REGULAR COUNCIL MEETING
AGENDA

JULY 27, 2015 - 7:30 P.M.

CITY HALL COUNCIL CHAMBERS
15 LOOCKERMAN PLAZA
DOVER, DELAWARE

OPEN FORUM - 15 MINUTES PRIOR TO OFFICIAL MEETING (7:15 P.M.)

THE "OPEN FORUM" SEGMENT IS PROVIDED TO EXTEND THE OPPORTUNITY TO THE GENERAL PUBLIC TO SHARE THEIR QUESTIONS, THOUGHTS, COMMENTS, CONCERNS, AND COMPLAINTS. DISCUSSION OF ANY ITEM APPEARING ON THE AGENDA AS A PUBLIC HEARING IS PROHIBITED DURING THE OPEN FORUM AS AN OPPORTUNITY WILL BE PROVIDED DURING CONSIDERATION OF THAT ITEM. CITIZEN COMMENTS ARE LIMITED TO THREE (3) MINUTES. COUNCIL IS PROHIBITED FROM TAKING ACTION SINCE THEY ARE NOT IN OFFICIAL SESSION; HOWEVER, THEY MAY SCHEDULE SUCH ITEMS AS REGULAR AGENDA ITEMS AND ACT UPON THEM IN THE FUTURE.

INVOCATION BY CHAPLAIN WALLACE R. DIXON

PLEDGE OF ALLEGIANCE LED BY COUNCILMAN ANDERSON

AGENDA ADDITIONS/DELETIONS

* **CONSENT AGENDA**

THOSE ITEMS ON THE COUNCIL AGENDA WHICH ARE CONSIDERED ROUTINE AND NON-CONTROVERSIAL SHALL BE MARKED WITH AN ASTERISK (*) AND WILL BE ACTED UPON BY A SINGLE ROLL CALL VOTE OF THE COUNCIL. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS UNLESS A MEMBER OF COUNCIL SO REQUESTS, IN WHICH EVENT THE MATTER SHALL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED A SEPARATE ITEM.

* 1. **ADOPTION OF MINUTES - REGULAR COUNCIL MEETING OF JULY 13, 2015**

2. **REMARKS BY LEVY COURT PRESIDENT P. BROOKS BANTA**

3. **PRESENTATION BY LUTHERAN SENIOR SERVICES OF DOVER, INC. - PAYMENT IN LIEU OF TAXES (PILOT)**

4. **RECOGNITION OF SERVICE - GERALD STREET - DOWNTOWN DEVELOPMENT CORPORATION - APRIL 1990 - AUGUST 2008 AND DOWNTOWN DOVER PARTNERSHIP - AUGUST 2008 - JUNE 2015**

5. PUBLIC HEARING - VIOLATION OF THE DANGEROUS BUILDING ORDINANCE - PROPERTY LOCATED AT 110 RUSTIC LANE, OWNED BY TAILILOU, LLC

(STAFF RECOMMENDS: 1) DECLARING THIS BUILDING AND ALL ACCESSORY STRUCTURES ON THIS PROPERTY DANGEROUS; 2) ORDERING THE PROPERTY REPAIRED OR DEMOLISHED BY AUGUST 27, 2015 BY THE OWNER OR EQUITY OWNER AT THEIR OWN RISK; 3) ORDERING THE BUILDING INSPECTOR TO CAUSE THE REPAIR OR DEMOLITION OF THE STRUCTURES IF NOT COMPLETED BY THE OWNER WITHIN 10 DAYS OF THE DATE ESTABLISHED BY CITY COUNCIL; 4) ORDERING THE CITY MANAGER WITH THE ASSISTANCE OF THE CITY SOLICITOR TO CAUSE THE COST OF REPAIRS OR DEMOLITION TO BE CHARGED AGAINST THE LAND ON WHICH THE BUILDING EXISTS AS A MUNICIPAL LIEN OR CAUSE SUCH COST TO BE ADDED TO THE TAX DUPLICATE AS AN ASSESSMENT, OR TO BE LEVIED AS A SPECIAL TAX, OR TO BE RECOVERED IN A SUIT AT LAW AGAINST THE OWNER.)

* **6. PARKS, RECREATION, AND COMMUNITY ENHANCEMENT COMMITTEE REPORT - JULY 13, 2015**

A. REVIEW OF REVISED ACTIVE RECREATION AREA PLAN - EDEN HILL FARM TRADITIONAL NEIGHBORHOOD DESIGN - RESIDENTIAL DISTRICT

(COMMITTEE RECOMMENDED APPROVAL OF REVISED ACTIVE RECREATION AREA PLAN, AS RECOMMENDED BY STAFF)

B. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM QUARTERLY UPDATE

(COMMITTEE ACTION NOT REQUIRED)

C. DRAFT RECREATION NEEDS ASSESSMENT

(COMMITTEE RECOMMENDED CONTINUED DISCUSSION OF THE RECREATION NEEDS ASSESSMENT AT THE NEXT MEETING)

D. STRATEGIC PLANNING AND GOAL SETTING (RESTORING CENTRAL DOVER STRATEGIC PLAN)

(COMMITTEE RECOMMENDED CONTINUED DISCUSSION OF THE RESTORING CENTRAL DOVER STRATEGIC PLAN AT THE NEXT MEETING)

E. DISCUSSION - COMMUNITY PARTNERSHIPS

(COMMITTEE ACTION NOT REQUIRED)

* **7. UTILITY COMMITTEE REPORT - JULY 13, 2015**

A. NORTH AMERICAN ENERGY SERVICES (NAES) AMENDED AND RESTATED OPERATING AGREEMENT

(COMMITTEE RECOMMENDED APPROVAL OF THE CONTRACT)

B. ANNUAL ENGINEERING CONSULTANT'S REPORT ON THE OPERATION AND MAINTENANCE (O & M) OF THE ELECTRIC SYSTEM - FISCAL YEAR 2014

(COMMITTEE RECOMMENDED ACCEPTANCE OF THE REPORT)

C. TEA/NAES REPORT (*MAY*)

(COMMITTEE RECOMMENDED ACCEPTANCE OF THE REPORT)

D. UPDATES

(COMMITTEE DEFERRED DUE TO TIME CONSTRAINTS)

8. LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE REPORT - JULY 13, 2015

* **A. FISCAL YEAR 2014/15 EDWARD BYRNE JUSTICE ASSISTANCE GRANT PROGRAM - POLICE VEHICLE COMPUTER/VIDEO TECHNOLOGY UPGRADES & SORT FIREARMS**

(COMMITTEE RECOMMENDED APPROVAL OF THE GRANT PROJECT, AS REQUESTED)

* **B. DISPOSAL OF EXCESS PROPERTY - SILVER LAKE DRIVE (EAST LAKE GARDENS)**

(COMMITTEE RECOMMENDED, PROVIDED LOCAL PROPERTY OWNERS ARE SURVEYED AND THERE ARE NO PROBLEMS, THAT A CERTAIN PORTION OF RIGHT-OF-WAY ADJACENT TO PROPERTY LOCATED AT 107 SILVER LAKE DRIVE IN THE EAST LAKE GARDENS SUBDIVISION, OWNED BY BRUCE AND DELLA PARHAM, BE DETERMINED TO BE EXCESS PROPERTY, AND THAT THE CITY MANAGER BE AUTHORIZED TO CONVEY THE EXCESS PROPERTY IN ACCORDANCE WITH EXCEPTION C OF THE PROCEDURES FOR SALE AND DISPOSITION OF REAL PROPERTY, AS RECOMMENDED BY STAFF)

* **C. TIMELINE FOR REVIEW OF FISCAL YEAR 2016/17 BUDGET**

(COMMITTEE RECOMMENDED THAT STAFF PROVIDE A PRELIMINARY FY17 BUDGET BETWEEN MARCH 15 AND MARCH 31, 2015, TO REVIEW EXPENSES)

D. PROPOSED AMENDMENTS TO THE CITY OF DOVER CODE OF ORDINANCES - CHAPTER 2 - ADMINISTRATION, ARTICLE IV - OFFICERS AND EMPLOYEES, DIVISION 4 - CONTROLLER/TREASURER AND DIVISION 5 - CITY CLERK; CHAPTER 54 - HEALTH AND SANITATION, ARTICLE I - IN GENERAL, SECTION 54-1 - HEALTH INSPECTOR GENERALLY; CHAPTER 82 - PLANNING, SECTION 82-2 - CITY PLANNER; AND CHAPTER 102 - TAXATION, ARTICLE I - IN GENERAL, SECTION 102-3 - ADMINISTRATIVE REPORTING. (TO MOVE DEPARTMENT REPORTING UNDER THE DIRECTION OF THE CITY MANAGER IN ACCORDANCE WITH COUNCIL ACTION OF MARCH 23, 2015 AND TO REMOVE ANNUAL APPOINTMENT REQUIREMENTS)

(COMMITTEE DEFERRED CONSIDERATION OF THIS ITEM AND RECOMMENDED SCHEDULING A SPECIAL MEETING, WITHOUT A TIME LIMIT, TO ALLOW FOR FURTHER DISCUSSION)

* **E. PROPOSED AMENDMENTS TO THE CITY OF DOVER CHARTER**

(COMMITTEE DEFERRED CONSIDERATION OF THIS ITEM AND RECOMMENDED SCHEDULING A SPECIAL MEETING, WITHOUT A TIME LIMIT, TO ALLOW FOR FURTHER DISCUSSION)

9. UTILITY COMMITTEE REPORT - JULY 27, 2015

A. CONTRACT AWARD - NORTH AMERICAN ENERGY SERVICES (NAES) AMENDED AND RESTATED OPERATING AGREEMENT

(STAFF RECOMMENDS AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDED AND RESTATED OPERATION AND MAINTENANCE AGREEMENT DATED JULY 1, 2015 BETWEEN THE CITY OF DOVER AND NORTH AMERICAN ENERGY SERVICES (NAES))

* **10. QUARTERLY REVENUE REPORT**

* **11. APPOINTMENTS RECOMMENDED BY COUNCIL PRESIDENT SLAVIN - HEALTH INSURANCE COST RESEARCH AD HOC COMMITTEE**

A. COUNCILMAN SCOTT W. COLE
B. COUNCILMAN WILLIAM F. HARE
C. MAYOR ROBIN R. CHRISTIANSEN
D. SCOTT KOENIG, CITY MANAGER
E. DONNA MITCHELL, CONTROLLER/TREASURER
F. KIM HAWKINS, HUMAN RESOURCES DIRECTOR

* **12. APPOINTMENTS/REAPPOINTMENTS - RECOMMENDED BY MAYOR CHRISTIANSEN**

A. APPOINTMENT - DOVER HOUSING AUTHORITY - MARK HARMON - SIX (6) YEAR TERM TO BEGIN AUGUST 15, 2015 AND TO EXPIRE AUGUST 15, 2021 (TO FILL THE EXPIRING TERM OF RAYMOND L. PAYLOR)

B. REAPPOINTMENT - ETHICS COMMISSION - GARY COY - FIVE (5) YEAR TERM TO EXPIRE JULY 31, 2020

C. REAPPOINTMENT - PUBLIC ADVISORY COMMITTEE OF THE DOVER-KENT COUNTY MPO - JONATHAN CONTANT - TWO (2) YEAR TERM TO EXPIRE JULY 2017

13. PURCHASE POWER AGREEMENT (CAPACITY) - CALPINE ENERGY SERVICES, L.P.

(STAFF RECOMMENDS AUTHORIZING THE CITY MANAGER TO EXECUTE THE MASTER POWER PURCHASE AND SALE AGREEMENT AS WELL AS OTHER DOCUMENTS REQUIRED TO COMPLETE THE PURCHASE OF 40 MW OF UNFORCED CAPACITY OVER THE PROPOSED TERM)

14. OVERVIEW OF STORMWATER SURVEY

15. COUNCIL MEMBERS' ANNOUNCEMENTS

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REGULAR COUNCIL MEETING

The Regular Council Meeting was held on July 13, 2015 at 7:30 p.m. with Council President Slavin presiding. Council members present were Mr. Anderson, Mr. Sudler, Mr. Neil, Mr. Lewis, Mr. Hosfelt, Mr. Hare, and Mr. Hutchison. Mr. Cole was absent.

