OFFICE USE ONLY			
Date Received: _____	Received by: _____	Amount: \$ _____	Cash/Check #: _____

Submit all requests to the Planning Department, 39 The Circle, Georgetown DE 19947  
 Phone: (302)856-7391 Fax: (302)856-6348



Town of Georgetown  
The Circle  
Georgetown, DE 19947

01/17/2017

I am writing to confirm that Xergy Inc. would like the town of Georgetown's approval to locate back at 310 North Race Street, Georgetown, DE 19947.

For your information, Xergy Inc. is primarily an engineering services company conducting research and development on advanced components for home appliances.

Under the terms of our research contracts, we are tasked with building prototype appliances or components for appliances. This effort involves tasks such as plumbing, appliance repair or modification, general services such as electrical connections and materials processing like for example what a hobby shop might undertake to make a model airplane. There are no noxious odors, gases, noise or vibration from our activities.

Beyond professional offices, unit operations at our current plant are as follows:

Membrane and Electrode Assembly Area: Hot pressing of catalyst media with ion exchange membranes.

Machine Shop: CNC machine tools (metal cutting)

Plate Shop: Robotic gaskets adhered to metal plates. Graphite compression molding.

Wood Shop: Packaging boxes (for shipping) and general hardware for plant needs

General Laboratories: Testing of components for home appliances. Refrigerators, hot water heaters, window air conditioners with our devices in them.

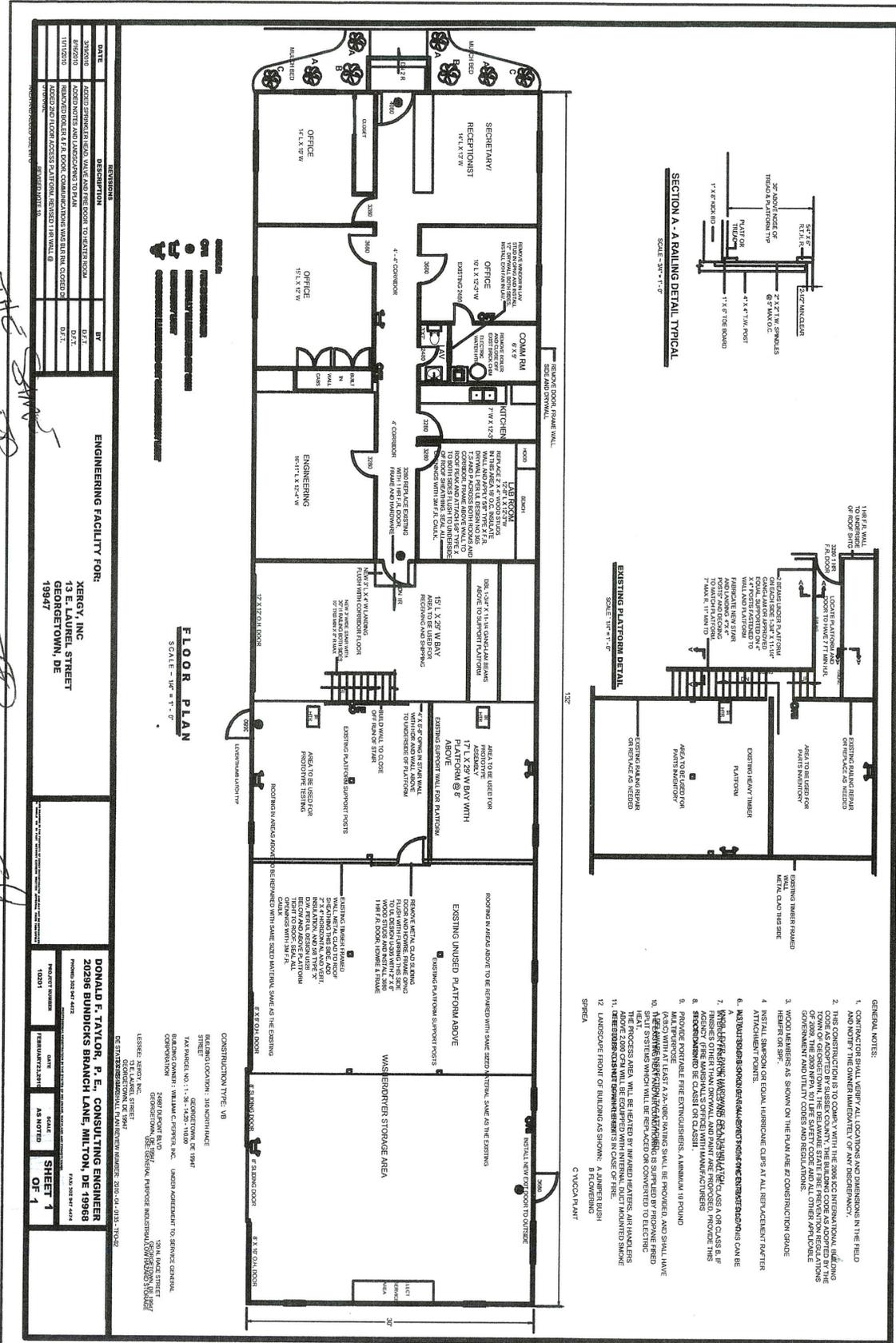
I look forward to the Town's favorable response to our relocation request.

