

**DNREC Polly Drummond Hill Road Community Yard Waste Drop-Off Site  
Operation and Maintenance Agreement**

**Contract# NAT\_13026\_YWSITPOLLY**

This Agreement ("Agreement") is entered into as of December 16, 2013 and will end on December 15, 2015, by and between the State of Delaware, Department of Natural Resources and Environmental Control, Division of Waste and Hazardous Substances, ("DELAWARE"), and ZEAGER BROS., INC., a Pennsylvania corporation, with offices at: 4000 E. Harrisburg Pike, Middletown, Pennsylvania 17057.

WHEREAS, DELAWARE desires to obtain certain services to aid in the implementation of yard waste management; and

WHEREAS, ZEAGER BROS., INC. desires to provide such services to DELAWARE on the terms set forth below;

WHEREAS, DELAWARE and ZEAGER BROS., INC. represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, DELAWARE and ZEAGER BROS., INC. agree as follows:

**1. Services.**

1.1 ZEAGER BROS., INC. shall perform for DELAWARE the services specified in the Appendices to this Agreement, attached hereto and made a part hereof as Appendix A and Exhibit A.

1.2 DELAWARE may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by ZEAGER BROS., INC. shall be furnished without the written authorization of DELAWARE. When DELAWARE desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify ZEAGER BROS., INC., who shall then submit to DELAWARE a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by ZEAGER BROS., INC. for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.3 ZEAGER BROS., INC. will not be required to make changes to its scope of work that result in ZEAGER BROS., INC.'s costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

## **2. Payment for Services and Expenses.**

2.1 The term of the initial contract shall be from December 16, 2013 through December 15, 2015.

2.2 DELAWARE will pay ZEAGER BROS., INC. for the performance of services described in Appendix A, Scope of Work. The reimbursement will be paid in accordance with the payment schedule attached hereto as part of Appendix A.

2.3 DELAWARE's obligation to pay ZEAGER BROS., INC. for the performance of services described in Appendix A, Scope of Work will not exceed the fixed reimbursement amount of **\$480,000**. It is expressly understood that the work defined in the appendices to this Agreement must be completed by ZEAGER BROS., INC. and it shall be ZEAGER BROS., INC.'s responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed reimbursement amount. DELAWARE's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in DELAWARE's purchase order(s) to ZEAGER BROS., INC.

2.4 ZEAGER BROS., INC. shall submit invoices to DELAWARE in sufficient detail to support the services provided during the reimbursement period which is from the start of this contract until December 15, 2015. DELAWARE agrees to pay those invoices within thirty (30) days of receipt. In the event DELAWARE disputes a portion of an invoice, DELAWARE agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide ZEAGER BROS., INC. a detailed statement of DELAWARE's position on the disputed portion of the invoice within thirty (30) days of receipt. DELAWARE's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle ZEAGER BROS., INC. to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to ZEAGER BROS., INC., (4000 E. Harrisburg Pike, Middletown, Pennsylvania 17057)

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by ZEAGER BROS., INC. If an Appendix

specifically provides for expense reimbursement, ZEAGER BROS., INC. shall be reimbursed only for the defined reimbursements included in Appendix A incurred by ZEAGER BROS., INC. in the performance of the services.

2.6 DELAWARE is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 DELAWARE shall subtract from any payment made to ZEAGER BROS., INC. all damages, costs and expenses caused by ZEAGER BROS., INC.'s negligence, resulting from or arising out of errors or omissions in ZEAGER BROS., INC.'s services, which have not been previously paid to ZEAGER BROS., INC.

2.8 Invoices shall be submitted to:  
Delaware Department of Natural Resources and Environmental Control  
Division of Waste and Hazardous Substances  
89 Kings Highway  
Dover, DE 19901  
Attn: Debra Nielsen

### **3. Responsibilities of ZEAGER BROS., INC.**

3.1 ZEAGER BROS., INC. shall be responsible for the quality, timely completion, and coordination of all services furnished by ZEAGER BROS., INC., its subcontractors and their principals, officers, employees and agents under this Agreement. In performing the specified services, ZEAGER BROS., INC. shall follow practices consistent with generally accepted standards in the mulch industry and those specified herein. If any service, product or deliverable furnished pursuant to this Agreement does not conform to those standards, ZEAGER BROS., INC. shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to such standards. ZEAGER BROS., INC. shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DELAWARE caused by ZEAGER BROS., INC.'s failure to ensure compliance with the foregoing standards.