Council staff members present were Deputy Police Chief Mailey, Mrs. Mitchell, Mrs. Townshend, Second Assistant Fire Chief Whitt, Mr. Koenig, City Solicitor Rodriguez, and Mrs. McDowell. Mayor Christiansen was absent.

OPEN FORUM

The Open Forum was held at 7:15 p.m., prior to commencement of the Official Council Meeting. Council President Slavin declared the Open Forum in session and reminded those present that Council was not in official session and could not take formal action.

Ms. Yolanda Bouyer-Bello, 1160 School Street, Houston, Delaware, addressed members regarding housing issues she experienced while living at Autumn Run apartments. Council President Slavin advised Ms. Bouyer-Bello that the City of Dover had no jurisdiction over Autumn Run apartments because they are just outside the City limits. He advised her that her concerns would be relayed to the County, which does have jurisdiction.

Ms. Faye White, 101 Babb Drive, noting that the Open Forum segment of the City Council meetings starts at 7:15 p.m. and the meeting is not televised until 7:30 p.m., requested that the City begin televising the Open Forum segment of the meetings. Council President Slavin stated that the decision not to televise the Open Forum segment of the meeting was made by a previous Council many years ago and suggested that the request could be considered by the Legislative, Finance, and Administration Committee.

The invocation was given by Bishop Thomas L. Holsey, followed by the Pledge of Allegiance.

AGENDA ADDITIONS/DELETIONS

Mr. Hutchison moved for approval of the agenda, seconded by Mr. Sudler and unanimously carried.

Mr. Hare moved for approval of the Consent Agenda, seconded by Mr. Hosfelt and carried by a unanimous roll call vote (Cole absent).

ADOPTION OF MINUTES - REGULAR COUNCIL MEETING OF JUNE 22, 2015

The Minutes of the Regular Council Meeting of June 22, 2015 were unanimously approved by motion of Mr. Hare, seconded by Mr. Hosfelt and bore the written approval of Mayor Christiansen.

PUBLIC HEARING - VIOLATION OF THE DANGEROUS BUILDING ORDINANCE - PROPERTY LOCATED AT 200 NORTH WEST STREET, OWNED BY MARY LOU BASHORE

A public hearing was duly advertised for this time and place to consider a violation of the Dangerous Building Ordinance at 200 North West Street, owned by Mary Lou Bashore.

Mrs. Ann Marie Townshend, Director of Planning and Community Development, explained that the property is a two (2) story, wood-framed single family home. The house has been vacant since January 11, 2013, and is registered with the City as a vacant building. The residential use is no longer permitted at this location, as the property is zoned M (Manufacturing). On January 15, 2014, the Board of Adjustment issued a variance to allow continued residential use. This variance expired as work did not commence and continue diligently within a year of the variance being granted. On May 7, 2014, staff from the Planning and Inspections Department condemned the home due to numerous code violations. The owner was ordered to board the property in May of 2014. Currently the home is still vacant, with no utilities and numerous outstanding code violations.

Mrs. Townshend reviewed a presentation depicting the condition of the structure ***(Exhibit #1)***.

Staff recommended that City Council take the following action for property located at 200 North West Street: 1) declare this building and all accessory structures on this property dangerous; 2) order the property repaired or demolished by August 13, 2015 by the owner or equity owner at their own risk; 3) order the Building Inspector to cause the demolition of the structures if not completed by the owner within 10 days of the date established by City Council; and 4) order the City Manager, with the assistance of the City Solicitor, to cause the cost of repairs or demolition to be charged against the land on which the building exists as a municipal lien or cause such cost to be added to the tax duplicate as an assessment, or to be levied as a special tax, or to be recovered in a suit at law against the owner.

Mr. Hare, noting that the utilities were terminated in 2008, asked why something had not been done regarding the property between 2008 and 2014. Responding, Mrs. Townshend stated that it was not until an inspector was assigned to enforcement in 2012 that the City began aggressively enforcing the vacant building ordinance. She advised that staff had the property boarded and were monitoring it; however, they had focused on bringing forward properties that were in much worse condition than this property.

Responding to Mr. Sudler, Mrs. Townshend stated that she had not spoken with the owner, Mrs. Bashore, in several months; however, Mr. Tim Taraila, Inspector III, had spoken with her the previous week. Mrs. Townshend stated that she was not aware of the content of that conversation.

Council President Slavin declared the public hearing open.

Mrs. Mary Lou Bashore stated that she and her husband, John Bashore, owned the house until he unexpectedly died on August 24, 2014. She noted that at the time of his death her husband was in the process of restoring the house, which would have cost a lot less than hiring someone to do the work. Mrs. Bashore advised that her sons had tried their best to restore the house; however, they had to stop after spending $10,000 on the renovation.

Mrs. Bashore indicated that she is handling other properties that her husband owned in Chestertown and Elkton, Maryland. She stated that the properties that he owned in Dover are rented and bringing in an income. Mrs. Bashore noted that she is also maintaining the business that he owned, which is a 24-hour answering service for doctors.

Mrs. Bashore stated that she put the house at 200 North West Street up for sale when she realized that she did not have the finances to continue with the restoration. She noted that there are approximately seven (7) people who are interested in the house and that she has a signed contract with someone who wants to buy it and restore it.

Mrs. Bashore stated that she was not aware that it could not be restored and made a residential property. She noted that the person that wants to buy it is willing to start working on it and have the renovations done. Mrs. Bashore indicated that it would be a terrible waste to have the house torn down because a lot of work had been done inside. She indicated that it had been totally gutted and was ready for the drywall, and the electric had been installed and just had to be wired. Mrs. Bashore stated that it is going to be like a new house when it is finished.

Mrs. Bashore stated that her husband really had not wanted to see this house torn down, and if there was anything she could do to keep that from happening, she would like to. She requested an extension of 60 days to apply for the variance to allow it to be a residential property.

Responding to Mr. Anderson, Mrs. Townshend stated that the next application deadline for the Board of Adjustment is the second Friday in August and that application would go to the Board the third week in September.

Mr. Hare asked if the house was ever residentially zoned. Responding, Mrs. Townshend stated that she had not researched that far back; however, a lot of that area was developed before zoning. She noted that the west side of the street between the street and the railroad tracks is all industrial and the east side of the street is residential.

Mr. Hare asked if the property could be grandfathered. Mrs. Townshend advised that the zoning ordinance allows for a non-conforming use to continue as long as it remains consistently used for that use and does not discontinue for a period of more than one (1) year. She noted that the utilities were disconnected in 2008, and it had been vacant since then. The Board of Adjustment granted a variance on January 15, 2014; however, the variance had expired and the building permit cannot be extended for that reason.

Mrs. Townshend advised members that a use variance has a higher legal test than other variances and she could not make any assurances as to whether or not the Board of Adjustment would grant a variance for the residential use to continue.

Responding to Mr. Hosfelt, Mrs. Townshend stated that the pictures of the exterior of the house were taken in the last week or so. Mr. Hosfelt stated that he drove by this property the day before and thought the pictures actually did the house justice compared with what he saw. He noted that if he lived in that neighborhood, he would be upset if this house was next to or across the street from his property. Mr. Hosfelt stated that if it had been in this condition since 2008 and something had not been done about it, it would be very upsetting to him as a resident of that area.

Mr. Rodney McKenzie, 725 Bacon Avenue, stated that he had a contract with Mrs. Bashore to purchase the property, pending the outcome of the hearing. He advised that he would like to begin work as soon as possible to do everything that is necessary to restore the home and make it a beautiful residence for another homeowner.

In response to Mr. Neil, Mr. Mackenzie stated that this would not be his residence but an investment property that he intended to fix up and sell or rent. He indicated that he would probably put it on the market for sale first, but if a buyer was not found, he had tenants who were ready to rent.

Responding to Mr. Neil as to how many houses he has for sale or rent, Mr. Mackenzie advised members that he works throughout the County buying houses, fixing and restoring them, and selling them and has a staff who is proficient in this. He indicated that they usually work on one (1) or two (2) such houses per month.

Mr. Slavin cautioned that whatever action Council takes has no bearing on what the Board of Adjustment may or may not do vis-a-vis the variance. If Mr. Mackenzie were granted extra time and began the work, it would be at his own risk because the Board of Variance would then have to rule on this matter.

This was confirmed by Mrs. Townshend, who stated that a permit cannot be issued for residential renovations until the Board of Adjustment takes action because the building codes relating to restoration as a commercial building are different than those for a residential building.

In response to Mr. Sudler, Mr. Mackenzie stated that he had not considered the possibility of restoring the building as a commercial building, but this could be considered.

Mr. Neil inquired if the ground could be sold for commercial purposes if the building were torn down. Responding, Mrs. Townshend stated that the property is zoned as manufacturing. It was her belief that a variance was granted previously because it is a very small property, and it would be very difficult to establish a new manufacturing use on it. Mrs. Townshend advised members that there are a lot of challenges associated with the property due to its size and zoning, noting that it is surrounded by industrial uses on two (2) sides. She indicated that, in theory, it could be developed under the manufacturing zone, but there would probably be very few uses that would really fit on the property once size is taken into account.

In response to Mr. Neil as to whether another residence could be built there with a variance if the building were torn down, Mrs. Townshend stated that this could be done with a use variance; however, the legal standard for a use variance is very difficult to meet. To her knowledge, the use variance granted for this property was the only one that had been granted since she began service with the City.

At the request of Mr. Sudler, Mrs. Townshend explained that a use variance allows a use that is not permitted by the zoning ordinance.

Mr. Hosfelt noted that Cecil Street extended is on the south side of the house and is currently a dirt lane. He inquired if the City would be responsible for paving and dedicating that roadway if the variance was approved and the house became a residence.

Mr. Scott Koenig, City Manager, advised members that this is a dedicated right-of-way and discussion had been held about paving at least a portion of it. He indicated that this would be a substandard pavement because it would not be the width of a normal road and would not have a curb,

and this roadway is technically an unimproved right-of-way that exists within the City. Mr. Koenig stated that there had been discussion about paving a 15-foot-wide swath for access and egress. It was his belief that the driveway for this house extends from that dirt/gravel road.

In response to Mr. Hare, Mr. Koenig confirmed that this unimproved road is used for access to Terrapin Recycling.

There being no one else present wishing to speak, Council President Slavin declared the public hearing closed.

Mr. Sudler moved to grant a 90-day extension to the property owner in order to go through the variance process. The motion was seconded by Mr. Anderson.

Mrs. Townshend stated that the pictures of the property reflect foundation issues and a structural engineering report may be needed. She indicated that this would be part of the permit submission.

For clarification, Mr. Slavin stated that the extension would be granted until 90 days from today's date. He indicated that the motion was made with the understanding that this would be enough time to go through the variance process.

The motion to grant a 90-day extension to the owner of the property located at 200 North West Street in order to go through the variance process carried by a roll call vote of seven (7) yes (Anderson, Sudler, Neil, Lewis, Hosfelt, and Slavin), one (1) no (Hutchison), and one (1) absent (Cole).

PUBLIC HEARING - VIOLATION OF THE DANGEROUS BUILDING ORDINANCE - PROPERTY LOCATED AT 311 NORTH GOVERNORS AVENUE, OWNED BY JEAN E. MACDONALD

A public hearing was duly advertised for this time and place to consider a violation of the Dangerous Building Ordinance at 311 North Governors Avenue, owned by Jean E. MacDonald. Mrs. Ann Marie Townshend, Director of Planning and Community Development, explained that the property is a two (2) story, wood-framed, single-family home. The house has been vacant since April 1, 2014, and is registered with the City as a vacant building. On April 3, 2014, staff from the Planning and Inspections Department condemned the home due to hoarding conditions within the home that are causing an excessive fire load to the structural members of the home. There are weak/loose floors around the rear door, laundry room and bathroom. The owner was ordered to obtain a structural engineer's report and to remove items causing the excessive load. Currently the home is still vacant, with no utilities and numerous outstanding code violations.