Sincerely,

***Bamdad***

Bamdad Bahar





THIS IS THE SAME LAYOUT APPROPRIATE AND 2013-01-10-05-11416

*[Signature]*

JAN 31 2017

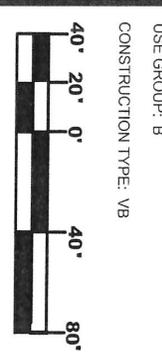
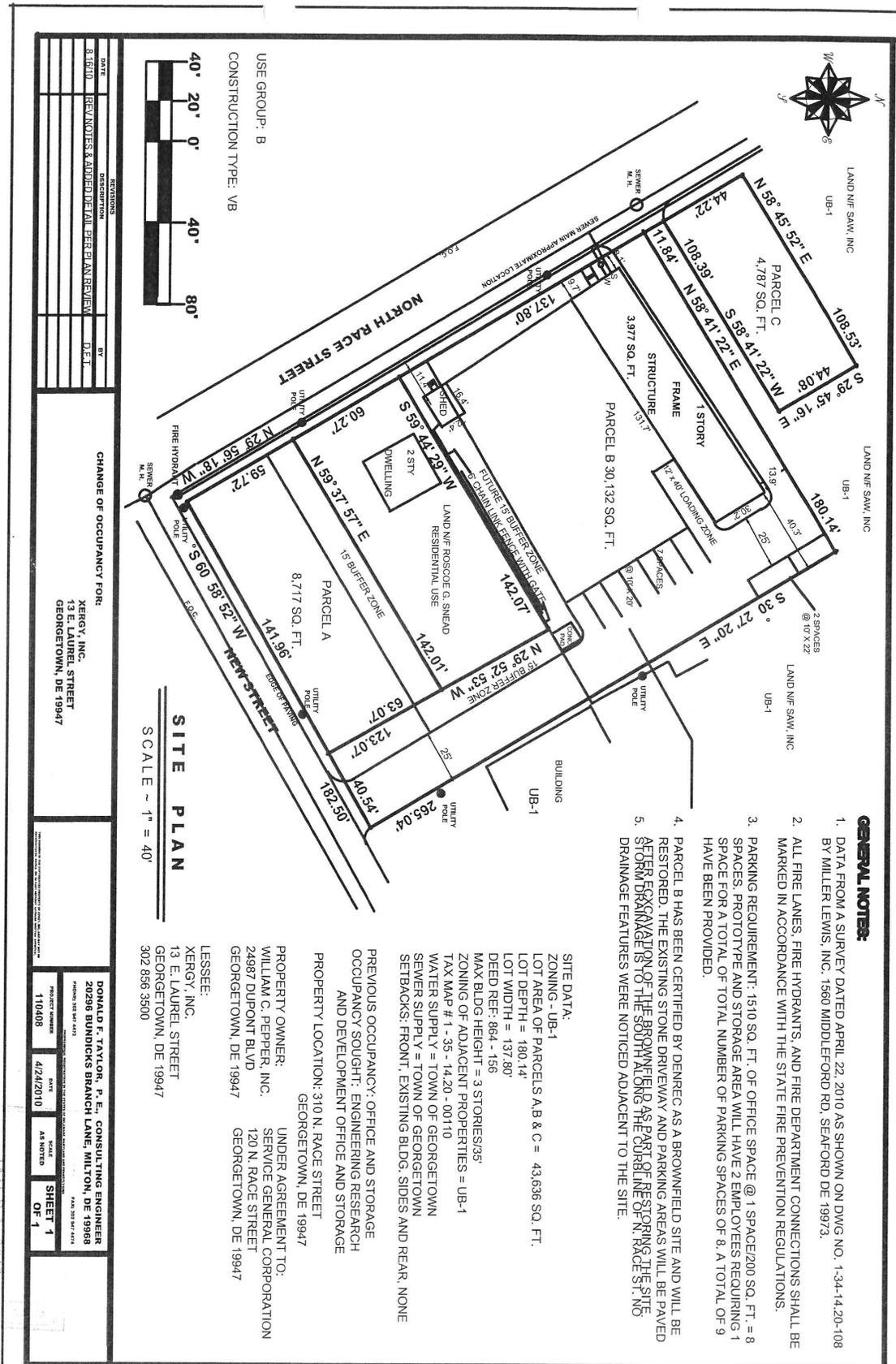
DATE	DESCRIPTION	BY
01/20/17	ISSUED FOR PERMITTING AND CONSTRUCTION	DJ
01/10/17	ISSUED FOR PERMITTING AND CONSTRUCTION	DJ
01/10/17	ISSUED FOR PERMITTING AND CONSTRUCTION	DJ
01/10/17	ISSUED FOR PERMITTING AND CONSTRUCTION	DJ

