

Wilmington, Delaware
September 17, 2020

#4860

Sponsor:

**Council
Member
Freel**

WHEREAS, pursuant to Wilmington Charter Section 8-205, the City may sell or exchange any real estate belonging to the City or grant any license, easement, right-of-way, or other interest over or in such real estate with authority by general ordinance and later resolution from Council to do so; and

WHEREAS, City Code Section 2-626 provides that the Department of Public Works shall have the authority, subject to the approval by Council by resolution, to grant such licenses, easements, and rights-of-way as shall be necessary for the construction, installation, maintenance, repair, operation and inspection of utilities; and

WHEREAS, City Code Section 45-1 provides that the Department of Public Works shall provide for the planning, acquisition, purchase, construction, reconstruction, improvement, betterment, extension, operation and maintenance of plants, properties, works, systems or facilities for the collection, treatment and disposal of sewage, waste, garbage and stormwater of the City; and

WHEREAS, the City is the owner of 475 Hay Road, Wilmington, Delaware, being Tax Parcel No. 26-046.00-001 (the “Property”); and

WHEREAS, Holland Mulch Inc. (“Holland”) is a company that, inter alia, manufactures and distributes quality mulch; and

WHEREAS, the City desires to have Holland accept and dispose of the City’s yard waste; and

WHEREAS, Holland desires to use a portion of the Property (the “License Area”) to store yard waste and convert yard waste into mulch; and

WHEREAS, in furtherance thereof, Holland has requested that it be afforded access onto the License Area for the purpose of storing yard waste and converting it into mulch, and the City is willing to grant such access, subject to the terms and conditions of the License Agreement attached hereto and incorporated herein as Exhibit “A”.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that the Council hereby authorizes and approves the License Agreement between the City of Wilmington and Holland Mulch Inc., a copy of which, in substantial form, is attached hereto as Exhibit “A”, and the Mayor, or his designee, is hereby authorized to execute as many copies of the License Agreement, as well as take all additional undertakings related thereto, as may be necessary.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution approves a five-year license agreement with five one-year renewal options between the City and Holland Mulch Inc. (“Holland”), which permits Holland to use of a portion of 475 Hay Road, Wilmington, Delaware (being Tax Parcel No. 26-046.00-001) to store yard waste and convert it into mulch. In return, Holland will accept and dispose of all of the City’s yard waste at its sole cost and expense, a service which has a monetary value of approximately one hundred twelve thousand, five hundred dollars (\$112,500.00) per year.

W0111711

EXHIBIT A

LICENSE AGREEMENT

(475 Hay Road)

THIS LICENSE AGREEMENT (this "License") is made as of this ____ day of _____, 2020 (the "Effective Date"), by and between the **CITY OF WILMINGTON**, a municipal corporation of the State of Delaware (the "City"), having an address of 800 North French Street, Wilmington, Delaware 19801, as licensor, and **HOLLAND MULCH INC.** ("Holland"), having an address of 135 Hay Road, Edgemoor, Delaware 19809, as licensee.

RECITALS:

WHEREAS, the City is the owner of that certain parcel of land and the improvements thereon known as 475 Hay Road, Wilmington, Delaware, being Tax Parcel ID 26-046.00-001 (the "Property");

WHEREAS, Holland is a company that, inter alia, manufactures and distributes quality mulch;

WHEREAS, Holland desires to use a portion of the Property, as depicted on Exhibit A attached hereto and incorporated herein (the "License Area"), to: (i) store Yard Waste (as defined herein) and (ii) convert Yard Waste into mulch (collectively, the "Permitted Business Activities"); and

WHEREAS, in furtherance thereof, Holland has requested that it be afforded access onto the License Area for the purpose of performing the Permitted Business Activities, and the City is willing to grant such access, subject to the terms and conditions hereof.