3.2 It shall be the duty of ZEAGER BROS., INC. to assure that all services are properly rendered and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations.

3.3 Permitted or required approval by DELAWARE of any products or services furnished by ZEAGER BROS., INC. shall not in any way relieve ZEAGER BROS., INC. of responsibility for the adequacy of its work. DELAWARE's review, approval, acceptance, or payment for any of ZEAGER BROS., INC.'s services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and ZEAGER BROS., INC. shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DELAWARE caused by ZEAGER BROS., INC.'s performance or failure to perform under this Agreement.

3.4 ZEAGER BROS., INC. shall furnish to DELAWARE's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.5 ZEAGER BROS., INC. agrees that its officers and employees will cooperate with DELAWARE in the performance of services under this Agreement and will be available for consultation with DELAWARE at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.6 ZEAGER BROS., INC. has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by DELAWARE or any other political subdivision of DELAWARE.

3.7 ZEAGER BROS., INC. will not use DELAWARE's name, either express or implied, in any of its advertising or sales materials without DELAWARE's express written consent.

3.8 The rights and remedies of DELAWARE provided for in this Agreement are in addition to any other rights and remedies provided by law.

#### **4. Time Schedule.**

4.1 A project schedule is included in Appendix A.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by DELAWARE.

4.3 In the event that ZEAGER BROS., INC. fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by DELAWARE, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within

the time specified in this Agreement or any extensions thereof, DELAWARE shall suspend the payments scheduled as set forth in Appendix A.

**5. State Responsibilities.**

5.1 In connection with ZEAGER BROS., INC.'s provision of the Services, DELAWARE shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 DELAWARE agrees that its officers and employees will cooperate with ZEAGER BROS., INC. in the performance of services under this Agreement and will be available for consultation with ZEAGER BROS., INC. at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by ZEAGER BROS., INC. under this Agreement shall be subject to review for compliance with the terms of this Agreement by DELAWARE's designated representatives. DELAWARE representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform ZEAGER BROS., INC. by written notice before the effective date of each such delegation.

5.4 The review comments of DELAWARE's designated representatives may be reported in writing as needed to ZEAGER BROS., INC. It is understood that DELAWARE's representatives' review comments do not relieve ZEAGER BROS., INC. from the responsibility for the adequacy of all services provided under this Agreement.

5.5 DELAWARE shall, without charge, furnish to or make available for examination or use by ZEAGER BROS., INC. as it may request, any data which DELAWARE has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

ZEAGER BROS., INC. shall return any original data provided by DELAWARE.

5.6 DELAWARE shall assist ZEAGER BROS., INC. in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by

this Agreement.

5.7 ZEAGER BROS., INC. will not be responsible for accuracy of information or data supplied by DELAWARE or other sources to the extent such information or data would be relied upon by a reasonably prudent ZEAGER BROS., INC. employee.

5.8 DELAWARE agrees not to use ZEAGER BROS., INC. name, either express or implied, in any of its advertising or sales materials. ZEAGER BROS., INC. reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

**6. Confidential Information.**

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

**7. Warranty.**

ZEAGER BROS., INC. warrants that its services will be performed in a good and workmanlike manner. ZEAGER BROS., INC. agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

**8. Indemnification; Limitation of Liability.**

ZEAGER BROS., INC. shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of ZEAGER BROS., INC., its agents or employees, or (B) ZEAGER BROS., INC. breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) ZEAGER BROS., INC. shall have been notified promptly in writing by DELAWARE of any notice of such claim; and (ii) ZEAGER BROS., INC. shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

**9. Employees.**

9.1 ZEAGER BROS., INC. has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by ZEAGER BROS., INC. in the performance of the services hereunder.

9.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent ZEAGER BROS., INC., directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 9.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent ZEAGER BROS., INC. and with which a party comes into direct contact in the course of the services.

**10. Independent Contractor.**

10.1 It is understood that in the performance of the services herein provided for, ZEAGER BROS., INC. shall be, and is, an independent contractor, and is not an agent or employee of DELAWARE and shall furnish such services in its own manner and method except as required by this Agreement. ZEAGER BROS., INC. shall be solely responsible for, and shall indemnify, defend and save DELAWARE harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

10.2 ZEAGER BROS., INC. acknowledges that ZEAGER BROS., INC. and any subcontractors, agents or employees employed by ZEAGER BROS., INC. shall not, under any circumstances, be considered employees of DELAWARE, and that they shall not be entitled to any of the benefits or rights afforded employees of DELAWARE, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. DELAWARE will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of DELAWARE or any of its officers, employees or other agents.