Mrs. Townshend reviewed a presentation depicting the condition of the structure ***(Exhibit #2)***.

Staff recommended that City Council take the following action for property located at 311 North Governors Avenue: 1) declare this building and all accessory structures on this property dangerous; 2) order the property repaired or demolished by August 13, 2015 by the owner or equity owner at their own risk; 3) order the Building Inspector to cause the repair or demolition of the structures if

not completed by the owner within 10 days of the date established by City Council; and 4) order the City Manager, with the assistance of the City Solicitor, to cause the cost of repairs or demolition to be charged against the land on which the building exists as a municipal lien or cause such cost to be added to the tax duplicate as an assessment, or to be levied as a special tax, or to be recovered in a suit at law against the owner.

Responding to Mr. Hosfelt, Mrs. Townshend advised that the red placard with the white X indicates to the Fire Department that there are structural concerns, the property should not be inhabited, and they should use caution if responding to that property.

Mr. Lewis asked if there had been any contact with the owner. Responding, Mrs. Townshend stated that there had been contact and it was her understanding that the owner is currently out of state.

In response to Mr. Lewis, Mrs. Townshend stated that she thought the taxes were being paid on this property and she did not believe they were delinquent.

Mr. Anderson asked if Mrs. Townshend had any contact with the owner about their response to the structural engineer, noting that this was delaying the issuance of the building permit. Mrs. Townshend advised that staff had discussed their concerns regarding shifting, the weight, and structural stability. She stated that she believed this was the first application for a permit that they had received to address these violations. Mrs. Townshend advised that the structural violations cannot be addressed before the house is cleaned out.

Responding to Mr. Anderson, Mrs. Townshend stated that property owners frequently submit permit applications once they receive notice that their violations are scheduled for consideration by City Council.

Council President Slavin declared the public hearing open and, there being no one present wishing to speak, the public hearing was closed.

Mrs. Townshend, correcting her previous statement, advised that there is a structural engineering report that discusses the steps necessary to begin removing items from the house.

Responding to Mr. Hare, Mrs. Townshend stated that a building permit will be issued if there are outstanding violations and fines due if it is a dangerous building. She noted that they typically request payment at the time of permit issuance.

Mr. Sudler asked if the City has an engineer confirm that a building is dangerous or that the foundation is faulty. Responding, Mrs. Townshend advised that dangerous buildings are defined in the Dover Code of Ordinances and they do not necessarily have to be structurally unsound to be dangerous. She noted that in this case there are hoarding conditions, it is vacant, and it is a blight to the neighborhood. Mr. Sudler asked if there were any situation where an engineer would confirm the code enforcement officer's determination that a building is dangerous. Mrs. Townshend responded that the determination is made using the definition set forth in the Code. She stated that

they would require a structural engineering report if they observe conditions that lead them to believe there could be structural problems. Mrs. Townshend advised that the structural engineer's report would be required before they could issue a permit for repair.

Mr. Hosfelt moved that the structure located at 311 North Governors Avenue be declared a dangerous building and ordered that the property be repaired or demolished by August 13, 2015, in accordance with the process recommended by staff. The motion was seconded by Mr. Hutchison and carried by a unanimous roll call vote (Cole absent).

DOVER HUMAN RELATIONS COMMISSION REPORT - MARCH 10, 2015

The Dover Human Relations Commission met on March 10, 2015 with Chairman Wilson presiding.

Presentation - Delaware Department of Justice, Office of Civil Rights and Public Trust

Ms. Smith introduced Deputy Attorney General Allison Reardon and advised members that Ms. Reardon was recently appointed as Director of the Delaware Department of Justice Office of Civil Rights and Public Trust, noting that this Office was designed to be a safe haven where the public can go to understand their rights in terms of housing, education, employment, and many other areas, and is also to be an advocate when there is a conflict of interest between the Department of Justice and the public.

Ms. Reardon advised members that she had been with the Department of Justice for 23 years, having started in the 1980s as a child support prosecutor. She stated that she went into private practice for approximately five (5) years and then returned to the State in a number of different capacities. Ms. Reardon indicated that she had worked with the State Human Relations Commission in the past and had also represented the Department of Labor, the Department of Finance, the Division of Professional Regulation, and a number of other State agencies.

Ms. Reardon stated that Attorney General Matthew Denn selected her to head up the newly created Office of Civil Rights and Public Trust and she was focused on getting it started in the right direction. The Office was now staffed at the level that is anticipated for the foreseeable future with two (2) attorneys, Ms. Reardon and one (1) additional Deputy Attorney General, two (2) public outreach and research specialists, and three (3) investigators. Ms. Reardon stated her hope that the Office could now move forward doing the business that they are charged with, noting that complaints were starting to come in more frequently since the Office was becoming known.

Ms. Reardon explained that the Office is responsible for various areas of statutory oversight, protecting the rights and liberties of Delawareans, and enforcement of related laws. It will be involved in discrimination cases, focusing on pattern and practice cases, and will not look at individual cases where there is already a place to have those concerns addressed, such as the Human Relations Commission and the

Department of Labor. She advised members that the Office of Civil Rights and Public Trust refers people to appropriate government resources and is looking for referrals from the State Human Relations Commission, Dover Human Relations Commission, and other organizations that see pattern and practice type cases that her Office would take charge of. The Office will also look into protecting the educational rights of children with disabilities, although they had not yet officially started in that track, and will enforce the laws designed to ensure citizen trust in government, such as those pertaining to election and campaign finance violations and governing the use of public funds and public contact. She indicated that they had already seen some complaints involving elections, as well public funds and conduct. Ms. Reardon explained that they would also focus on criminal prosecution of State and municipal actors who violate the public trust by engaging in criminal conduct, such as theft and bribery. She noted that they would work in collaboration with a number of other agencies, including the Public Integrity Commission, the State Auditor, and the Election Commissioner, and indicated that the Office is in the process of scheduling meetings to meet with those various agencies and individuals to see how they can work together.

Ms. Reardon explained that there might be an appearance of conflict if the Department has a prosecutorial role and relationship with an entity when conducting some investigations, for example, the use of deadly force by police officers, and this function of review had been shifted to the Office of Civil Rights and Public Trust. She advised members that she would be the person responsible for determining whether or not the use of force was justified, along with Chief Deputy Attorney General Danielle Gibbs. Ms. Reardon stated that she will write the associated reports and make decisions, which she indicated was an important issue and big responsibility that she would not take lightly. Having previously served in the Civil Division and as the former State Solicitor, Ms. Reardon stated that she provided legal advice to State agencies, noting that a State agency is often the subject of a criminal, ethics, or other violation. She noted that it is very difficult to be in the position of providing advice on both sides of the fence, and explained that the Office of Civil Rights and Public Trust would perform investigations, which would take away the conflict of interest that Justice Department attorneys often feel when they have to represent one (1) of the entities that is the subject of an investigation.

Ms. Reardon informed members that her Office was also embarking on educational programs and hoped in the very near future to reach out to various organizations with common interests. For the past two (2) months, her staff had been talking with offices of civil rights in surrounding states to fold some of their experience into the developing Office. They had talked to such offices in Massachusetts and New York and were continuing to reach out to other states to benefit from their experiences and to further their mission of protecting civil rights and public trust.

Ms. Reardon advised members that the Office's webpage can be accessed through a link on the Delaware Attorney General's website, and includes a contact information and an online complaint form.

Noting that the 50th anniversary of the 1965 Voting Rights Act was approaching, Mr. Henderson expressed concern that it was currently difficult for people to vote. He noted that license renewal now requires a birth certificate and other things and felt that some people, including the elderly and those who are not organized, may experience difficulty with this. Mr. Henderson expressed concern that this is a civil rights issue driven by politics, noting that Delaware had fallen in line with this and that some licenses state that they are not a valid ID for government. He questioned what Ms. Reardon's feelings were on this matter. Responding, Ms. Reardon stated that she had not looked into this specific issue or how it would affect people's ability to vote. She stated her belief that a federally compliant driver's license is a federal requirement; however, she was glad that Mr. Henderson brought this matter to her Office's attention.

Ms. Smith requested clarification regarding Ms. Reardon's request for DHRC commissioners to share cases with her relating to pattern and practices. In addition, she noted that Ms. Reardon had served as a former protector of State agencies, and indicated that solid relationships are built with such protectors. She asked that Ms. Reardon explain the process of what she had formerly done versus what she was now assigned to do.

In regard to patterns and practices, Ms. Reardon stated that the Office was looking for certain situations. For example, she explained that if the DHRC received complaints that an apartment complex was routinely denying access to a particular race or gender, the Office would want to know about it. However, if one (1) person complained, they would be referred to the State Human Relations Commission to file a complaint and receive assistance. Ms. Reardon indicated that it would be helpful if the City or State Human Relations Commission reported to them if a number of similar cases builds up so it could be determined if this was a pattern and practice case.

In regard to Ms. Smith's question pertaining to the protection of State agencies, Ms. Reardon stated that she is responsible for issues pertaining to police shootings. She stated that she had never advised the police or worked with them on a daily basis in what they do as law enforcement officers, although attorneys under her supervision had worked with the State police and other police agencies; therefore, she felt that she could be independent in her assessment of situations. Ms. Reardon stated that it might be a little more difficult in a situation where a child has been abused in a State facility and this may have to be reviewed; however, she felt that protocols and laws would be in place. She would not be talking directly with the attorney representing that agency and would make her own assessment for her Office on the occurrence. She reminded members that the Office was still in its infancy and all protocols were not yet in place but were being worked on.

Referring to Ms. Reardon's comment about being involved with children with disabilities, Mr. Roach inquired if this pertained to mental health, school, or community issues. Responding, Ms. Reardon stated that they were looking at all

types of complaints, for example, whether children with Individualized Education Programs (IEPs) were being treated fairly and if their concerns were being heard. She stated that the Office would be driven by what they hear from constituents and that these would also be issues pertaining to pattern and practice.

Mr. Ruane questioned when the Office would become involved in issues related to use of excessive force by police. He indicated that in the past there had been a perception that some of the investigating parties within the Attorney General's Office had entered into related decision making, perhaps because of their own groundwork with police. In response, Ms. Reardon stated that the Attorney General is sensitive to the fact that a number of investigators had developed relationships with police officers over the years. She explained that the investigators assigned to her Office would work exclusively with her Office and would not be on the ground with the police in other matters. She stated that if there were a police shooting and someone was injured or killed, an investigator would go to the scene, perform their own assessment and prepare a report for her, then she would issue a public report.

Mr. Ruane questioned the level of involvement of the local police force and if it would be a routine practice for those cases to be moved up to the Attorney General's level rather than being handled by the City police. Responding, Ms. Reardon indicated that a separate attorney who is not in an oversight position of personnel in the Criminal Division would now be involved in the review. She indicated that the Attorney General's Office had held that oversight role in recent history, noting that they had monitored and written reports on shootings involving injury or death for years, and their website contains a number of related decisions rendered by former Chief of Staff Timothy Mullaney. She stated that this responsibility would now be shifted away from those who have a closer relationship with the police.

Noting that Ms. Reardon had mentioned that she foresaw problems related to elections, Ms. Smith requested that she elaborate. Responding, Ms. Reardon stated that, historically, there had been complaints involving elections, for example, laws relating to electioneering within a certain perimeter. She stated that her Office would be charged with ensuring follow-up on those complaints.

Mrs. Sadusky advised members that inmates in State prisons who feel they are being treated unfairly must address this within the prison or pay money for an outside lawyer. She explained that this may relate to issues such as prosecution for wrongful death or improper health care, and questioned if this was an issue that Ms. Reardon's Office could address. Responding, Ms. Reardon stated that the Office's role on that issue had not been explored and she was unsure if there were partner organizations that would be better suited for that.