NOW, THEREFORE, intending to be legally bound, the parties hereto agree as follows:

1. Recitals. The above recitals are incorporated herein and made a part hereof.
2. Definitions.
 - (a) "Alterations" shall mean any alteration, addition, demolition, improvement, grading, replacement, or change to the License Area, which is necessary to perform the Permitted Business Activities, following the completion of the Clearing Work.
 - (b) "City" has the meaning ascribed to such term in the first paragraph of this License.
 - (c) "Clearing Work" shall mean (i) clearing the vegetative overgrowth that is located on the License Area as of the Effective Date and (ii) constructing any necessary initial improvements on the License Area in order for Holland to be able to perform the Permitted Business Activities.
 - (d) "Commencement Date" means the date that is the later of (i) the Effective Date or (ii) the date that the Wilmington City Council approves this License.

- (e) “Effective Date” has the meaning ascribed to such term in the first grammatical paragraph of this License.
- (f) “Expiration Date” is defined in Section 4(b) of this License.
- (g) “Event of Default” is defined in Section 14(a) of this License.
- (h) “Holland” has the meaning ascribed to such term in the first grammatical paragraph of this License.
- (i) “Law(s)” means all present and future laws, statutes, codes, ordinances, orders, rules, and regulations of all federal, state, and local governments, agencies, and authorities having jurisdiction over the License Area.
- (j) “License” has the meaning ascribed to such term in the first grammatical paragraph of this License.
- (k) “License Area” has the meaning ascribed to such term in the fourth grammatical paragraph of this License.
- (l) “Permitted Business Activities” has the meaning ascribed to such term in the fourth grammatical paragraph of this License.
- (m) “Property” has the meaning ascribed to such term in the second grammatical paragraph of this License.
- (n) “Renewal Terms” is defined in Section 4(b) of this License.
- (o) “Term” is defined in Section 4(a) of this License.
- (p) “Termination Notice” is defined in Section 4(b) of this License.
- (q) “Yard Waste” shall mean plant material resulting from residential, commercial, institutional, or industrial sources as part of maintaining yards or other private or public lands and includes grass, leaves, flowers, roots, prunings, brush, shrubs, wood chips, Christmas trees, tree limbs up to four (4) inches in diameter, and debris commonly thrown away in the course of maintaining yards and gardens, including sod and a small number of incidental rocks not over two (2) inches in diameter. Yard Waste does not include loose soils; plastics and synthetic fibers; construction, renovation, and demolition wastes; clean wood; treated wood; any wood or tree limbs over four (4) inches in diameter; human or animal excrement; noxious weeds; or soil contaminated with hazardous substances.

3. Grant of License. The City hereby grants to Holland a temporary, revocable license in favor of Holland for Holland to utilize the License Area for the purpose of performing the Clearing Work, the Permitted Business Activities, and the Alterations. Holland shall access the License Area through the designated area depicted on Exhibit A to this License. This License is revocable by the City at will, with or without cause, upon ninety (90) days’ advance written notice (or such lesser period as specified herein).

4. Term; Contingency; Renewal.

(a) Subject to the renewal options set forth in Section 4(b) below, the term of this License (as it may be extended, the “Term”) shall commence on the Commencement Date and shall expire on the day immediately preceding the fifth (5th) anniversary of the Commencement Date (unless extended or terminated pursuant to Section 4(b) below or revoked by the City, the “Expiration Date”).

(b) Absent the delivery of a written notice of termination from either party to the other at least thirty (30) days prior to then current Expiration Date (a “Termination Notice”), this License shall automatically renew, on a year to year basis, without any action by either party beyond the initial Expiration Date and each successive Expiration Date thereafter (“Renewal Terms”) as long as (i) Holland continues to use the License Area for the Permitted Business Activities, (ii) the City has not revoked the License, and (iii) an Event of Default has not occurred that remains uncured to the City’s satisfaction. Notwithstanding anything to the contrary in this License, there shall be no more than five (5) Renewal Terms under this License, and this License shall automatically terminate on the last day of the fifth (5th) Renewal Term.

5. Compensation; Acceptance of City’s Yard Waste.

(a) Holland shall not pay any monetary compensation to the City for this License. In lieu of monetary compensation, Holland, at its sole cost and expense, shall accept and convert all of the City’s Yard Waste into mulch starting on the Commencement Date. The parties acknowledge that the aforementioned service has a monetary value of approximately one hundred twelve thousand, five hundred dollars (\$112,500.00) per year.