**ENGINEERING FACILITY FOR:**  
XEROY, INC  
13 E. LAUREL STREET  
GEORGETOWN, DE  
19847

**CONSTRUCTION TYPE: VB**  
BUILDING LOCATION: 310 NORTH FACE STREET  
GEORGETOWN, DE 19847  
TAX PARCEL NO: 11-36-1429-11000  
OWNER AGREEMENT TO SERVICE GENERAL CONTRACTOR  
DESIGNED BY: DONALD D. TAYLOR, P.E.  
CHECKED BY: DONALD D. TAYLOR, P.E.  
DATE: 01/10/17

**DONALD D. TAYLOR, P. E., CONSULTING ENGINEER**  
20296 BLINDICKS BRANCH LANE, MILTON, DE 19968  
PH: 302-341-4444  
FAX: 302-341-4444  
WWW.DDTAYLOR.COM

**PROJECT NUMBER:** 10051  
**DATE:** 01/10/17  
**SCALE:** AS NOTED  
**SHEET:** 1 OF 1



USE GROUP: B  
CONSTRUCTION TYPE: VB

**SITE PLAN**  
SCALE ~ 1" = 40'

DATE	DESCRIPTION	BY
8/16/10	REVISED & ADDED DETAIL PER DAN BRUNEN	D.E.T.

CHANGE OF OCCUPANCY FOR:  
XERGY, INC.  
13 E. LAUREL STREET  
GEORGETOWN, DE 19947

PREPARED BY:  
DONALD F. TAYLOR, P.E., CONSULTING ENGINEER  
20296 BUNDICKS BRANCH LANE, MILTON, DE 19968  
PHONE: 302-368-4400 FAX: 302-368-4400

PROJECT NUMBER	DATE	SCALE	SHEET
110408	4/24/2010	AS NOTED	1 OF 1

JAN 31 2017

**GENERAL NOTES:**

1. DATA FROM A SURVEY DATED APRIL 22, 2010 AS SHOWN ON DWG NO. 1-34-14-20-108 BY MILLER LEWIS, INC., 1580 MIDDLEFORD RD, SEACORD DE 19973.
2. ALL FIRE LANES, FIRE HYDRANTS, AND FIRE DEPARTMENT CONNECTIONS SHALL BE MARKED IN ACCORDANCE WITH THE STATE FIRE PREVENTION REGULATIONS.
3. PARKING REQUIREMENT: 1510 SQ. FT. OF OFFICE SPACE @ 1 SPACE/200 SQ. FT. = 8 SPACES. PROTOTYPE AND STORAGE AREA WILL HAVE 2 EMPLOYEES REQUIRING 1 SPACE FOR A TOTAL OF TOTAL NUMBER OF PARKING SPACES OF 8. A TOTAL OF 9 HAVE BEEN PROVIDED.
4. PARCEL B HAS BEEN CERTIFIED BY DENREC AS A BROWNFIELD SITE AND WILL BE RESTORED. THE EXISTING STONE DRIVEWAY AND PARKING AREAS WILL BE PAVED AFTER EXCAVATION OF THE BROWNFIELD AS PART OF RESTORING THE SITE.
5. STORM DRAINAGE IS TO THE SOUTH ALONG THE CORNER OF N. RACE ST. NO DAMAGE FEATURES WERE NOTICED ADJACENT TO THE SITE.

**SITE DATA:**

ZONING: UB-1  
LOT AREA OF PARCELS A & C = 43,636 SQ. FT.  
LOT DEPTH = 180.14'  
LOT WIDTH = 137.80'  
DEED REF: 864 - 156  
MAX BLDG HEIGHT = 3 STOREYS/35'  
ZONING OF ADJACENT PROPERTIES = UB-1  
TAX MAP # 1 - 35 - 14,20 - 00110  
WATER SUPPLY = TOWN OF GEORGETOWN  
SEWER SUPPLY = TOWN OF GEORGETOWN  
SETBACKS: FRONT, EXISTING BLDG, SIDES AND REAR, NONE

PREVIOUS OCCUPANCY: OFFICE AND STORAGE  
OCCUPANCY SUGHT: ENGINEERING RESEARCH AND DEVELOPMENT OFFICE AND STORAGE  
PROPERTY LOCATION: 310 N. RACE STREET  
GEORGETOWN, DE 19947

PROPERTY OWNER: UNDER AGREEMENT TO:  
WILLIAM C. PEPPER, INC.  
24987 DUPONT BLVD  
GEORGETOWN, DE 19947  
SERVICE GENERAL CORPORATION  
120 N. RACE STREET  
GEORGETOWN, DE 19947

LESSEE:  
XERGY, INC.  
13 E. LAUREL STREET  
GEORGETOWN, DE 19947  
302 856 3500

**TOWN OF GEORGETOWN PLAN REVIEW**

DUFFIELD ASSOCIATES, INC.      Submittal      Conditional      Project No.:      2017-01  
 Project Review Comments      Phase:      Use  
 Date      Submitted:      2/3/17      Project      Title:      Xergy Conditional Use  
 Submittal      No.:      1      Project A/E:      Pennoni Associates, Inc.  
 Duffield      00.10730.BB  
 Project No.:      Phase 08  
 Date      Returned:      2-17-16

Distribution:      P & Z      Town      Manager      DPW      ✓      Engineer      ✓      Other  
 Name of Reviewer:      Scott C. Hoffman, P.E.      Office:      Dover, DE 302-674-9280  
 Documents Reviewed:      Site Plan, Sheet 1 of 1 dated 4-24-10