10.3 ZEAGER BROS., INC. shall be responsible for providing liability insurance for its personnel.

10.4 As an independent contractor, ZEAGER BROS., INC. has no authority to bind or commit DELAWARE. Nothing herein shall be deemed or construed to create a joint venture, partnership, and fiduciary or agency relationship between the parties for any purpose.

**11. Suspension.**

11.1 DELAWARE may suspend performance by ZEAGER BROS., INC. under this Agreement for such period of time as DELAWARE, at its sole discretion, may prescribe by providing written notice to ZEAGER BROS., INC. at least 30 working days prior to the date on which DELAWARE wishes to suspend. Upon such suspension, DELAWARE shall pay ZEAGER BROS., INC. its compensation, based on the percentage of the services provided until the effective date of suspension, less all previous payments. ZEAGER BROS., INC. shall not provide further services under this Agreement after the effective date of suspension until receipt of written notice from DELAWARE to resume performance.

11.2 In the event DELAWARE suspends performance by ZEAGER BROS., INC. for any cause other than the error or omission of ZEAGER BROS., INC., for an aggregate period in excess of 30 days, ZEAGER BROS., INC. shall be entitled to an equitable adjustment of the compensation payable to ZEAGER BROS., INC. under this Agreement to reimburse ZEAGER BROS., INC. for additional costs occasioned as a result of such suspension of performance by DELAWARE based on appropriated funds and approval by DELAWARE.

**12. Termination.**

12.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.



12.2 This Agreement may be terminated in whole or in part by DELAWARE for its convenience, but only after ZEAGER BROS., INC. is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with DELAWARE prior to termination.

12.3 If termination for default is effected by DELAWARE, DELAWARE will pay ZEAGER BROS., INC. that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to ZEAGER BROS., INC. at the time of termination may be adjusted to the extent of any additional costs occasioned to DELAWARE by reason of ZEAGER BROS., INC. default.
- c. Upon termination for default, DELAWARE may take over the work and prosecute the same to completion by agreement with another party or otherwise.

12.4 If after termination for failure of ZEAGER BROS., INC. to fulfill contractual obligations it is determined that ZEAGER BROS., INC. has not so failed, the termination shall be deemed to have been effected for the convenience of DELAWARE.

12.5 The rights and remedies of DELAWARE and ZEAGER BROS., INC. provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

12.6 Gratuities.

- a. DELAWARE may, by written notice to ZEAGER BROS., INC., terminate this Agreement if it is found after notice and hearing by DELAWARE that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by ZEAGER BROS., INC. or any agent or representative of ZEAGER BROS., INC. to any officer or employee of DELAWARE with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

- b. In the event this Agreement is terminated as provided in 12.6.b hereof, DELAWARE shall be entitled to pursue the same remedies against ZEAGER BROS., INC. it could pursue in the event of a breach of this Agreement by ZEAGER BROS., INC.
- c. The rights and remedies of DELAWARE provided in Section 12.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**13. Severability.**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**14. Assignment; Subcontracts.**

14.1 Services specified by this Agreement shall not be subcontracted by ZEAGER BROS., INC., without prior written approval of DELAWARE.

14.2 Approval by DELAWARE of ZEAGER BROS., INC. request to subcontract or acceptance of or payment for subcontracted work by DELAWARE shall not in any way relieve ZEAGER BROS., INC. of responsibility for the adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

14.3 ZEAGER BROS., INC. shall be and remain liable for all damages to DELAWARE caused by negligent performance or non-performance of work under this Agreement by ZEAGER BROS., INC., its subcontractor or its sub-subcontractor.

14.4 The compensation due shall not be affected by DELAWARE's approval of ZEAGER BROS., INC., request to subcontract.

**15. Force Majeure.**

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

**16. Non-Appropriation of Funds.**

16.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated DELAWARE may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

16.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and DELAWARE's obligations under it shall be extinguished at the end of the fiscal year in which DELAWARE fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

**17. State of Delaware Business License.**

ZEAGER BROS., INC. and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

**18. Complete Agreement.**

18.1 This agreement and its Appendices shall constitute the entire agreement between DELAWARE and ZEAGER BROS., INC. with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

18.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of

such provision shall be curtailed only to the extent necessary to conform to the law.