(b) The City shall deliver the City’s Yard Waste to Holland at the License Area at time periods agreed upon by the parties. Holland shall accept all of the City’s Yard Waste and shall utilize it for the Permitted Business Activities.

6. Permitting. Holland shall, at its sole cost and expense, obtain all approvals, permits, and licenses legally required to perform the Clearing Work, the Permitted Business Activities, and the Alterations.

7. Business License. Holland shall obtain and/or maintain an appropriate business license from the City’s Department of Finance.

8. Taxes. Holland shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents, and employees as required by the City’s wage tax law.

9. Clearing Work and Future Alterations.

(a) Holland shall perform the Clearing Work at its sole cost and expense prior to commencing the Permitted Business Activities.

(b) Holland shall have the right to make Alterations to the License Area at Holland’s sole cost and expense; provided, however, any Alteration shall be subject to the City’s prior written consent, which shall not be unreasonably withheld, conditioned, or delayed.

10. Utility Expenses. During the Term of this License, Holland shall pay and discharge all applicable utility charges (including, but not limited to, charges for electric, stormwater, sewer and water) related to the License Area.

11. Maintenance, Repair, and Obligations.

(a) Holland shall, at its sole cost and expense, keep, or cause to be kept, the License Area in good order and repair and shall make all restorations and improvements necessary to maintain the License Area in a good, safe and clean condition, including, but not limited to, (i) cutting and maintaining any grass or landscaping and (ii) collecting and disposing of any trash that accumulates on the License Area.

(b) During the Term of this License, Holland shall, at its own cost and expense, promptly observe and comply with all Laws applicable to the License Area, the Clearing Work, the Permitted Business Activities, and the Alterations.

12. Insurance and Indemnity.

(a) Insurance. Holland, at its sole cost and expense, for the mutual benefit of the City and Holland, shall at all times during this License, provide or confirm the procurement of, workers' compensation, automobile, and commercial general liability insurance coverage for personal injury, sickness, disease or death, or for damage or injury to or destruction of property (including the loss of the use thereof) occurring upon, in, or about the License Area or any improvements erected or constructed thereon, to wit:

(i) Workers' Compensation & Employer's Liability Insurance

(A) Holland and any vendor or independent contractor engaged for work or services on the License Area shall purchase and keep in force and effect workers' compensation insurance affording statutory coverage and containing statutory limits that will provide the applicable statutory benefits for employees of any employer who may or do suffer covered injuries or diseases while involved in the performance of their work at the License Area; and, even if permitted to do so by statute, Holland, independent contractor, or vendor shall not reject any workers' compensation insurance option that, in the absence of such a rejection, would be applicable to any of the said employees.

(B) Holland and any vendor or independent contractor shall purchase, and keep in force and effect, Employers' Liability insurance with maximum limits for each employee of \$1,000,000 for each bodily injury by accident or occupational disease, and \$1,000,000 aggregate maximum limits for all bodily injuries by accidents or occupational diseases within the coverage period, regardless of the number of employees who may sustain bodily injuries by accident or occupational disease.

(ii) Automobile and Commercial General Liability Insurance

(A) Holland and any vendor or independent contractor shall purchase: (1) motor vehicle liability coverage with liability limits for bodily injury of at least \$1,000,000 with a combined single limit, and \$100,000 for property damage for owned, hired and non-owned vehicles, covering any and all claims for bodily injury and property damage that arise out

of Holland's, vendor's or independent contractor's performance of work, and (2) comprehensive commercial general liability ("CGL") insurance with limits of no less than \$2,000,000 per each occurrence and \$3,000,000 in the aggregate. The CGL policy shall be extended by endorsement or otherwise to also include (a) coverage for contractual liability assumed by Holland, vendor and/or independent contractor, with defense provided in addition to and separate from policy limits for indemnities of the named insured, (b) coverage for Independent Contractor Liability, (c) coverage for broad form property damage liability, and (d) coverage for personal injury liability. The "City of Wilmington" shall be named as an additional insured on the motor vehicle liability coverages and CGL coverages. The CGL policy shall provide an endorsement that specifically waives any subrogation rights the insurer would otherwise have against the City, its officials or employees.