DWG/PAGE NO.	COMMENT NO.	PROJECT REVIEW COMMENTS	APPLICANT RESPONSE
1	1	Provide responses to these comments on this form with the submission of the revised plans.	Provided
	2	Line work on this drawing is difficult to read because all lines are the same line type and width. For example the extents of future paving are not clear and the extents of the existing fence are not clear. Consider providing a larger sheet or larger scale plan.	Done
	3	Verify subject parcel area	Done changes made
	4	Property line dimension missing on lands NOF R.G. Sneed	Done
	5	Verify subject parcel depth based on code definition	Done
	6	Revise "Occupancy" to "Use"	Done changes made
	7	Verify if deed reference is correct	Done changes made
	8	Verify if property owner is correct	Done changes made
	9	Applicant should provide a statement describing how the proposed project meets the Town's four criteria for a conditional use.	Done attached

DUFFIELD ASSOCIATES, INC.  
Project Review Comments

Submission Phase: Conditional Use  
Reviewer: Scott C. Hoffman, P.E.

Submission No.: 2  
Project Title: Xerig Conditional Use

10	No information has been provided describing the applicant's intentions to install signs or landscaping. A buffer zone is shown, is this intended to be a landscaped Bufferyard?	Sign Shown Buffer
11	The site is located in a Zone 2 Wellhead Protection Area (WHPA). The proposed use includes a machine shop which is a conditional use in a Zone 2 WHPA. Other requirements are applicable to sites in Zone 2 WHPAs. Applicant should provide a statement describing how the proposed use will conform the Town's code requirements for projects in a WHPA.	Done
12	Applicant shall provide appropriate documentation which demonstrates that a site remediation plan has been approved by DNREC and is or will be completed as part of this project. Site restrictions associated with the remediation plan should be included on the site plan.	Done
13	Does the applicant intend to provide common open space on this site?	Done
14	Does the applicant intend to maintain the North Race Street entrance?	Yes

Reviewer Signature: \_\_\_\_\_  
Scott C. Hoffman, P.E.

34603

BK: 4044 PG: 337

Tax Parcel No(s): 135-14.20-108  
135-14.20-110  
135-14.20-111

Prepared By: Department of Natural Resources  
and Environmental Control

Return To: Timothy T. Ratsep  
Environmental Program  
Administrator  
DNREC-SIRS  
391 Lukens Drive  
New Castle, DE 19720

#### ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Xergy, Inc. ("Owner") and the Delaware Department of Natural Resources and Environmental Control ("DNREC") pursuant to 7 Del. C. Chapter 79, Subchapter II, Uniform Environmental Covenants Act, for the purpose of subjecting the Property to the activity and use limitations as set forth herein.

#### WITNESSETH

**WHEREAS**, Xergy, Inc. is the Owner of certain real estate located at 310 N. Race Street in Sussex County, Delaware, as described below ("Property"); and

**WHEREAS**, DNREC has investigated a release of hazardous substances on the Property pursuant to the Hazardous Substance Cleanup Act, 7 Del. C. Chapter 91 ("HSCA"); and

**WHEREAS**, on May 24, 2012, DNREC issued a Final Plan of Remedial Action ("Final Plan") for the Former Pep Up Site, OU-1 (DE #1491) ("Site"), pursuant to HSCA, which includes the Property; and

**WHEREAS**, the Final Plan for the Site requires that certain activity and use limitations be placed on the Property; and

**WHEREAS**, Owner is willing to establish this Environmental Covenant on the Property as required by the Final Plan.

Now therefore, Owner, Xergy, Inc. and DNREC agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to 7 Del. C. Chapter 79, Subchapter II, Uniform Environmental Covenants Act.

KRB12028

as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to 7 Del. C. Section 7916. Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Secretary of DNREC from exercising any authority under applicable law.

8. Rights of Access. Owner hereby grants to DNREC, its agents, contractors, and employees the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Remedial Decision Record. The Remedial Decision Record containing all documents which support the issuance of the Amended Final Plan is located at the offices of DNREC-SIRS, 391 Lukens Drive, New Castle, Delaware, 19720.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE ENVIRONMENTAL COVENANT, DATED AND RECORDED IN THE OFFICIAL RECORDS OF THE SUSSEX COUNTY RECORDER OF DEEDS ON THE DATE OF THIS DOCUMENT AND NOTED AS THE INSTRUMENT NUMBER AT THE TOP LEFT CORNER OF THE FIRST PAGE OF THIS ENVIRONMENTAL COVENANT. THIS ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

b. Use Restriction. Use of the Property shall be restricted solely to those non-residential type uses permitted within Commercial, Manufacturing, or Industrial Districts, respectively, as such district types and uses (including, without limitation, ancillary or accessory uses) are described and permitted, respectively, pursuant to the Town of Georgetown Code in effect as of the date of this Declaration;

b. Interference with Remedy. There shall be no digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activities on the Property including any repair, renovation or demolition of the existing structures on the on the Property without the prior written approval of DNREC-SIRS. In the event that an emergency

Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining; an Amendment shall also include an assignment of the Environmental Covenant, as specified in 7 Del. C. Section 7915. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

b. This Environmental Covenant may be amended or terminated only by a written instrument duly executed by DNREC and the Owner or Transferee of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any Amendment or Termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Sussex County Recorder of Deeds Office, and shall provide a file-and date-stamped copy of the recorded instrument to DNREC.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Delaware.

15. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Sussex County Recorder of Deeds Office. This environmental covenant must be indexed in the grantor's index in the name of the Owner, and in the grantee's index in the name of the Holder, DNREC.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Sussex County Recorder of Deeds.

17. Distribution of Environmental Covenant. The Owner shall distribute a file-and date-stamped copy of the recorded Environmental Covenant to: DNREC; the Town of Georgetown; *[any "Holder," any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property, and any other person designated by DNREC; see 7 Del. C. Section 7912].*

18. Notice. Any document or communication required by this Environmental Covenant shall be submitted to:

Environmental Program Administrator  
DNREC-SIRS  
391 Lukens Drive  
New Castle, DE 19720

KRB12028

IT IS SO AGREED:

Xergy, Inc.

[Signature]  
Signature of Owner

Bamdad Bahar, President  
Printed Name and Title

Sept. 19. 2012  
Date

State of Delaware )  
County of Sussex )

ss:

Before me, a notary public, in and for said county and state, personally appeared Bamdad Bahar, a duly authorized representative of Xergy Inc, who acknowledged to me that he did execute the foregoing instrument on behalf of Xergy, Inc.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 19th day of Sept., 2012.

[Signature]  
Notary Public

PAMELA S. CLOUSER  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires on: 09-20-2013





STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL  
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES  
391 LUKENS DRIVE  
NEW CASTLE, DELAWARE 19720-2774

MAR 15 2013 #048

SITE INVESTIGATION &  
RESTORATION SECTION

TELEPHONE: (302) 395 - 2600  
FAX NO.: (302) 395 - 2601

March 11, 2013

Mr. Bob Kondelin, P.G.  
Environmental Alliance, Inc.  
5341 Limestone Road  
Wilmington, DE 19808

**RE: Certification of Completion of Remedy for the Former Pep Up-OU-1 Site (DE#1491)**

Dear Bob:

Enclosed please find the original, executed Certification of Completion of Remedy regarding the above referenced Site. Pursuant to 7 Del. C. § 9115 (b), the owner is required to promptly file this COCR with the Sussex County Recorder of Deeds. Please note that this COCR is **double-sided**.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me @ (302) 395-2670

Sincerely,

  
Elizabeth LaSorte  
Paralegal

EML:tlw  
EML13044  
DE 1491 I-4

pc: Rick Galloway, Project Officer  
Keith Brady, Deputy Attorney General

*Delaware's good nature depends on you !*

Printed on  
Recycled Paper

Tax Parcel Number: 135-14.20-  
108, 135-14.20-110, and 135-14.20-111  
Prepared By: Department of Natural Resources  
and Environmental Control  
Return To: Administrator  
DNREC-SIRS  
391 Lukens Drive  
New Castle, DE 19720

---

### CERTIFICATION OF COMPLETION OF REMEDY

The Department of Natural Resources and Environmental Control (DNREC) has reviewed the request made by Environmental Alliance, Inc. on October 5, 2012 for a Certification of Completion of Remedy for Operable Unit-1 of the Former Pep Up Site (DE-1491) (Site) located at 310 North Race Street in Georgetown, Delaware. DNREC has reviewed all of the relevant documents necessary to make a determination.

The approximate 1.0 acre Site is identified by Sussex County as including tax parcels 135-14.20-108, 135-14.20-110, and 135-14.20-111. Gasoline, kerosene and heating oil aboveground storage tanks (ASTs) were located on the Site. They were situated within a concrete berm containment area and used for fuel storage and distribution. The Site also included a former pump area and truck fueling area. The concrete structures have been removed. Petroleum releases have occurred at the Site in the past likely as a result of historic operations. These releases impacted the soil and groundwater beneath the Site.

Currently, the Site consists of an office/warehouse building and open gravel parking area and is zoned for commercial use. Xergy, Inc. intends to use the Site for office space and manufacturing activities.

For the purposes of remediation, DNREC divided the Site into two operable units. Operable Unit-1 (OU-1) consists of the soil and soil gas contamination beneath the Site and Operable Unit-2 addresses groundwater contamination from petroleum products at the Site. ***This COCR is for the OU-1 portion of the Site only.***

In 2010, a Brownfield Investigation was performed at the Site. The investigation revealed that the subsurface soil near the area where the ASTs had been located contained petroleum contamination which exceeded DNREC's soil standards for commercial use. Specifically, the Site was contaminated with volatile organic compounds (VOCs) including benzene, as well as semi-volatile organic compounds (SVOCs) including 2-methyl naphthalene and naphthalene.

In August 2011, over 3,000 tons of petroleum-contaminated soils were excavated from the Site and properly disposed of offsite. Clean fill was added to the excavated area as were chemicals which helped breakdown the petroleum contamination. Following the completion of the remedial activities, the indoor air and air under the onsite building slab were tested and found not to pose a health risk.