Mr. Ken Abraham, 430 Kings Highway, stated that he is a retired lawyer and serves as President of Citizens for Criminal Justice. He explained that he was familiar with the practice, pattern, and policy term, noting that it is a legal term that provides common sense meaning to a series of abuses or violations that might trigger an

investigation under appropriate circumstances. Mr. Abraham questioned who the other deputy in the office was, and Ms. Reardon stated that it was Mr. Dennis Kelleher.

Mr. Abraham stated that he wished to follow up on Ms. Sadusky's question regarding prisons, noting that he had a good look at what goes on in the Delaware Department of Corrections (DOC) and there were serious problems in the State of Delaware. He indicated that he did not know what partner agencies Ms. Reardon was referring to and expressed his opinion that nobody was doing anything about the cesspool of crime that exists in Delaware, stating that he was not talking about the prisoners. He expressed his hope that Ms. Reardon's Office would become involved. Mr. Abraham stated that he had contacted the U.S. Department of Justice, claiming a pattern, practice, and policy of serious abuse and criminal violations, and had received a form letter from them stating that they only investigate claims of pattern, practice, or policy, which were the very words he had used. Since that time, he stated that he had received three (3) such form letters in response to follow-up complaints. Mr. Abraham expressed his hope that the Office would do what it is designed to do and wished them success.

Referring to Ms. Reardon's comments regarding a lack public trust, Mr. Abraham stated his observation, based on being immersed in these matters over the last eight (8) years locally and nationwide, that the effect of the many problems in the criminal justice system, including prison abuse, was the erosion of public trust in government officials. He indicated his belief that Ronald Shoup, an inmate in the Delaware DOC, was murdered, explaining that the death certificate indicated homicide at the hands of DOC staff through blunt force trauma. Mr. Abraham inquired if a decision had been made on this matter.

Mr. Reardon stated that she had previously responded to Mr. Abraham's email regarding this matter and, as she indicated in that response, this was an active case and she could not comment on it. She stated that Mr. Abraham had emailed her this question repeatedly and that this would be her response to all such emails.

Mr. Abraham stated that he would probably continue to send emails about once per month.

Ms. Cynthia Smith, Felton, Delaware, questioned who protects whistle blowers from retaliation, how Ms. Reardon's Office would be transparent in regard to cases being investigated, and if information would available on their website. Ms. Smith also expressed concerns with regard to the Freedom of Information Act (FOIA), stating that there were problems with a lack of transparency. She felt that there was a conflict of interest in Ms. Reardon's Office and that if they were representing the public, they should use an outside, independent investigator so that there would not appear to be bias in the office. Ms. Smith expressed her opinion that law enforcement, social services, and the judiciary were three (3) important agencies that must work together. Ms. Smith indicated that false allegations should also be

addressed. She stated the desire to avoid becoming another Ferguson, Missouri. She concurred with Ms. Reardon's comments about patterns, stating the desire to know how much racial profiling is happening in Delaware and how many minority arrests. Ms. Smith felt it important to expose corruption and desired to leave the room knowing that there is protection, although she acknowledged the desire for transparency. Noting that she was a survivor of domestic abuse, she questioned what happened to funding in the Violence Against Women Act. Ms. Smith indicated that she had heard that Family Court wants a new building; however, she felt they should be merged together. Ms. Smith stated that the State actors are playing games with the people's livelihood and families, and emphasized the importance of discipline, transparency, and oversight in the judiciary.

Ms. Denise Tolliver, Camden, Delaware, stated that there was a series of rape cases in the Caesar Rodney School District spanning a number of years and questioned, when there is a pattern such as this, what the Office of Civil Rights and Public Trust would do to help the families in situations where the kids are systematically being abused by teachers. Responding, Ms. Reardon stated that this would cross over into a number of areas, including criminal prosecution and the Family Division to assist with children who are being abused. She felt that if a public school teacher was abusing a child, this would be an issue of public trust and would be looked at by her Office.

Ms. Tolliver questioned what would cause the Office to act, since she estimated that the most recent case was less than three (3) months ago. In response, Ms. Reardon stated that she had been in this Office for two (2) months; therefore, she was not familiar with this case. Ms. Reardon explained that her Office is closely monitoring what is happening around them and there is nothing that would prevent them from opening their own inquiry into a matter, if they determine that it is appropriate.

Ms. Tolliver questioned if a citizen could file a complaint on behalf of children if they are not involved in the actual crime. Ms. Reardon stated that if her Office cannot help the person who files a complaint, they would try to direct the complainant to the appropriate resource, such as Family Court or the Family or Criminal Divisions of the Attorney General's Office. She reiterated that she did not know all the answers and was still learning.

Ms. Tolliver questioned the composition of Ms. Reardon's team in terms of ethnic background and diversity. In response, Ms. Reardon stated that there are two (2) women, one (1) of her investigators is an African American female, and there are four (4) white males. Ms. Tolliver suggested greater diversity in the office. Ms. Reardon agreed and stated that they would continue to build this as positions are added.

Mr. Raymond Paylor, Dover, questioned what the steps in the complaint process are once a complaint is accepted by the Office of Civil Rights and Public Trust. Responding, Ms. Reardon stated that constituents are initially directed to file an

online complaint form and two (2) public outreach and research specialists work with them to pool together as much information as they can. The complaint is then assessed by one (1) of the attorneys to determine whether or not it is something that is within the responsibilities of the Office and what needs to be done.

Chairman Wilson expressed thanks to Ms. Reardon for enlightening members on the mission of the newly created Office and stated his hope that they would be effective in Dover and throughout the State.

Presentation - Downtown Development District Incentives

Mr. William Neaton, Economic Development Manager, reviewed a presentation regarding the City of Dover Downtown Development District (DDD), which included information pertaining to the program incentives. Mr. Neaton informed members that this was one (1) of the most important revitalization efforts in the history of the downtown area. He explained that approximately one (1) year ago, Governor Markell added $7M the budget to revitalize downtown districts. The legislation was approved unanimously by the General Assembly in June 2014 and it was determined that three (3) cities in Delaware would be designated to utilize these funds for both large projects, with over $250,000 being invested, and small projects, involving investment under $250,000. There was an extensive application process and cities had to show the need and impact of the funds for the downtown area, develop a district plan demonstrating how the funds would be used, and develop additional local incentives above and beyond what the State was suggesting.

Mr. Neaton advised members that applications were reviewed by a cabinet committee and by the State Planning Office. The City of Dover's 300-page plan drew on two (2) plans that the City had utilized in the past: 1) the Dover Transit Center Neighborhood Plan and 2) the Restoring Central Dover Plan. He explained that the Dover Transit Center Neighborhood Plan was developed in partnership with the Dover/Kent County Metropolitan Planning Organization (MPO) approximately six (6) years ago, and involves the area surrounding the Transit Center on Queen and Water Streets as well as the downtown area. In reference to the Restoring Central Dover Plan, Mr. Neaton stated that a $75,000 planning grant was received from Wells Fargo, with the National Council on Agricultural Life and Labor Research (NCALL) as the lead agency. Numerous partners were involved in this initiative, including the Downtown Dover Partnership (DDP), faith-based participants, and the City of Dover. He stated that many good things came out of this plan, which was completed in the Fall of 2014, and an application had been submitted to reapply for an implementation grant.

Mr. Neaton stated that on January 11, 2015, Governor Markell announced District Designations for the cities of Wilmington, Seaford, and Dover. Mr. Neaton explained that this was a ten-year designation; therefore, it would be a long-term fix and Dover would be able to apply for funding for ten years. He stated his understanding that the Governor would recommend another round of $7M for the upcoming budget year.

Mr. Neaton informed members that the Dover DDD includes 220 acres in the Central Business District and adjacent neighborhoods. He explained that this area has an 84% rental rate and stated the need to balance this with more owner-occupied housing. Mr. Neaton stated that Dover's plan has two (2) revitalization components, a residential component and a commercial component. He noted that this is a high-crime area with 49 vacant buildings in the District. Mr. Neaton stated that the City was looking at strengthening code enforcement throughout the City, especially in this area. He advised that 25 buildings that did not meet code requirements had been demolished, nine (9) additional buildings were considered dangerous, and part of the revitalization would target these buildings.

Mr. Neaton explained that incentives would include cash rebates on construction costs, fee waivers, tax abatements and credits, historic tax abatements and credits, and facade improvement and architectural grants. Mr. Neaton explained, for example, that an applicant with a $100,000 commercial remodeling project would pay $25,000 out of pocket and would be eligible for a 20% cash rebate from the State on the remaining $75,000, which would amount to $15,000. In addition, Kent County had allocated $200,000 to match all incentives up to $10,000; therefore, the applicant would receive a total of $25,000 in State and County rebates.

In regard to City incentives, Mr. Neaton stated that building permit fees as well as sewer and water impact fees would be waived for DDD approved projects. He explained that the City's water and sewer impact fees are $4,000 for each equivalent dwelling unit (EDU), and a building constructed with two (2) bathrooms would have two (2) EDUs, amounting to $8,000 in water and sewer impact fees which would be waived. In addition, business license fees for new businesses would be waived for three (3) years in the DDD. The City would also rebate transfer fees once a certificate of occupancy is obtained for a building that is being purchased and remodeled.

In regard to tax benefits, Mr. Neaton informed members that the City would provide tax abatement on the value of improvements for ten years. As an example, he explained that if an owner of a building with a tax base of $200,000 completed $100,000 worth of improvements, typically the tax base would increase to $300,000; however, with this incentive, the City would continue to use $200,000 as the tax base for ten years. Mr. Neaton stated that there are also State historic preservation tax credits and City tax credits for historic properties.

Referring to homeownership incentives, Mr. Neaton stated that the City was offering a five (5) year phase-in for property taxes for owner-occupied homes in the DDD. In addition transfer taxes would be waived for first-time homebuyers in the DDD. Mr. Neaton explained that the City has had a down payment assistance program for first-time homebuyers for many years. He stated that on March 9, 2015, the Parks, Recreation, and Community Enhancement Committee had recommended that City Council approve $60,000 to continue this program through Community Development Block Grant (CDBG) funding.

Mr. Neaton indicated that the Downtown Dover Partnership (DDP) was offering funding for architectural design assistance. He explained that the DDP would fund 100% of the first $1,000 used for this purpose and would provide a 50% match for additional fees up to $5,000. It was hoped that this would assist new owners in bringing buildings up to code. Mr. Neaton stated that the DDP had a facade improvement program for a number of years and would provide rebates for this purpose as well. In addition, he noted that the Sustainable Energy Utility was reducing the cost of energy audits from approximately $400 to $50 and would also provide rebates for energy efficiency improvements. Mr. Neaton reiterated that strong code enforcement was needed to make sure that buildings are brought up to code.

Mr. Neaton reviewed an example of the value of incentives for a sample project with an initial construction cost of $350,000, noting that this project would qualify for incentives valued at $147,034, which would be approximately 40% of the cost. He noted that the expectation was that this would result in developers bringing forward projects that were previously postponed and starting development downtown.

Mr. Kirby Hudson, Assistant City Manager, advised members that two (2) workshops were scheduled for March 11, 2015 at 11:00 a.m. and 4:00 p.m. which would provide more detailed information regarding the DDD program. He indicated that three (3) similar workshops were held last month and attendance averaged 40 people; therefore, approximately 140 developers and investors had come to see the types of redevelopment incentives being offered in downtown Dover.

Mr. Hudson expressed his feeling that a key component of making the project work was cleaning up the area. He felt that all of the incentives and programs to spur development and redevelopment would not mean a thing unless this is done. Members were provided a flyer to be distributed to encourage residents to perform basic property maintenance for spring. Mr. Hudson noted that the flyer provided a synopsis of the types of code violations that code enforcement staff would be looking at.