(iii) General Requirements for all Insurance

(A) All insurance required under this License except workers' compensation and employers' liability shall specifically name the "City of Wilmington", its officials and employees as additional insureds.

(B) Every insurance policy, to the extent obtainable, shall provide written notice of cancellation to the City of such policy.

(C) Each policy shall be written by a carrier licensed by the State of Delaware that has, and maintains during the term of the policy, at least an "A" rating from the A.M. Best Agency with "Stable" outlook. Any change in this rating or outlook must be disclosed to the City by Holland as soon as possible upon learning of the same.

(D) All insurance required under this License, except workers' compensation and employers' liability, shall expressly provide that such insurance shall be primary insurance.

(E) Holland shall procure and retain records including certificates of insurance evidencing the above-stated coverages and other requirements.

(b) Certificates of Insurance. Holland shall deliver to the City certificates of insurance evidencing the existence of all policies of insurance described above. Holland shall be permitted to maintain the coverages required by this License under one or more blanket policies of insurance that also cover other properties owned by Holland.

(c) Indemnity. Holland shall defend, indemnify, and hold the City and its officials and employees harmless from any and all claims, lawsuits, loss, liability, costs or expenses, including reasonable attorneys' fees, arising out of or related to (i) any claim of bodily injury, property damage or other damages occurring within the License Area during the Term of this License or (ii) the activities, improvements, and uses contemplated by this License, including, but not limited to, the Clearing Work, the Permitted Business Activities, the Alterations, and the restoration required by Section 13 below.

(d) Release. The City shall not be liable or responsible for, and Holland hereby releases the City from any and all claims with respect to, any loss, damage or injury to any property or person occasioned by (i) any condition, design, or defect in the Property, (ii) the City's use of the

Property, (ii) the repair or alteration of any part of the Property, or (iii) any other cause whatsoever related to the use of the License Area.

(e) Sections 12(c) and 12(d) shall survive any revocation, termination, or expiration of this License.

13. Restoration. Holland, at its sole cost and expense, shall promptly repair (or replace if appropriate) any damage to the Property resulting from the exercise of the rights granted hereunder, including, without limitation, any damage to landscaping. Holland, at its sole cost and expense, shall remove all Yard Waste, including the City's Yard Waste, upon revocation, termination, or expiration of this License. This Section 13 shall survive any revocation, termination, or expiration of this License.

14. Default Provisions.

(a) The occurrence and continuance of any one or more of the following events shall constitute an "Event of Default" under this License:

(i) If Holland ceases to use the License Area as contemplated in this License;

(ii) If default shall be made in the punctual acceptance of the City's Yard Waste by Holland, and such default shall continue for a period of ten (10) days after Holland's receipt of written notice thereof from the City to Holland; or

(iii) If default shall be made by Holland in the performance of or compliance with any of the covenants, agreements, terms or conditions contained in this License and such default shall continue for a period of thirty (30) days after receipt of written notice specifying such default from the City to Holland; or, if it shall not be reasonably possible to cure such default within a period of thirty (30) days, then such longer period reasonably designated by the City in order to allow Holland to promptly remedy such default following Holland's receipt of the default notice.

(b) If an Event of Default has occurred and continues beyond those periods of time herein granted to cure the same, then the City, in addition to any other remedies to which the City may be entitled at law or in equity, shall have the right to terminate this License by giving Holland a notice of termination, whereupon the Holland's rights under this License shall immediately terminate.

(c) THE CITY AND HOLLAND EACH AGREE TO AND THEY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LICENSE, THE RELATIONSHIP OF THE CITY AND HOLLAND, OR HOLLAND'S USE OR OCCUPANCY OF THE LICENSE AREA, AND ANY CLAIM OR INJURY OR DAMAGE AND/OR ANY STATUTORY REMEDY.