18.3 ZEAGER BROS., INC. may not order any product requiring a purchase order prior to DELAWARE's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

**19. Miscellaneous Provisions.**

19.1 In performance of this Agreement, ZEAGER BROS., INC. shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. ZEAGER BROS., INC. shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

19.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

19.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

19.4 ZEAGER BROS., INC. covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. ZEAGER BROS., INC. further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

19.5 ZEAGER BROS., INC. acknowledges that DELAWARE has an obligation to ensure that public funds are not used to subsidize private discrimination. ZEAGER BROS., INC. recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, DELAWARE may declare ZEAGER BROS., INC. in breach of the Agreement, terminate the Agreement, and designate ZEAGER

BROS., INC. as non-responsible.

19.6 ZEAGER BROS., INC. warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, DELAWARE shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

19.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

19.8 ZEAGER BROS., INC. shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of DELAWARE may inspect or audit ZEAGER BROS., INC. performance and records pertaining to this Agreement at ZEAGER BROS., INC. business office during normal business hours.

## **20. Insurance.**

20.1 ZEAGER BROS., INC. shall maintain the following insurance during the term of this Agreement:

- a. Worker's Compensation as required by law, **and**
- b. General liability Insurance: bodily injury \$300,000 per occurrence; property damage: \$100,000 per occurrence, **and**
- c. Automobile liability: \$350,000 combined bodily injury and property damage per occurrence.
- d. ZEAGER BROS., INC. shall provide forty-five (45) days written notice of cancellation or material change of any policies.

20.2 Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows: ZEAGER BROS., INC.

20.3 In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

**21. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. ZEAGER BROS., INC. consents to jurisdiction venue in the State of Delaware.

**22. Notices.**

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

**TO DELAWARE:**

Department of Natural Resources and Environmental Control  
Division of Waste and Hazardous Substances  
89 Kings Highway  
Dover, DE 19901  
Attn: Debra Nielsen

**TO ZEAGER BROS., INC.:**

ZEAGER BROS., INC.  
4000 E. Harrisburg Pike  
Middletown, PA 17057  
Attn: Ernie Miller

**SIGNATURE PAGE TO FOLLOW**

STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

**Original on File**

Collin P. O'Mara, Secretary

STATE OF Delaware  
COUNTY OF Kent, to wit:

I, Casie R. Anthony, a Notary Public in and for said County and State, do certify that  
Collin P. O'Mara in his/her official capacity as Secretary has this day  
acknowledged the same before me in said County.

Given under my hand and seal of office seal this 17th day of December, 2013



**Original on File**

Notary Public

ZEAGER BROS., INC.

**Original on File**

Ernie Miller, Corporate Secretary

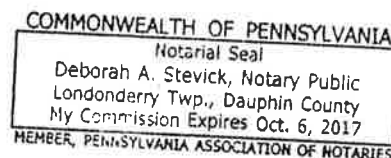
STATE OF Pennsylvania  
COUNTY OF Dauphin, to wit:

I, Deborah A. Stevick, a Notary Public in and for said County and State, do certify that  
Ernie Miller in his/her official capacity as Corporate Secretary has this day  
acknowledged the same before me in said County.

Given under my hand and seal of office seal this 3rd day of December, 2013.

**Original on File**

Notary Public







## **APPENDIX A**

### **SCOPE OF WORK**

#### **DNREC Polly Drummond Hill Road Community Yard Waste Drop Off Site**

##### **Operation and Maintenance Agreement**

As set forth in this Scope of Work, ZEAGER BROS., INC. shall provide the following services at the Delaware Department of Natural Resources and Environmental Control (DNREC) Polly Drummond Hill Road Yard Waste Drop-off Site (located on the west side of Polly Drummond Hill Road just across from the entrance to the Judge Morris Estate, as shown in Exhibit A):