Mr. Hudson advised members that he was the former City Manager for the Town of Cobleskill, New York. He indicated that he was new to the City of Dover; however, he quickly realized that there are a number of properties in the DDD in major disarray, reiterating that 84% of the properties were rental units, and there were 49 vacant buildings and 25 vacant lots that have become havens for dumping. Mr. Hudson stated that residents must be held accountable for bringing these properties up to code. He advised that the City would like to start a campaign and let everyone know in advance that Dover was fortunate enough to be designated as one (1) of three (3) cities to receive this opportunity. He stated that the City would use this to its advantage, and for those people who did not want to clean up their act, the City would help them to do so. Mr. Hudson stated that this would be done fairly, consistently, and by the book.

Mr. Ruane questioned if owners of multiple rental units had been identified and been given an invitation to meet with the City to incentivize them, so that there would be direct targeting of some of the ownership, rather than a general invitation. Mr. Ruane stated that he would like to see those people who are used to getting away with doing the wrong thing being targeted. In response, Mr. Neaton stated that in one (1) instance a person who has owned numerous properties had come to the City and met with the City Manager, the Assistant City Manager, the Director of Planning and Community Development, and Mr. Neaton to discuss what they could do to upgrade and how these incentives would impact them. Mr. Neaton indicated that he did not know how many property owners own multiple locations but assumed that there were a number of them.

Mr. Ruane strongly suggested getting this into place because he felt that individuals would make the effort to make improvements; however, in the past there were difficulties with those who own multiple properties.

Mr. Henderson stated that Mr. Matt Haley had planned to do quite a bit for Dover, including putting in a restaurant, before tragically being killed. He asked if that situation had been addressed. In addition, he questioned if there would be gentrification in the DDD and expressed concern about the poor, transient, and non-home owners in the area and where they would go if the area is upgraded.

Mr. Hudson explained that, by the broken window theory, properties that are in disarray, with boarded houses, broken windows, and abandoned cars, are the most targeted for criminal activity. He indicated that this program would do two (2) things: 1) bring local and out-of-town people to look at incentives throughout the State, County, and City, so that they would know the area is open for redevelopment business; and 2) clean up the area, which would also help to take care of some of the crime. If a property is picked up and remains clean, facade improvements are made, and new lighting is installed, this would demonstrate that people care about their property and criminal activity would move to another area. Mr. Hudson felt that if the root of the problem is not taken care of, efforts would only amount to putting cosmetics on the problem. He stated that property owners must be made to maintain properties and they were not being asked to do anything beyond what a normal person would do.

Mr. Henderson stated that most of the people who live in this area cannot afford property and that he respected broken areas because he grew up in broken areas. He asked that the City look after the needs of the people who will be displaced, and suggested trying to keep those who live outside of the District from building liquor stores in the community, as well as stores that have no nutrition and sell no vegetables to children. He stated that some people have no choice but to buy these items because that is all that is available. Mr. Henderson stated that it was easier to put up a liquor store than a church in this community. Responding, Mr. Hudson stated that there is a list of businesses that are not allowed or eligible for funding, including tattoo parlors, liquor stores, gentleman's clubs, etc.

Mr. Scott Koenig, City Manager stated that gentrification had been discussed and that it was important to lay the groundwork to avoid that reality. He stated that in this area of the City, there would either be progress and people would want to live and do business there, or it would become the hollow heart of the City. Mr. Koenig advised members that nothing good is happening on vacant property and in vacant buildings from a community standpoint. He stated that this is a difficult subject because, as people come in and refurbish, rebuild, or build new structures, gentrification is an accusation that will have to be dealt with. Mr. Koenig indicated that the question is how to develop a full palette of affordable housing or offer pathways for homeowners who may not have economic backgrounds or means to keep their property or maintain it in the future. Mr. Koenig stated that the program does not provide all the answers. He noted that some property owners had attended the workshops and questioned what would be done for them; however, this program, as set up, was not the answer to their questions. These individuals would have to be directed to other programs or opportunities, and this had been discussed at the staff level.

In response to Mr. Ruane's question regarding multiple property owners, Mr. Koenig stated that strategies were being developed internally to address those owners with whom the City has had difficulty in the past. He noted that the DDD designation was received in early January, only eight (8) weeks ago. Mr. Koenig advised that the positive promotion campaign was being done right now. He stated that it was important to get the projects moving forward, the interest level up, and projects in the queue at the State because, in some ways, this is a competition for $7M of State money to be directed to the private sector. Mr. Koenig reminded members that the City or State cannot make application for these projects and it is not money that is in the City's coffer, noting that the City incentives actually take away potential revenue from the City. He explained that this is a long-term strategy to redevelop, refurbish, and reinvigorate this area of the City and there would not be not an instantaneous economic benefit to the City.

Mr. Koenig explained that if the City did not promote and get this program moving, the City would be incurring a lot of costs for code enforcement, policing, and other things that are not necessarily contributing to the overall community. He reiterated that the program was in its early stages and there had been staff-level discussions about developing public strategies for addressing concerns and getting buy-in from the community and groups like the DHRC that this is a good program for the City. Mr. Koenig indicated that there would be some potentially unintended consequences to adjust for as the program is implemented.

Mr. Koenig emphasized that the objective was not to push the problem somewhere else, so that at the end of the 10-year designation these 220 acres would be doing we1l, but things would be made worse immediately outside of the 220 acres. He stated the need for the DHRC and community organizations to understand that there are some potential negative effects and a need to figure out strategies on how to mitigate them and to achieve the goals of the entire palette; commercial, residential, low-to-moderate income, and potentially low-income housing, so that those who deserve to be there would not be pushed out.

Mr. Henderson stated that this was exactly what he wished to hear.

Mr. Ruane stated that one (1) of the purposes of the DHRC is to promote diversity and social inclusion and he felt that all of the commissioners would be supportive of a program like this. He reassured Mr. Koenig that the questioning should not be seen as negative or discouraging. He felt that the program was an attempt to improve the economic program in the City and to provide better housing, which are goals that the DHRC supports. He felt that this was a good program and that the DHRC would like to support it.

Mr. Koenig stated that City staff had not known how to work with the Commission on common subjects; however, that staff needed the DHRC's help and was asking for it by providing the presentation. He indicated that staff would like continued dialogue, advice, and ideas coming from the Commission to help to make this a successful plan. Mr. Koenig stated that when the City went to the cabinet committee on State Planning for its application, one (1) of the strong points of the application was the City's organizational capacity to make the plan successful. Several background plans had been completed with ideas and potential solutions to problems. In the application, the City was also brutally honest in stating that in this 220 acres there has been a high crime problem, a high rental rate problem, and a desire for additional home ownership. Mr. Koenig felt that these were goals that the DHRC would have for this community and expressed the desire to use the DHRC to partner in making this a successful program.

Commissioner Smith stated her agreement; however, she felt it important to understand the strategy, stating her feeling that the strategy was not completely laid out. She referenced Mr. Henderson's concern regarding a group of people that will be displaced and would have to move elsewhere. She felt it important to understand what is being endorsed before endorsing it. She suggested that this might mean having a conversation and helping to support staff in creating that strategy. Ms. Smith explained that she has a former client who is a contractor that has built many of these properties throughout the State and kept them affordable and is very familiar with how to navigate these difficult waters, and perhaps someone like that could be brought to the table. Speaking for herself, she stated that she did not want to back something that she was unclear on, or that those who are moving it forward are unclear on.

Ms. Stewart inquired if any projects had come forward yet. Responding, Mr. Koenig advised that the projects are submitted directly to the State.

Mr. Neaton stated that one (1) large project, in excess of $250,000, had been submitted and staff was currently working with half a dozen other projects. He explained that those applying for small projects will perform the renovations and repairs, and then submit their expenses to the Delaware State Housing Authority. Applicants for larger projects must submit a reservation for funds and those reservations would be due on March 20, 2015.

Mr. Ruane questioned if there is a citizens advisory group, including residents, associated with the program. Responding, Mr. Koenig stated that there was not and that staff was looking for advice on how to get the correct messages out to the development community and the community in general. He noted that these things must be discussed because, while staff may think that the message is clear and correct, it may have to be adjusted if something is missing.

Chairman Wilson suggested holding a special DHRC meeting to discuss this issue in terms of strategies. He stated his feeling that it would be a good move to clean up the entire City, not just that target area. He indicated that clarity is extremely important and the idea of defining strategies that will not overlap one another, as far as the what the DHRC was doing versus the City and any other group within the City. He was in favor of Mr. Ruane's suggestion to have a group of people that represents the community be part of the initiative, noting the importance of hearing from those in the target area so they know what is going on and for transparency.

Mr. Ruane informed members that the DHRC Government Policy, Programs, and Practices Committee would have their first meeting with a group of senior City employees to begin examining the City's organization in terms of the status of its diversity and its role in promoting diversity and social inclusion in the Dover community on Friday, March 13, 2015, from 2:00 to 3:00 p.m. in the City Hall Conference Room. Mr. Wilson expressed his hope that many of the Commissioners could attend this important meeting.

By consent agenda, Mr. Hare moved for acceptance of the Dover Human Relations Commission Report, seconded by Mr. Hosfelt and carried by a unanimous roll call vote (Cole absent).

SAFETY ADVISORY AND TRANSPORTATION COMMITTEE REPORT - JUNE 22, 2015

The Safety Advisory and Transportation Committee met on June 22, 2015 with Chairman Hosfelt presiding.

Discussion - Proposed Committee to Study the Basic Life Safety (BLS) Needs for the City of Dover

During the Safety Advisory and Transportation Committee meeting held on April 27, 2015, members evaluated proposals for the ambulance service contract. Mr. Scott Koenig, City Manager, advised members that Council had ultimately voted to extend and renew the Prime Care, LLC contract through June 30, 2018. During the discussions, a member of the Safety Advisory and Transportation Committee suggested creating a committee to study issues such as procedures and protocols, service delivery, and equipment needs to incorporate in the next request for proposals for ambulance services, which Mr. Koenig stated would take place close to 2017.

Mr. Koenig advised members that City Council would be considering an Authorization to Execute Agreement to Perform a Comprehensive Analysis of Police, Fire, and EMS Services for the City of Dover during their meeting scheduled

later in the evening. He explained that some recommendations regarding BLS may come out of that study, although BLS would be a relatively small component of the study.

Responding to Mr. Hutchison regarding internal mechanisms in place, Mr. Koenig explained that complaints are usually filed in writing with the Emergency Management Coordinator. Moving forward with the current and next budget years, he stated that there would be a file of complaints, remedies, and ultimate disposition which would be monitored to determine best practices for handling such situations. Mr. Koenig noted that this information would not be published, as it is considered to be private, unless specifically requested.

Request for Three-way Stop at the Intersection of Dwight Court and George Washington Drive

Mr. Christopher Rupp, 1203 Woodrow Court, advised members that a request was submitted to put in a three (3) way stop sign between Dwight Court and George Washington Drive, stating that there are currently no stop signs at this location and, as a result, drivers speed through. Mr. Rupp expressed concern for the safety of people in that area, particularly young children, and suggested that putting a three (3) way stop sign in place may cut down on some of the speeding.

Responding to Mr. Hutchison, Mr. Rupp stated that he had not had contact with the Police Department regarding this matter. Mr. Rupp noted that the topic was discussed with a neighborhood watch representative who mentioned putting a policeman at that location, but that was a year ago and this was not done.

Mr. Hutchison suggested reaching out to the Dover Police Department to ask that officers patrol the area and provide a recommendation on the best way to address the issue.

Mr. Scott Koenig, City Manager, indicated that the amount of traffic occurring at this intersection, from an engineering standpoint, would not support the installation of a three (3) or four (4) way stop. However, Mr. Koenig stated that the City had installed stop signs in areas of the City that may have not warranted it from an engineering aspect in the past because a community had submitted a petition that identified a need, and this was agreed upon by all the residents around the stop sign. Mr. Koenig stated that, often, once a stop sign is in place, there are complaints that people are running the stop sign. Then the Dover Police Department will ticket people who violate the stop sign; however, these are typically people that live in and around the area. He reiterated the importance that all members of the community be in agreement.