15. Relocation of License Area. The City shall have the right and option to cause Holland to relocate its Permitted Business Activities, within ninety (90) days after notice to do so, to another location within the Property, comparable in size and location to the License Area. Within sixty (60) days after any such notice shall be given, the City and Holland shall execute and deliver an

amendment to this License which shall substitute a description of the License Area to which Holland is to be relocated for the description of the License Area contained herein; otherwise all of the terms and conditions of this License shall be applicable to Holland's occupancy of the new License Area.

16. Rules and Regulations. The City shall have the right to promulgate rules and regulations for the use of the License Area during the Term of this License.

17. Construction. This License shall be construed without any presumption that an ambiguous provision is to be interpreted against the party which drafted this License.

18. Assignment and Sublicense. Holland shall not assign this License or otherwise transfer Holland's interest in the License Area or any portion thereof to any person.

19. Condemnation. If at any time during the Term of this License, title to the whole or any portion of the License Area shall be taken by exercise of the right of condemnation, eminent domain or by agreement between City and those authorized to exercise such right (all such proceedings being collectively referred to herein as a "taking"), this License shall terminate and expire on the date of such taking.

20. Notices. Every notice, approval or consent required by this License shall not be effective unless the same shall be in writing and sent postage prepaid, by (a) United States registered or certified mail, return receipt requested, (b) hand delivery, or (c) overnight courier, directed to the other party at its address hereinabove first mentioned, or such other address as either party may designate by notice given from time to time in accordance with this paragraph. Notices shall be deemed given when so sent; but time periods for performance following notice shall run from the date the notice has been delivered or delivery is refused.

21. Governing Law. This License and the performance of all the terms and conditions contained herein shall be governed, interpreted, construed, and regulated by the laws of the State of Delaware. All disputes in connection with this License shall be resolved by the courts of New Castle County, Delaware. The parties agree to submit exclusively to the jurisdiction and venue of said courts.

22. Severability. Any provision of this License that may be determined by competent authority to be illegal, invalid, prohibited, or unenforceable shall be ineffective to the extent of such illegality, invalidity, prohibition, or unenforceability without invalidating the remaining terms and provisions hereof, and any such illegality, invalidity, prohibition, or unenforceability shall not invalidate or render unenforceable any of the remaining terms and provisions hereof.

23. Entire Agreement; Amendments. This License shall constitute the entire agreement between the parties with respect to the subject matter of this License. This License shall not be modified or changed except by a writing executed and delivered by both parties.

24. Counterparts. This License may be executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

25. Parties. Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this License shall bind, and inure to the benefit of, Holland and the City and their respective permitted successors and assigns.

26. No Partnership. It is understood and agreed that no party hereto shall be construed or held to be a partner, joint venturer, or associate of the other in the conduct of the other's business, nor shall either party be liable for any debts incurred by the other; but it is understood and agreed that the relationship is and at all times shall remain that of licensor and licensee.

27. Headings; Pronouns. The headings of the sections of this License are for convenience only and have no meaning with respect to this License or the rights or obligations of the parties hereto. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein: "person", as used herein, includes an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity; "hereof", "herein", and "hereunder" and other words of similar import refer to this License as a whole; and "parties" means the City and Holland. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of pronouns or nouns shall include the plural and vice versa.

28. Computation of Time Periods. All periods of time referred to in this License shall include all Saturdays, Sundays, and City, state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday, or holiday when City offices are closed, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or holiday when City offices are closed.

29. Time of the Essence. Time is of the essence in all provisions of this License.

30. No Recordation of License. The City and Holland agree that neither this License nor any memorandum thereof shall be recorded.

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IN WITNESS WHEREOF, the parties have executed this License under seal as of the day and year first above written.

LICENSOR:

CITY OF WILMINGTON

By: _____

Name:

Title:

LICENSEE:

HOLLAND MULCH INC.