1. Operate and maintain the site to allow residents of the State of Delaware to drop off yard waste from their own properties free of charge from December 16, 2013 through December 15, 2015.
2. Advise site users of proper site usage.
3. Adequately maintain the site to safely accommodate the flow of traffic entering, using and exiting the site. ZEAGER BROS., INC. shall notify DELAWARE in writing 30 days in advance, and receive approval from DELAWARE, in the event that they wish to make any physical alterations to the site.
4. Maintain the site's perimeter, yard waste drop off area, and entrance and exit road inside the gate. The site's surface, including the entrance road, shall be maintained so as to prevent rutting and creation of mires and must be sufficiently level and firm to prevent site users from getting bogged down or stuck.
5. Clear the yard waste drop-off area of yard waste at a frequency that allows safe and reasonable entrance, usage, and exit from the site. This shall be accomplished by removing the yard waste from the site or aggregating the yard waste into piles such that it does not interfere with the public's ability to safely access, use, and exit the site. In the event the ZEAGER BROS., INC. fails to clear the site of yard waste as needed for public use, DELAWARE shall arrange for clearing and ZEAGER BROS., INC. shall reimburse DELAWARE within 30 days of billing for the cost of clearing not less than \$500 per site clearing.
6. Not less than every three months, remove aggregated yard waste from the site for an appropriate use at an alternate location or grind the yard waste into mulch on site. ZEAGER BROS., INC. shall notify DELAWARE at least 10 days in advance when a grinding event is required. ZEAGER BROS., INC. shall remove mulch that is produced at the yard waste site so that it does not interfere with the public's ability to safely access, use, and exit the site. In the event ZEAGER BROS., INC. fails to clear the site of yard waste or mulch as needed for public use in DELAWARE's sole discretion, DELAWARE shall arrange for removal and ZEAGER BROS., INC. shall reimburse DELAWARE within 30 days of billing for the cost of removal, or DELAWARE shall deduct an equal amount from subsequent payment(s) to ZEAGER BROS., INC. All yard waste and mulch stockpiled on site shall be properly maintained to prevent odors and conditions which result in spontaneous combustion or otherwise result in a fire hazard.
7. Submit reports on quantities of all incoming material, quantities of all outgoing material, site maintenance activities, and site operations to DELAWARE upon DELAWARE's request.

8. If, for safety reasons, it is necessary to close the site during grinding events or for any other reason, residents shall be given a minimum of 10 days' notice of the closure and expected duration of closure. DELAWARE shall also be notified of closures at least 10 days in advance, and work with the ZEAGER BROS., INC. on issuing a press release to notify the public.
9. Provide for removal of all non-yard waste debris from the yard waste site and properly recycle or dispose of it in a timely fashion. ZEAGER BROS., INC. may be able to dispose of non-yard waste debris through the cooperative arrangement between DELAWARE and the Delaware Solid Waste Authority (DSWA).
10. ZEAGER BROS., INC. is responsible for:
  - a. Following all laws, regulations, and ordinances;
  - b. Obtaining any necessary permits or approvals; and
  - c. Coordinating with the landowner as necessary to obtain any permits or approvals.
11. The Polly Drummond Hill Road yard waste drop-off site is located on land owned by the Delaware Division of Parks and Recreation, and, as such, ZEAGER BROS., INC. shall not interfere with the recreational use, agricultural activity, or management of the property without the permission of the Division of Parks and Recreation.
12. ZEAGER BROS., INC. shall be responsible for providing and maintaining a barrier between the yard waste drop-off site and the remainder of the property, at a location defined by DNREC.
13. Ensure that signage provided by DELAWARE, indicating appropriate contact information and hours of site operation, remains posted and clearly visible at all times.
14. Manage yard waste, mulch, and non-yard waste debris piles in a way that allows optimum coverage of the yard waste site by DELAWARE'S enforcement cameras.
15. Site shall be open for yard waste drop-off seven days a week from 8:30 a.m. to 4:30 p.m. (except holidays or extenuating circumstances, or closure if needed for grinding events).