On April 20, 2012, DNREC issued the Proposed Plan of Remedial Action (Proposed Plan) for the OU-1 portion of the Site based on the results of the Brownfield Investigation. The Proposed Plan recommended that the following remedial actions be undertaken:

- 1) An Environmental Covenant be placed on the Site, restricting the Site to commercial use, prohibiting any land disturbing activities without prior written approval by DNREC, and prohibiting any interference with the remedy; and
- 2) Development of a Contaminated Materials Management Plan (CMMP) to be approved by DNREC that would allow construction workers to safely handle any potential contaminated soil and groundwater at the Site.

DNREC advertised the Proposed Plan for public comment in the News Journal and Delaware State News beginning April 25, 2012 through May 15, 2012. DNREC did not receive any public comments or requests for a hearing on the Proposed Plan.

On May 24, 2012, DNREC issued the Final Plan of Remedial Action (Final Plan) which contained DNREC's final determination of the remedial action necessary for OU-1 of the Site. The Final Plan consisted of the same remedial action as was contained in the Proposed Plan. The remedial action required by DNREC has been completed, as follows:

- The Environmental Covenant, as described above, was recorded in the Office of the Sussex County Recorder of Deeds on September 26, 2012 in Deed Book 4044, Pages 337-347.
- DNREC approved the CMMP on October 5, 2012.

Therefore, based on its review, DNREC certifies that a remedy consistent with HSCA and the Regulations has been completed for OU-1 of the Site, and that it may be used in any manner consistent with the above-described Environmental Covenant and CMMP. The activities required by the approved or modified CMMP shall continue to be performed at the Site. Non-compliance with the CMMP or the above-described Environmental Covenant, which may result in a potential risk to public health, welfare or

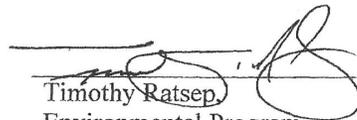
the environment, shall, at DNREC's discretion, render this Certification of Completion of Remedy null and void and require that additional remedies be performed at the Site.

If circumstances change, or any new information becomes available that relates to the release of a hazardous substance at the Site, DNREC reserves the right to require additional measures to be taken in order to ensure the protection of both human health and the environment.

Furthermore, pursuant to 7 Del. C. Section 9105(e), any person who owns, operates or otherwise controls activities at the Site after the date of issuance of this Certification shall not, by virtue of that later ownership, operation or control, be liable for the release or imminent threat of release addressed in this Certification, or for any future release or imminent threat of release attributable to environmental conditions existing prior to the issuance of this Certification.

Finally, pursuant to 7 Del. C. § 9115(b), the Owner is required to promptly record this Certification of Completion of Remedy with the Office of the Sussex County Recorder of Deeds.

3/8/2013  
Date of Issuance

  
Timothy Ratsep  
Environmental Program  
Administrator  
DNREC, Site Investigation  
and Restoration Section

SWORN TO AND SUBSCRIBED before me this 8<sup>th</sup> day of March, 2013.

  
NOTARY PUBLIC

Commission Expires  
Upon Office.

ELIZABETH M. LASORTE  
NOTARY PUBLIC  
STATE OF DELAWARE  
My commission expires  
upon office.

EML120128  
DE 1491-I-4



March 15, 2013

Mr. Bamdad Bahar  
Property Manager  
Service General Corporation  
13 East Laurel Street  
Georgetown, DE 19947

- *Engineering*
- *Remediation*
- *Consulting*

**RE: Transmittal of COCR – Completion of Brownfield Process for  
DE-1491, OU-1 (Soil and Soil Gas)  
Xergy, Inc. Property (former Pep-Up)  
310 North Race Street, Georgetown, DE**

Dear Bamdad:

Environmental Alliance, Inc. (“Alliance”) is transmitting the attached Certificate of Completion of Remedy (COCR) for the subject brownfield site. As instructed in the DNREC letter, this original document (double-sided) must be filed at the Sussex County Recorder of Deeds. Please complete the filing as instructed by DNREC. This is the last task to complete the brownfield project for OU-1. Congratulations.

Contact me with any questions.

Sincerely,  
**ENVIRONMENTAL ALLIANCE, INC.**

A handwritten signature in cursive script that reads 'Robert J. Kondelin'.

Robert J. Kondelin, P.G.  
Senior Geologist

Attachments

c: Bryan Pepper w/o attachments

J:\EAL\_files\3055\_Xergy\_Georgetown\CORR 2012\Transmittal of COCR and DNREC letter for 310 N. Race St. 3-15-13.doc

*5341 Limestone Road Wilmington, DE 19808*  
302-234-4400 302-234-1535 Fax [www.envalliance.com](http://www.envalliance.com)

\*-----\*  
Official Receipt for Recording in:

Sussex County Recorder of Deeds  
PO Box 827  
GEORGETOWN, DE 19947

Issued To:  
DEPT OF NATURAL RESOURCES  
XERGY INC  
WINDOW 302-218-4279

Recording Fees

*-----*				
Filing Type	Number	Volm	Page Time	Recording Amount
*-----*				
Agreement	13132	04111	00212 03:16:19p	58.00
DR-DELAWARE STATE OF DEPT NATL RES & ENV CO				
IN-DELAWARE STATE OF DEPT NATL RES & ENV CO				
Non Compliance Fee			03:16:19p	30.00
				-----
				88.00