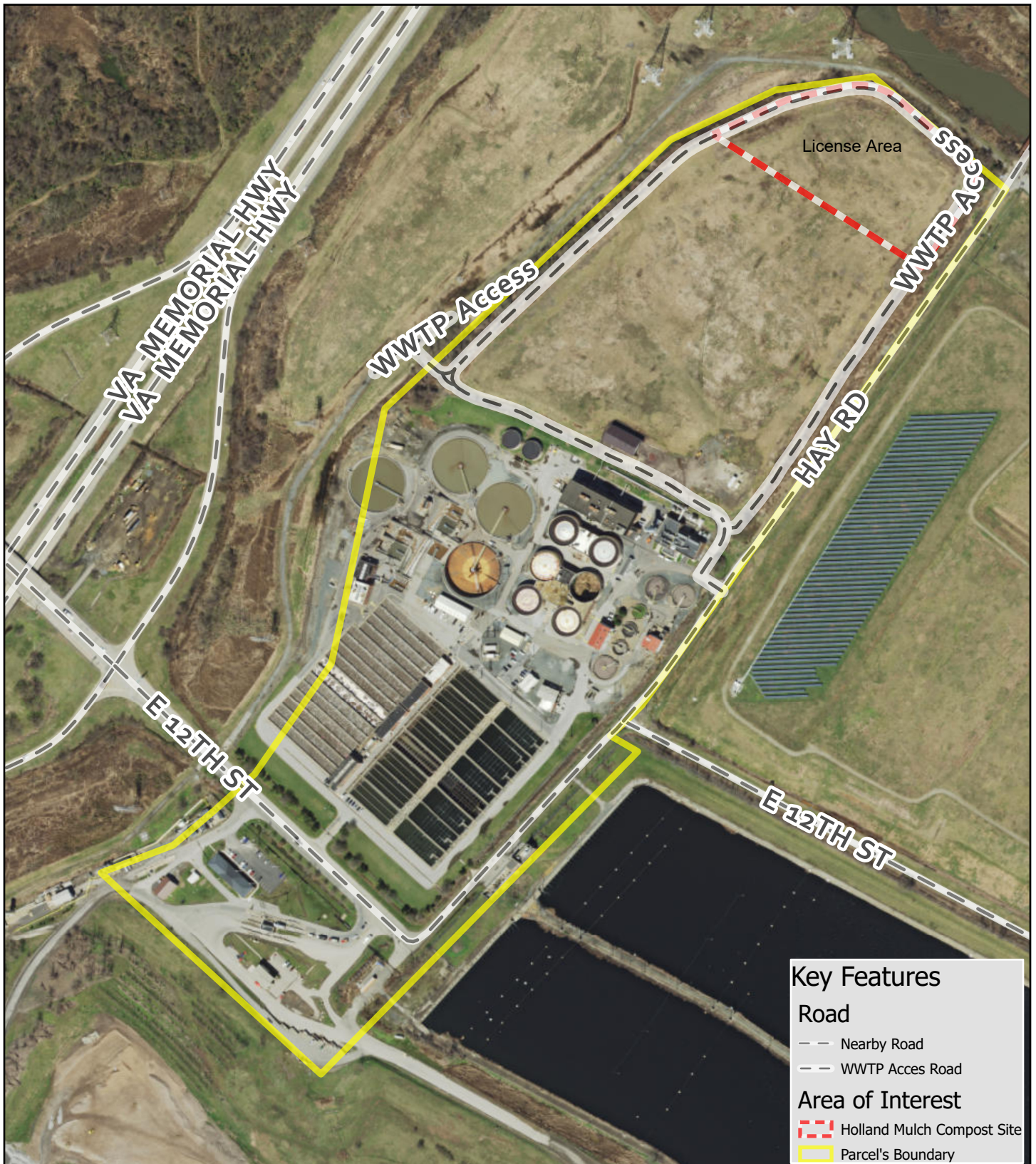
By: _____

Name:

Title:

W0111337

EXHIBIT A
LICENSE AREA



Key Features

Road

- Nearby Road
- WWTP Acces Road

Area of Interest

- Holland Mulch Compost Site
- Parcel's Boundary



Holland Compost Site

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri

2020

Coordinate System: NAD 1983 StatePlane Delaware FIPS 0700 Feet