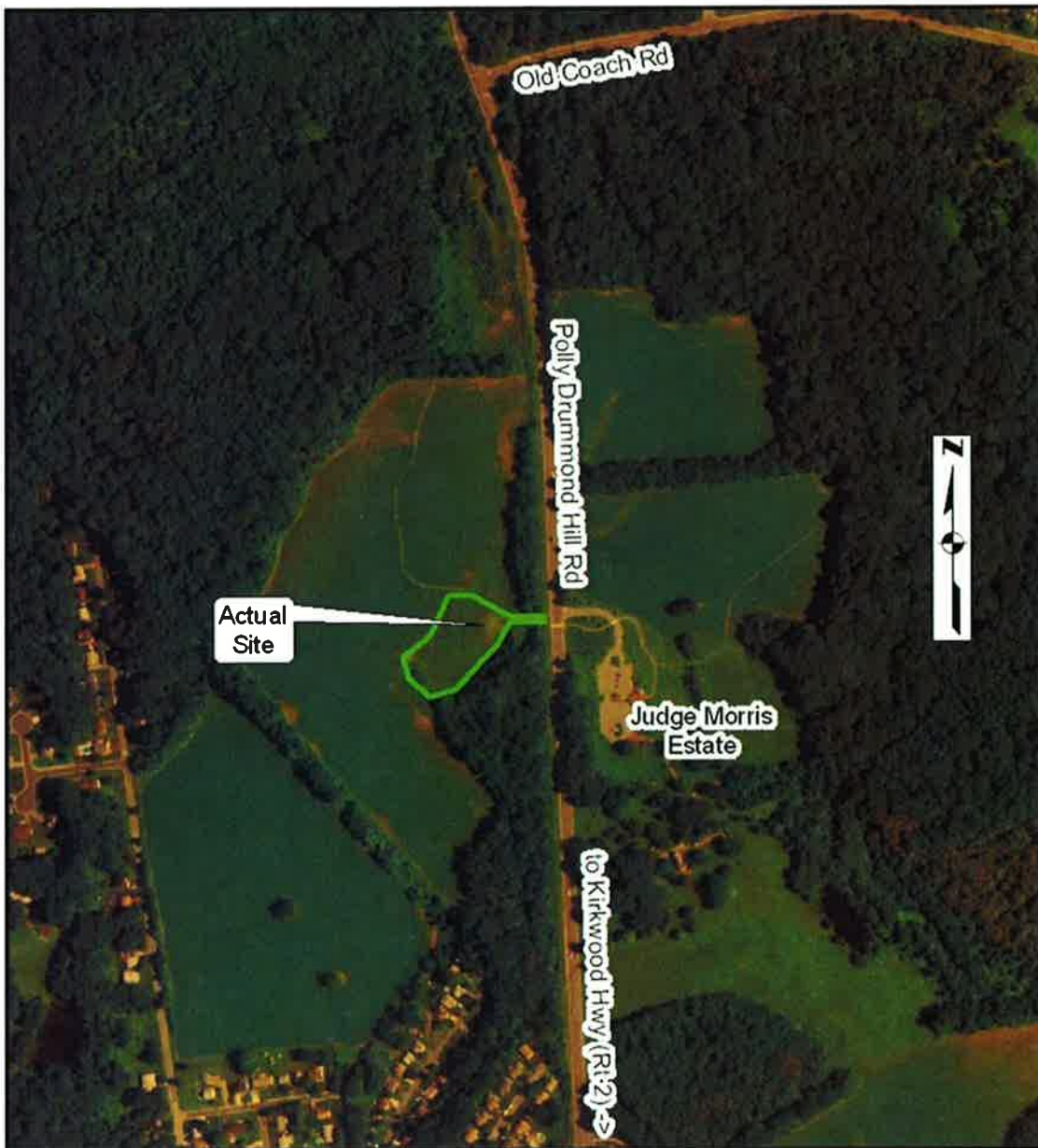
#### 16. PROJECT SCHEDULE

- a. ZEAGER BROS., INC. shall clear the site entrance and push back the yard waste at the site at a frequency determined by DELAWARE.
- b. Yard waste grinding shall take place as needed, and DELAWARE shall be notified at least 10 days in advance of the actual start date of each grinding event.
- c. All grinding shall be done between 8:00 a.m. and 5:00 p.m. Monday through Friday. All push-backs shall be done between 8:00 a.m. and 5:00 p.m. Monday through Friday, and between 12:00 noon and 5:00 p.m. on Saturday.

#### 17. PAYMENT SCHEDULE

- a. DELAWARE's obligation to pay ZEAGER BROS., INC. for the performance of services will not exceed the fixed reimbursement amount of **\$480,000**. DELAWARE shall pay ZEAGER BROS., INC. \$20 for each ton of mulch produced and removed, or each ton of unprocessed yard waste removed, to DELAWARE'S satisfaction. No additional costs shall be reimbursed by DELAWARE as part of this agreement.

## Exhibit A



The Polly Drummond Hill Community Yard Waste Demonstration Site is located on Polly Drummond Hill Road east of Newark. Polly Drummond Hill Road is between Kirkwood Highway (Rt. 2) and Paper Mill Road (Rt. 72). The site entrance is on the west side of Polly Drummond Hill Road just across from the entrance to the Judge Morris Estate.