Collected Amounts

*-----*	
Payment Type	Amount
*-----*	
1-Cash	100.00
-----	
	100.00

Total Received :	100.00
Less Total Recordings:	88.00
-----	
Change Due :	12.00

Thank You  
SCOTT DAILEY - Recorder of Deeds

By - Sue D

Receipt# Date Time  
0223224 04/04/2013 03:16p



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL  
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES  
391 LUKENS DRIVE  
NEW CASTLE, DELAWARE 19720-2774

SITE INVESTIGATION &  
RESTORATION SECTION

TELEPHONE: (302) 395 - 2600  
FAX No.: (302) 395 - 2601

October 5, 2016

Mr. Robert Kondelin  
Environmental Alliance, Inc.  
5341 Limestone Road  
Wilmington, Delaware 19808

**RE: Approval Letter- Revised September 22, 2016 Two Year Remedy Evaluation Report  
Former Pep Up OU-2 (DE-1571)  
Georgetown, DE 19947**

Dear Mr. Kondelin:

The Department of Natural Resources and Environmental Control-Site Investigation and Restoration Section (DNREC-SIRS) has reviewed the above referenced document for the Former Pep-Up OU-2 site (Site) in Georgetown, Delaware. DNREC-SIRS approves the report.

Please don't hesitate to contact me with any questions or concerns at (302) 395-2600.

Sincerely,

A handwritten signature in blue ink that reads "Richard M. Galloway, P.G.".

Richard M. Galloway, P.G.  
Project Manager

RMG:tlw  
RMG16046.doc  
DE 1571 II E 2

pc: Qazi Salahuddin, Environmental Program Manager II  
Bryan Pepper, Pep-Up-[bpepper@pepupinc.com](mailto:bpepper@pepupinc.com)

*Delaware's good nature depends on you !*

Printed on  
Recycled Paper



Exhibit A

Tax Map #1-35 14.20 108; 110 & 111

Prepared by and return to:  
Wilson, Halbrook & Bayard, P.A.  
107 West Market Street  
Georgetown, DE 19947  
File No.2010157ECH

BK: 4044 PG: 345

*THIS DEED*, made this 30th day of December, 2010,

BETWEEN

**Pep-Land, Inc.**, a Delaware Corporation, and **Pep-Up, Inc.**, a Delaware Corporation, of P.O. Box 556, Georgetown, Delaware 19947, parties of the first part, Grantors,

AND

**Xergy Inc.**, a Delaware Corporation, of 13 East Laurel Street, Georgetown, Delaware 19947, party of the second part, Grantee,

WITNESSETH that the said parties of the first part, for and in consideration of the sum of One Dollar (\$1.00), lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grant and convey unto the party of the second part, its successors and/or assign, in fee simple the following described lands, situate, lying and being Sussex County, State of Delaware;

Tax Map # 1-35 14.20 108.00

ALL THAT CERTAIN lot, piece or parcel of land with the buildings erected thereon, situate, in the Town of Georgetown, Sussex County, State of Delaware, more particularly bounded and described according to a survey by J.J. McCann, Inc., Registered Land Surveyor, dated April 17, 1986, as follows, to wit:

BEGINNING at a point, said point being the intersection of the northwesterly right of way of North Race Street; thence from said point of Beginning with the said northwesterly side of New Street, North 60° 03' 42" East, 140.00 feet to a point in line of lands now or formerly of William C. Pepper, Inc.; thence thereby, North 29° 56' 18" West, 60.00 feet to a point in line of lands now or formerly of Reuben Dale Bryan, et ux.; thence thereby, South 60° 03' 42" West, 140.00 feet to a point on the said northeasterly right of way of North Race Street; and thence thereby, South 29° 56' 18" East, 60.00 feet to the point and place of Beginning, containing within said metes and bounds, 8,400 square feet of land, be the same more or less.

BEING the same lands conveyed unto Pep-Land, Inc., a Delaware Corporation, by Deed dated October 22, 2002 from Luzvimin C. Corpus and Isabelita A. Corpus, husband and wife, as recorded October 22, 2002 in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware, in Deed Book 2764, Page 67.

*rw*

The Town of Georgetown

The Circle, Georgetown, DE 19947

3/5/17

Ref: 310 North Race Street – Plan Review

To whom it may concern:

With respect to your request to explain how the proposed plan addresses the 4 criteria in conditional use applications, our response is as follows:

Criteria - Adjoining Properties: 310 North Race street is adjoined by other properties that have been historically used for industrial purposes. Townsend (Vegetable) processing plant is next door to the north side of the property; Georgetown Coal and Gas facility resided to the east (which is now a vacant lot), and Georgetown Optical Glass (which is now a vacant lot) is to the south side. Across the New Street, we have an old U.S. Cold Storage site (now also a vacant lot). Thus, the property is situated in what has been historically in an industrial region of Georgetown. Xergy is currently a research and development company, the intended use of the property is less industrially intensive than the historical uses of adjacent properties.