In response to Mr. Sudler regarding an alternative solution, Mr. Koenig stated that people simply need to obey the speed limit. He explained that a lot of money is spent to put up three (3) and four (4) way stops signs and for policemen to patrol due to a relatively small group of people that are creating a major inconvenience for these

neighborhoods, but this often does not remedy the issue long term. He said if the community wants a stop sign put in place and will support it and obey it, 80% of the problem is solved; however, if the majority does not adhere to the rules once signage is in place, it is not effective.

Major Marvin Mailey, Deputy Police Chief, stated that the Police Department can increase police enforcement in that area which, once in place, usually improves the driving habits there. He concurred with Mr. Koenig that often the individuals in violation are those who live in the community where the street sign is put in place. Deputy Chief Mailey stated that he made note of Mr. Rupp's complaint and would forward the information to the rest of the Police Department to be addressed.

Responding to Mr. Hosfelt, Deputy Chief Mailey advised that the Special Enforcement Unit could do a speed survey on George Washington Drive, which may help as well. Mr. Hosfelt explained that a speed survey can give an indication of the average rate of travel on the road, which could help identify the best way to address the problem. Responding to Mr. Hosfelt, Mr. Rupp said he would be agreeable to a speed survey.

Proposed 15 MPH Speed Limits for Alley Ways

Mr. Hosfelt explained that Councilman Cole, Third District, had proposed a 15-mph speed limit for alley ways within the City of Dover.

Ms. Paula Kinsey, Owner of Tea for Two, 224 North State Street, advised members that her garage is located approximately four (4) feet from an alley and explained that on numerous occasions she scarcely avoided collisions in the alley. She stated concern for the safety of children that ride bikes in the alley ways. Ms. Kinsey expressed her opinion that the speed limit should be 10 mph to provide drivers enough reaction time to stop at a short distance and to allow residents to move about safely, as well as pedestrians, college students, and patrons of The Grocery Basket. Ms. Kinsey also noted that as a result of a house in the vicinity being torn down, a short cut was created which caused an increase in foot traffic in the alley, noting that pedestrians often appear to be intoxicated, adding another element of concern for pedestrians and drivers.

Mr. Paul Olsen, 301 North State Street, supported Ms. Kinsey's comments. He stated that he lives across the street from Ms. Kinsey and noted that approximately a year ago, Council approved a stop sign in the alley in the back of his house, which immensely reduced the speed of travel. Prior to that however, Mr. Olsen noted that a person was hit in the alley and he expressed support for whatever action could be taken.

Mrs. Kathie Siler, 229 North State Street, expressed her concurrence with Ms. Kinsey, supporting her request to place a 10 mph speed limit in the alley. She stated that she had lived on North State Street for 30 years and recalled a child being hit in the alley and that the homeowner that she purchased the property from was

nearly struck as well. She concurred with Mr. Olsen that the posting of a stop sign had been extremely helpful. Mrs. Siler stated that there are a great number of pedestrians that utilize the alley, including children walking home from school, people walking their dogs, etc., and that, with the way the alley is situated and how the garages are placed, the visibility is very poor, leaving very little time to react when traveling beyond 10 mph. She concurred that many people look at the alleys as short cuts and felt that posting signs would be helpful.

Ms. Susan Yost, 11 Cecil Street, stated that she also lives on the same alley as Tea for Two, which is between State and Bradford Streets, and expressed her agreement with the previous speakers. She shared her concern regarding speeding through the alley and the danger it poses to herself, children, and dogs.

Responding to Ms. Yost, Mr. Hosfelt stated his belief that the speed limit was 25 mph in a residential district.

Ms. Sarah Herbert, 223 North Bradford Street, stated that her step-daughter's vehicle was totaled by someone traveling in the alley approximately three (3) years ago, indicating a high rate of speed. She also pointed out that the "Watch for Children" sign in the alley was not placed where it could easily be viewed and this was the total signage in the alley. Ms. Herbert explained that it had been suggested that the residents place their trash cans out further to cause drivers to slow down; however, residents had not done so. Ms. Herbert stated she had written to area residents to ask them to send her their concerns, and there were issues that go far beyond the alley ways. People had expressed concerns regarding arrows pointing in the wrong direction on North State Street, drivers ignoring signs to stop for pedestrian, etc. She stated that signs should be posted low enough so that those speeding by could see them. She reiterated the need for a clear solution to the problems with alleys. Ms. Herbert said that she would provide information regarding the issues brought to her attention by the community to Councilman Cole and that members could review them.

Ms. Janice Gaddis, 448 North State Street, stated that although speeding was not an issue in her neighborhood, she grew up in Chicago where most homes had garages in the alley, not driveways. She recalled stop signs being posted in the alleys and expressed her thought that the speed limit must have been less than 25 mph.

State Representative Sean Lynn, 224 Columbia Avenue, advised the Committee that he had received a number of complaints about this topic, including the lists of constituents and respective emails that had been provided to Councilmen Cole and Neil. Representative Lynn asked the Committee to consider this information and find a way to provide some relief to the constituents.

Ms. Lynn Gold, 222 North State Street, expressed her support for everything that had been verbalized regarding this topic. She pointed out that accountability was also an

issue, stating that if the City were not accountable for enforcing the limits, they have no impact. Ms. Gold suggested speed bumps, stating that this would require less enforcement because people would either have to stop or wreck their cars.

Mr. Hutchison stated that the City does not utilize speed bumps because of fire apparatus and paramedics; however, he felt there were alternative solutions. He assured those present that he shared the safety concerns that were expressed.

Mr. Cole expressed his appreciation to Mr. Hosfelt for placing this topic on the agenda and thanked the residents of the Third District for attending the meeting and voicing their concerns.

Mr. Koenig advised that the City's code indicates that the speed limit is 25 mph unless otherwise posted and expressed his uncertainty as to whether this would prevent the City from reducing the speed limit to 15 or 10 mph. Mr. Koenig stated that the City has about 16 miles of alleys, and if signs were posted they would be needed at the beginning and likely at the end of each alley, and it was his belief that some posting would be needed in the alleys, which would be difficult from an operational standpoint. He stated that there are obstacles that may pose issues regarding posting and visibility because of the way the alleys are laid out. In addition, the cooperation of property owners would be needed to post signs since some of the alleys are not paved according to property lines. Mr. Koenig advised that alleys in the City are supposed to be 16 feet wide; however, in some cases may be slightly wider or narrower, which would ultimately require signage on private property. Mr. Koenig stated that some people had expressed concerns that alleys were very narrow, and noted that putting up a sign would further narrow the area, creating problems for larger vehicles. He indicated that it would be essential to consider these types of issues when determining if and where signs should be posted and it would take some time to accomplish. Mr. Koenig requested, if the City moved forward with this, that staff be given direction on a location for a pilot project to be tested before going City-wide with it.

In response to Mr. Hosfelt regarding whether there would be a difference in enforcement level if speed limits were reduced, Major Marvin Mailey, Deputy Police Chief, stated that 25 mph was faster than it should be, noting that streets with greater visibility and clearance for vehicles have a 25 mph speed limit. He concurred that alleys are tight, have blind spots, and a lot of opportunity for accidents. Deputy Chief Mailey stated that he did not oppose the drop in the speed limit and confirmed Mr. Koenig's statement that Delaware law would require posting at the beginning and end of the speed zone. This would present a problem with enforcement because of the area where officers would have to be stationed to enforce the speed limits. He indicated that if the Department could get its officers out there to enforce the limits safely, they would do so.

At the request of Mr. Hosfelt, Deputy Chief Mailey said he would ask the Special Enforcement Unit commander to look into this and perhaps provide some information to the Committee and Mr. Koenig regarding what had been done in other cities or locations in relation to this issue.

In response to Mr. Sudler regarding how a reduction in speed limit would affect enforcement, Deputy Chief Mailey stated that, with the many tasks the Police Department has, alleys are not at the top of the priority list, especially considering that the Department is functioning with 88 officers, which was well below manpower standards. He indicated that speed in alleys had not been monitored in some time.

Responding to Mr. Cole regarding the requirements for posting, Deputy Chief Mailey stated that the operator must be given due notice of the posted speed so they can decelerate and come within the guidelines. It would have to be posted at the entrances at each end, unless it was a one (1) direction alley. In response to Mr. Cole's question as to whether an ordinance could be established declaring that all alleys within the City have a 15 mph speed limit, Deputy Chief Mailey stated that this would be a matter for the City Solicitor to address.

Mr. Cole advised members that many states had declared a 15 mph speed limit for alley ways throughout their jurisdictions unless otherwise posted and suggested this may be a possibility.

At Mr. Hosfelt's request, Deputy Chief Mailey agreed to research this possibility with the City Solicitor.

Ms. Sarah Herbert, 223 North Bradford Street, reiterated that she had provided a list of constituent concerns to Mr. Cole, noting that one (1) of the suggestions was to educate the City regarding pedestrian laws, possibly through the newspaper and schools. She felt that pedestrians do not know what to do on walkways and alleys.

Council President Slavin suggested that a motion be made to request staff to begin the process of preparing an ordinance as part of Deputy Chief Mailey's research.

The Committee recommended referring this matter to staff for review and recommendation to be followed up at the Committee's next monthly meeting.

By consent agenda, Mr. Hare moved for approval of the committee's recommendation, seconded by Mr. Hosfelt and carried by a unanimous roll call vote (Cole absent).

Discussion - Increased Criminal Activity - Lincoln Park Subdivision

Mr. Stanley Richardson, 126 Reese Street, addressed the Committee about a group home located behind his residence. He stated that the facility had been there for a few years but had taken a significant downward turn in the last year and a half. He cited a recent incident where he had to have one (1) of the group home residents arrested for trespassing and threatening to destroy his property and blow his head off

shortly after a shooting that took place in the neighborhood. Mr. Richardson stated that the individual was later arrested. Subsequent to that, the director of the facility advised Mr. Richardson that a fence was scheduled to be put in place; however, this did not occur. Additionally, Mr. Richardson stated that he was told that he would be made aware when the individual who threatened him was released from jail but this did not occur. He was then told that this individual would be present no longer than a week; however, he was still currently present after three (3) weeks.

Mr. Richardson spoke of another incident where a resident of a group home on Bradford Street threw a brick at a neighbor's windshield and rocks at her car, and who also went to jail. Mr. Richardson stated that something needed to be done about the group home. He indicated that it was said that residents are mentally handicapped; however, based on having worked for the prison system for 27 years, in Mr. Richardson's experience, prisoners who wanted to be moved to a more private or more relaxed area of the prison would claim to have mental problems. Mr. Richardson felt that those types of individuals were being released to group homes.

Mr. Richardson stated that he was informed by a fellow prison retiree who was working with Connections Community Support Programs, Inc., the organization that runs the group home near Mr. Richardson, that inmates were being picked up and put into group homes without screening. He expressed his understanding that this organization was mainly concerned about the $1,500 that they receive per day per resident and they are not paid if these homes are unoccupied. Mr. Richardson said Connections has two (2) other locations in Dover, one (1) of which housed a sex offender until the community protested this individual's presence, at which time this person was moved out. Mr. Richardson questioned the types of disabilities the individuals being housed at the group home have and expressed his feeling that many do not have a mental disability and are only looking for a place to be housed. Mr. Richardson advised members that he is fearful in his own home and does not feel safe running his lawn care business, stating that he feels he is in a vulnerable position when he is performing tasks like lying down in his driveway while sharpening blades for his lawn care business in his driveway. He noted that when he cuts the grass of Ms. Gloria Gardner, 115 Bertrand Street, next door to the group home, one (1) of the residents gives him dirty looks. Mr. Richardson stated that he had been told that three (3) more group homes were popping up on Saulsbury Road and Forrest Avenue next to the Subway Restaurant.