Criteria - Need for use: Xergy Inc. resided at this property for several years, and made its core inventions on this site, before moving to Seaford's Industrial Park to assist a sister company in managing several operation issues where Xergy engineers had expertise. That project is now complete, and Xergy would like to return to its original site. Xergy would prefer to use its own facility at 310 North Race Street, and save on paying rent to other parties.

Criteria - Minimal effect: Xergy Inc. has occupied this site before, and had no impact at all on any adjacent properties or uses. In fact, Xergy Inc. undertook a major environmental clean-up of this site and removed over 100 truckloads of contaminated dirt (with gasoline), helping clean up Georgetown's water table, and improving the overall environmental condition of not only its properties but also adjacent lots impacted. The jobs created by Xergy Inc. would be high tech, high pay, quality jobs that would only improve the economic wellbeing of the town of Georgetown.

Criteria - Need for safeguards: The property is fenced, and secured. The research and development programs undertaken by Xergy Inc. are to develop clean-energy solutions for many appliance applications i.e. providing sustainable, eco-friendly engineering solutions to help improve energy efficiency for home appliances. This work itself is not a hazard or detrimental to any adjacent properties or the Georgetown community.

I trust that this application will be reviewed favorably by the Town of Georgetown, and we look forward to your response.

Sincerely,

Bamdad Bahar

Xergy inc.



- *Engineering*
- *Remediation*
- *Consulting*

DRAFT

February 28, 2017

Bamdad Bahar  
Service General  
15 Laurel Street  
Georgetown, DE 19947

**RE: Environmental Update  
Former Pep-Up Site (DE-1491)  
310 N. Race St.  
Georgetown, Delaware**

Dear Mr. Bahar:

Environmental Alliance, Inc. (Alliance), is responding to your request for information regarding the environmental status and conditions at the referenced property (“the Site”), which is owned by Xergy, Inc. (Xergy). Under the DNREC Hazardous Substance Cleanup Act (HSCA) program, environmental media have been administratively categorized as Operable Unit 1 (OU-1) (soil and soil gas) and OU-2 (groundwater). The Site consists of the following Sussex County tax parcels: 135-14.20-108, 135-14.20-110, and 135-14.20-111.

Alliance previously performed and completed environmental services for Xergy, Inc. under the Department of Natural Resources and Environmental Control (DNREC) Site Investigation and Environmental Restoration (SIRS) Brownfield program. The work done for Xergy resulted in a Certificate of Completion of Remedy (COCR) by DNREC for OU-1 (Attachment A). An Environmental Covenant (Attachment B) was prepared and signed by DNREC and Xergy, and filed with the property deed at the Sussex County Recorder of Deeds office. The Environmental Covenant contains several requirements including restriction to commercial use, notification to DNREC SIRS in advance of soil-disturbing activities, non-use of onsite groundwater for drinking water, and compliance with an approved Contaminated Materials Management Plan (CMMP).

Alliance also performed environmental services for Pep-Up, Inc. (Pep-Up) (the previous property owner) under DNREC SIRS’ Voluntary Cleanup Program (VCP). The work done for Pep-Up addresses groundwater at the site which contains residual petroleum contamination. Alliance performed groundwater monitoring for eight quarters under a DNREC-approved Long-Term Stewardship (LTS) Plan. At the completion of the eighth quarter, Alliance prepared a Two-Year Remedy Evaluation Report (“Two-Year Report”) as required by the LTS Plan. The Two-

877.234.1141 • [www.envalliance.com](http://www.envalliance.com)

5341 Limestone Road  
Wilmington, DE 19808  
302.234.4400

150 Blades Lane, Ste R  
Glen Burnie, MD 21060  
410.729.9000

515 Plainfield Avenue, Ste 202  
Edison, NJ 08817  
732.537.0250

8215 Hermitage Road  
Henrico, VA 23228  
804.658.5550

Year Report demonstrated the reduction of groundwater contaminants over the monitoring period. In response to the draft Two-Year Report, DNREC responded with a requirement to monitor three particular wells for Volatile Organic Compounds (VOCs) semi-annually during the year 2018. The purpose of the requirement is to demonstrate continued reduction of the contaminant concentrations. This requirement was incorporated into the final Two-Year Report. DNREC issued an approval letter for the Two-Year Report on October 6, 2016. A copy of the DNREC letter is attached. Therefore, no actions in regard to groundwater are required by Pep-Up at this time, except for preservation of the existing monitoring wells. During the year 2018 select wells will be sampled as required, and based on the results additional actions or closure will be recommended. It should also be noted that with regard to groundwater at the site, impacts from solvent compounds associated with the nearby Georgetown Cleaners site (DE-113) were identified and are being monitored by DNREC.

Should you have questions, contact me at (302) 234-4400.

Sincerely,  
**ENVIRONMENTAL ALLIANCE, INC.**

Robert J. Kondelin, P.G.  
Associate Geologist

c: Bryan Pepper (electronic copy)

**Attachments**

J:\EAI\_files\3056\_Bast\_Parking\_Lot\correspondence 2017\310 N. Race St\Environmental Update - 310 N. Race, St. docx