Mr. Richardson suggested that the City notify the neighborhood when approval is sought for a group home. He mentioned again the shooting that took place and expressed his frustrations that no one is speaking up to help the Dover Police Department identify the shooter.

In regard to the recent shooting that he mentioned previously, Mr. Richardson advised that he and Detective Woods of the Dover Police Department attempted to obtain information from the father of one of the possible individuals involved who originally stated that he did not know the names of anyone involved, only their

nicknames. When pressed for the nicknames after being told the Police Department could likely identify them based on a known nickname, the individual was no longer willing to cooperate or provide any information. Mr. Richardson stated that the same individual whose name the neighbor refused to provide a nickname for, was later arrested, along with some other individuals as a result of an incident at Dover Downs. Mr. Richardson thought that there were weapons in the residence of the individual, referring to a shooting that took place eight (8) months ago that the same individual was involved in.

Responding to Mr. Hosfelt, Mr. Richardson stated that the individual he was referring to regarding the shooting was not connected with the group home; however, Mr. Richardson felt something needed to be done about both situations because they were both problems and posed a danger to the neighborhood.

In response to Mr. Hosfelt, Mr. Richardson stated that he had called the Dover Police Department on numerous occasions and encouraged his neighbors to do the same. He noted that the Dover Police Department does a good job but more needs to be done about the group home and the violence in the neighborhood.

Ms. Gloria Gardner, 115 Bertrand Drive, expressed her concurrence with Mr. Richardson's concerns regarding the health-related group home next door, which opened approximately one (1) year ago. Ms. Gardner stated that when the home first opened, there were no problems with the residents as most of them were wheelchair-bound patients; however, recently, those types of individuals had been replaced by young 19 and 20-year-old men. Ms. Gardner noted specifically that starting on May 21, 2015 the police were called to that location four (4) times in one (1) week, and she no longer feels it is safe for her children to play in the yard. Ms. Gardner added that a couple of weeks ago she observed a young man using a brick to break a window in the group home and was later advised by one of the group's counselors that the windshield of Ms. Gardner's car had been broken out of her car and her car had dents from bricks. Her concern was this kind of damage, as well as the physical damage that could be caused to her, her children, or her grandchildren. Ms. Gardner suggested that the facility adopt some kind of screening process for the types of patients that are approved to be housed at the group home.

Ms. Gardner shared her understanding that in some cases if someone wants to build something in a neighborhood, a petition would be distributed to the members of the neighborhood to allow them the opportunity to give or deny their permission. She indicated that she was shocked to find that a medical facility was approved next to her house in a residential neighborhood with no one's knowledge until they started bringing patients in. She asked to be informed what the ordinance or requirement was for this. Responding, Mr. Hosfelt advised Ms. Gardner that her question would be brought to the attention of City staff to be answered. Mrs. Gardner stated that she thought it was very unsafe, noting that she had been in this house for approximately 35 years and she felt that serious changes needed to be made.

In response to Mr. Anderson, Ms. Gardner stated that she believed the address of the group home is 125 Bertrand Street, which is next door to her home at 115 Bertrand Street.

Mr. Charles M. Durham, 145 Irma Street, stated that he was from the neighborhood being discussed by the last two (2) speakers and lives a block away from the group home. He advised members that he was the former owner of the property next to Ms. Gardner, which he sold it to the Department of Housing and Urban Development, who indicated that it would be a home for people who needed short-term assistance. He stated that he went to the neighbors about who would be buying the house and told them what the purpose was, feeling that this was his obligation. That house was torn down and the new one was built. He expressed his apologies to Ms. Gardner, Mr. Richardson, and the other neighbors, stating that had he known the type of facility that was going to be placed there, he would not have sold the property to the buyer.

Mr. Durham stated that there were additional issues. Approximately two (2) weeks ago, a 9mm bullet came into his home through a porch window, ricocheted off of the side wall, and landed in a door jamb in a rear room of his home and, based on the angle of entry, the bullet was believed to have come from Simon Circle. In addition, Mr. Durham cited problems with speeding, stating that people disregard the stop signs on Paul and Irma Streets. Mr. Durham stated that he and his wife put up a brand new fence around their yard the first of July, only to have it kicked down by individuals coming through the alley way. He advised members that people speed up and down that alley way and also down Irma and Paul Streets on dirt bikes. Mr. Durham advised that Mr. Richardson had been good enough to talk to the neighborhood about things to solve the problem and he and Mr. Richardson discussed finding a way to block off the entrance to Simon Circle from Reese Street, leaving just a walkway for kids going to school.

Mr. Durham recalled that years ago a neighbor by the name of Ms. Martha Woodfolk went around the neighborhood trying to get people to sign a petition to stop the building of Simon Circle and stated that he refused to sign it because he felt that poor people needed a place to live; however, he now wished he had signed the petition. He stated that he and his wife were too old to move, but there were shots fired through his house, another neighbor had two (2) bullet holes in his car and one (1) in the house, and Mr. Richardson had a bullet hole through his basement window. He noted that this was an expense as well. He did not know what could be done in regard to Simon Circle but emphasized that the concerns needed to be addressed.

In response to Mr. Sudler regarding the location of the alley that he was referring to regarding the dirt bikes and speeding, Mr. Durham stated that he lives on the corner of Irma Street and Paul Street and the alley runs down the south side of his property and extends from Simon Circle to Davis Circle.

Mr. Hutchison stated that there are several group homes within the City and often no one is even aware of their existence, stating that in his experience as a former Mayor of the City of Dover and former City of Dover Police Chief, there are always going to be isolated incidents. He assured those present that the City could reach out to State leadership to address them. Mr. Hutchison stated that the issues and concerns shared tonight were unacceptable and felt that the City of Dover needed to take a leadership role.

Mrs. Ann Marie Townshend, Director of Planning and Community Development, stated for the record and to make sure that members of Council and the Committee know that there are State and Federal laws that prohibit treating a group home for people with disabilities any differently than a single-family home, and there can be no differentiation by disability. Mrs. Townshend concurred with Mr. Hutchison that if issues arise, State licensing agencies can be contacted to address the issues. She advised members that Connections Community Support Programs, Inc. owns the home that had been discussed this evening and stated that Title 22, Chapter 3 of Delaware Code, which gives the City zoning authority, specifically states that group homes for people with disabilities cannot be treated any differently than a single-family home.

In response to Mr. Hosfelt, Mrs. Townshend stated that the City does not have licensing that is separate from the state licensing and offered to contact the City Solicitor to determine if a City license could be established, even if it were a non-charged license. This would enable the City to have the homes registered and be aware of their locations in order to follow up if an issue arises, but she cautioned that this is a gray area in terms of fair housing.

Responding to Mr. Hosfelt, Mrs. Townshend stated that representatives from Connections were present.

In response to Mr. Sudler regarding how Ordinance 2013-04, adopted on April 8, 2013, would apply to the current situation with the Connections home, Mrs. Townshend advised that, based on the calls that the Police Department had received for this location, there was nothing to act on under that ordinance. Mrs. Townshend also stated, in response to Mr. Sudler, that if someone from the agency had exhibited nuisance behavior more than three (3) times within a 12-month period, the City would have to seek the guidance of legal counsel and reiterated that, to date, there had not been any incidences that would permit action under that ordinance.

State Representative Sean Lynn, 224 Columbia Avenue, advised members that this issue had been brought to his attention, stating that he had received numerous emails, originally starting from the Gardner family and then moving out through the Lincoln Park area from those concerned about the neighborhood. Mr. Lynn suggested that the neighborhood be looked at from a public works and public safety perspective, stating the easternmost part of the neighborhood, specifically Cherry and

Vine Streets, were in utter disrepair. He expressed his opinion that the streets were in deplorable condition and only suitable for traffic going in one direction (1), definitely not both. Mr. Lynn questioned how Cherry Street and Vine Street were approved, noting that they are not conventional City streets. Mr. Lynn shared his feeling that the neighborhood was in dire need of public works attention, noting that the easternmost part of Slaughter Street was also in disrepair, as well as the stream that borders Lincoln Park on the eastern side, and a culvert off Forrest Avenue is full of debris and waste. Mr. Lynn expressed his uncertainty as to who is responsible for maintaining the stream, but indicated that it was not being maintained at all, and the culvert that runs underneath Forrest Avenue was blocked and needed attention.

Mr. Lynn noted that Mr. Hosfelt had raised the issue of creating a homeowners association and a neighborhood watch and said he had tried to reach out to Mr. Richardson in this regard but had been unable to obtain his phone number. Mr. Lynn expressed his hope that Council could encourage the Dover Police Department to reach out to set up a neighborhood watch in Lincoln Park, expressing his belief that it would help drastically, as would increased police presence.

Ms. Kathy McCann, Chief Executive Officer (CEO) of Connections Community Support Programs, Inc., apologized to Mrs. Gardner for what happened to her car, stating that measures should have been in place to ensure this did not occur, and they were now attempting to remedy this. Ms. McCann stated that the reason the original home on the property was torn down was because it had a great deal of asbestos in it and could not be salvaged. She advised members that Connections built a very nice new house and stated that they are dependent on the State Division of Developmental Disabilities and the State Department of Health and Social Services to make referrals for people to live there. Ms. McCann stated that Connections is not funded with $1,500 a day, as someone asserted earlier, and that the people who live have developmental or intellectual disabilities. She explained that the people that live there right now are very young, and they are not very well socialized, and she agreed that they may not be the best people to live in a neighborhood that is so densely populated. Ms. McCann stated that she would go back and tell the State that the current location is not a good placement for those individuals. Ms. McCann noted that the people who live in the Connections' home were not involved in any shootings and are not speeding in cars or driving motorbikes, stating that those are issues in the neighborhood, but not related to Connections.

In response to Mr. Hosfelt regarding her responsibility to ensure that individuals living at the Connections facility are respectable, Ms. McCann stated that she believes it is Connections' responsibility that staff manage the people who are living there to the best of their ability. She indicated that if the people are not manageable in this setting, Connections can reach out to the State and ask them to do something different with those people. Ms. McCann stated that it is not possible to force an individual to do anything but, in the spirit of neighborliness, everyone has to be willing to work together because there have been a few incidents in which there had been people agitating on both sides.

Responding to Mr. Sudler, Ms. McCann stated that the staff members receive a lot of training, but they are mostly people who have high school diplomas, noting that the people who manage the program are people with Master's degrees and professional training. Ms. McCann pointed out that, unfortunately, the funding that is available for the program is pretty much based on a rate of $10 an hour, which includes benefits. Ms. McCann stated that Connections pays people a little bit more than that in attempt to get people with a little more qualification, but reiterated that they do go through a State-prescribed training program.

In response to Mr. Hutchison, Ms. McCann stated that Connections does not put the individuals through a screening process, they are assigned to them by the State agency.

Responding to Mr. Hutchison's comment that this was a problem, Ms. McCann agreed, explaining that Connections does not have the right to say yes or no to a prospective resident; their only recourse is to explain to the State that it is not a good location because of the dense population, which is a problem for those who have issues getting along with other people, noting Connections' responsibility to be good neighbors.

In response to Mr. Hutchison regarding the State's responsibility to consider an individual's ability to be in a neighborhood setting when assigning them to the home, Ms. McCann stated that the problem is that many of these people would otherwise be institutionalized and federal law no longer permits that, so the State is now in the position of having to find alternative places for them to live, adding that funding is also an issue.

For the record, Mr. Anderson advised members that Mr. Sudler had previously suggested setting up a mobile substation that could be moved to different areas and locations. Mr. Anderson stated such a substation could stay at a location for two (2) or three (3) months, then move to another location. Mr. Anderson asked that the Committee put this up for investigation and research.

Mr. Hutchison stated his belief that Deputy Chief Mailey had heard the complaints and would take them back to Chief Paul Bernat, and together they would come up with a game plan to address some of the concerns regarding Simon Circle and Lincoln Park. Mr. Hutchison expressed his desire to revisit this issue.

The Committee recommended that the Dover Police Department increase their presence in the Simon Circle and Lincoln Park areas, as they had in the other location near State Street, and concentrate on the alley way and the areas of concern.

Deputy Chief Mailey stated that he wanted to advise Council, the residents from Lincoln Park, and all those present that the Police Department's Street Crimes Unit, which is overseen by Lt. Jason Pires, had been in place in Simon Circle,

Lincoln Park, Bertrand Avenue, and that whole area since June 17, 2015, and they had made numerous arrests. Deputy Chief Mailey urged the residents of that area to report immediately any criminal activity that they see or become aware of.

By consent agenda, Mr. Hare moved for approval of the Committee's recommendation that the Dover Police Department increase their presence in the Simon Circle and Lincoln Park areas, as they had in the other location near State Street, and concentrate on the alley way and the areas of concern. The motion was seconded by Mr. Hosfelt and carried by a unanimous roll call vote (Cole absent).

The Committee deferred the remaining agenda items until the July 27, 2015 Safety Advisory and Transportation meeting.

By consent agenda, Mr. Hare moved for acceptance of the Safety Advisory and Transportation Committee Report, seconded by Mr. Hosfelt and carried by a unanimous roll call vote (Cole absent).

UTILITY COMMITTEE REPORT - JUNE 22, 2015

The Utility Committee met on June 22, 2015 with Chairman Hutchison presiding.

House Bill No. 171 Amending Titles 9 and 22 of the Delaware Code Relating to Taxes on Special Betterments

Members were advised that House Bill No. 171 establishes a Telecommunications Tax Modernization Review Group to study and make recommendations for establishing a future funding mechanism to replace the property tax on telecommunications equipment and addressing the projected decrease in revenue to the counties, municipalities and school districts from the transition to new technologies throughout the State. The resulting mechanism should be revenue-neutral to the localities and competitively neutral to providers of like services. To encourage investment in broadband infrastructure, this bill also caps the amount of tax on telecommunications equipment at FY15 rates and eliminates the tax as of June 30, 2018.

Mrs. Donna Mitchell, Controller/Treasurer, advised members that a proposed revision for House Bill House Bill 171. Mrs. Mitchell stated that the revised bill eliminates the provisions of the original bill establishing the Tax Modernization Review Group and eliminates the repeal of the tax as of June 30, 2018. To encourage investment in broadband infrastructure, it retains the cap on the amount of tax on telecommunications equipment at 2015 levels, and clarifies that the cap only applies with respect to communication providers that are currently subject to the tax and specifies that the limitations on county and municipal taxation will apply as well to school districts and Business Improvement Districts. At the present time this tax is paid only by landline telecommunication providers and not cable companies.

Mrs. Mitchell explained that she served with former Representative Darryl Scott on a related committee several years ago and that those in the telecommunication industry felt that they were being taxed unfairly on the betterments tax versus other

providers. The committee was to look at different alternatives, but when Rep. Scott did not run again, this did not occur. The proposed amendments aimed for consistency among all providers of telecommunications equipment. Mrs. Mitchell stated her understanding that the current proposal was to work with each community to try to obtain consistency.

In response to Councilman Hutchison, Mrs. Mitchell confirmed that the General Assembly would be voting on the amendment on June 23, 2015. She indicated that she agreed with the proposed amendment but not the bill as originally written, and this is what she relayed to the parties that were involved in this.

Responding to Mr. Neil, Mrs. Mitchell stated that she did not believe the bill would pass during the current session, stating that there did not seem to be enough support for it.

Overview of City Utilities

At the request of Chairman Hutchison and for the benefit of new members of Council, Mr. Scott Koenig, City Manager, provided a brief overview of the various utilities that the City of Dover provides to its residents and customers. Mr. Koenig stated that the City's power system had its 100th anniversary within the last few years and the water system dated back to roughly 1882; therefore, the City had been in the public utility business for many years, which had been a benefit to the City and its customers. *[City Clerk's Office Note: Subsequently during the meeting, Mr. Blakeman advised members that the City's electric utility came online and began generating power on January 1, 1900, and received a 100-year award from the American Power Association in 2000; therefore, the utility had been generating power for the City of Dover for 115 years.]*

Mr. Koenig explained that the City of Dover was granted a Certificate of Public Convenience and Necessity by the State of Delaware to provide electric services in a service territory. The City of Dover proper consists of approximately 24 square miles, and the City's electric territory is approximately 74 square miles, which extends to Little Creek, Port Mahon, down into Kitt's Hummock, which includes the Dover Air Force Base and areas south of Route 10, and then comes up and intertwines with the City limits. On the north side, the territory is in line with City limits. Mr. Koenig informed members that when property is annexed into the City, there is usually a letter of agreement where the franchise providing service prior to the annexation is transferred to the City's electric system. He noted that no financial transaction takes.

Mr. Koenig advised members that the City of Dover built a power plant in the 1960s at McKee Run which included two (2) 17 MW units called Unit 1 and Unit 2. In the early 1970s, Unit 3 was added, which is roughly 103 MW, and in approximately 1990, the VanSant combustion turbine was added. Mr. Koenig stated that at that point the City was producing power for the demands of its service territory; however, over the last two and a half decades the City had gravitated toward being part of a

regional power supply grid called the PJM system. The City is no longer a primary producer of power but produces power when called upon by the grid. He indicated that the City's generation capacity is approximately 170 MW.

Mr. Koenig explained that Council voted to retire Units 1 and 2, consisting of 34 MW of power, in Power Year 2018 for budgetary reasons. Council had considered replacing those units with either a purchase power agreement or new units that would offer Dover power generation well into the future. Related discussions had been ongoing for approximately four (4) years, and Mr. Koenig stated that it was hoped that staff would be bringing agreements regarding power supply forward to Council for consideration.

Mr. Koenig stated that the Calpine Corporation had come before Council to obtain authorization for a 618 MW facility for two (2) units, the first of which was for the Garrison Energy Center, which became commercially available on June 1, 2015, began producing power to the grid, and became the City's largest water customer overnight. Prior to the unit coming onto the grid, the thought was that once it did, Dover would not be called upon to generate power; however, that had not been the case.

Mr. Koenig reiterated that power generation is a very fluid and complicated environment, making it difficult to determine when Dover will be called upon to produce power. He stated that there are many producers inside the grid, but some are being retired and coming offline because they are old coal technology. Mr. Koenig stated that the call for who runs and who does not changes on a daily basis. When nuclear power plants are offline for maintenance, many more facilities are called up than when these plants are online and available. Mr. Koenig advised members that there had been some difficulty with gas supply in the last couple of weeks, and he hoped to find out more about that issue in meetings with The Energy Authority and Eastern Shore Natural Gas. He referenced to inconsistences with gas transmission and expressed his belief that this was due to the heavy demand of the new Calpine facility.

Mr. Koenig indicated that the Electric Fund is tagged at roughly $89M of revenue in this year's budget, and this money is used to cover the cost to purchase power from the system as well as the capital plan, which includes vehicle purchases, equipment purchases, line replacements, substation upgrades and/or replacements, and replacement of both large and small transformers. This revenue also supports needs related to facilities and infrastructure and a transfer from the Electric Fund to the General Fund. In the FY 16 budget, approximately $10.85M will transfer from public utilities directly into the General Fund, $10M from the Electric Fund and $850,000 from the Water/Wastewater Fund.

Regarding the electric utility, Mr. Koenig stated that the City serves approximately 23,000 customers, ranging from single-family houses all the way up to the Dover Air Force Base. A cost of service study was performed to properly allocate costs and

identify what the rates should be for each class of customer. Mr. Koenig noted that the City of Dover residential electric rates are the lowest in the State of Delaware but the commercial rates are not the lowest.

Mr. Koenig stated that the water and sewer system service territory is not quite as big as the electric service system. He noted that the City serves areas outside its corporate limits and has interconnection agreements with Tidewater Utilities, who purchases water from the City in the northwest portion of the City and supplies subdivisions northwest of the City. In addition, Tidewater purchases water from Dover through the Lakeland interconnection for the Lakeland Mobile Home Park and businesses on South State Street. Mr. Koenig stated that the City's relationship with Tidewater over the last decade had been very good, noting that Tidewater has four (4) of Dover's top 20 meters.

Mr. Koenig explained that the water and sewer systems are accounted for separately to ensure that the cost of water is covered by the water charge and the cost of sewer by the sewer charge; however, these funds are intermingled in a water and sewer enterprise fund. Total revenues expected in FY16 were $19.3M, including new revenue projected from the Calpine facility. Mr. Koenig advised that originally, the water system revenue was estimated to be about $1.6M and the sewer system in the $300,000 range. He indicated that the water system consists of approximately 14,000 to 15,000 meters, requiring a lot of manpower for care and maintenance. Water quality complaints were expected when Calpine came online but not many complaints were received. It was hoped that water quality would improve since water would be moving quickly through the system on that part of the City due to Calpine's demand.

Mr. Koenig stated that improvements were proposed over the long term for the water system, including potentially developing another aquifer, noting that if this will be necessary if Calpine builds a second generating unit. He indicated that the City has a 1.5M gallon water tower under construction presently at the Garrison Oak Technology Park, which is the City's largest tower by about 50 percent and another 1M gallon tower was scheduled to be built in the north middle quadrant of the City pending final resolution on a site. This would offset fire demands and provide additional elevated storage for supply. Additional improvements will be made to the system through pipe replacements.

Mr. Koenig advised members that staff expected to return to Council to review rates, explaining that efficiency had affected the City's water utilities. Plumbing codes had changed, and low-flow fixtures and low-flush toilets had significantly reduced household water usage. In the 1980s, a generic house used 300 gallons of water per day, and now a generic house uses 250 gallons per day, a drop of 50 gallons per day, which was a significant change when multiplied by 8,000 to 10,000 households.

Mr. Koenig stated other changes also affect the water/wastewater utility. In the early 1990s, Proctor & Gamble expanded their paper-making process, which put a significant demand on the water system of approximately 600,000 gallons a day.

However, in the last 10 years, they had stopped making that product at that location and water demand decreased by 600,000 gallons per day. He indicated that it is difficult to make up for these types of fluctuations in production and revenue. On the electric side, Mr. Koenig informed members that a push for more efficient air conditioning systems was affecting the electric utility. It was expected that electric load, even with growth, may be relatively flat over the next few years due to the implementation of systems using less power. He indicated that these are the types of variables used to set rates, determine how to recover fixed costs, develop revenue projections for future budgets, and review revenues for current budgets.

In regard to the sewer utility, Mr. Koenig stated that in the early 1970s, the City built a sewage treatment plant at the old PW2 warehouse location at the end of Water Street, which came online in about 1971. The plant was in operation for only a couple of years when the City transferred all of its waste to Kent County. Mr. Koenig expressed his opinion that the City was very fortunate to be with the County system because it is not necessary to do any of the related permitting or worry about the actual treatment of waste water coming out of of Dover. All flow from the City of Dover is sent to the County by contract and they have an obligation, under their Environmental Protection Agency (EPA) permit and Division of Natural Resources and Environmental Control (DNREC) permits, to treat the City's waste and deliver it to the Murderkill River in a state that is equal to or better than drinking water quality. Mr. Koenig indicated that the City was benefitting today from not having to run its wastewater treatment plant.

In terms of infrastructure, Mr. Koenig stated Dover has approximately 40 pump stations, which vary from small stations serving eight (8) to 10 houses, to large pump stations like the Puncheon Run station that serves industrial flow coming out of Kraft and Procter & Gamble. Mr. Koenig pointed out that it is critical that those stations work, noting that Dover had gone through replacement and renewals on the wastewater side, and backup generation was being constructed at those facilities because the potential for overflows into streams and rivers or onto the ground would be significant if the power goes out. Mr. Koenig stated he is grateful that Dover has such a reliable system with very few system-wide outages, noting the impact a power outage can have, such as sewage backing up in people's homes.

Mr. Koenig pointed out that owning its own utilities places the City in a good position to attract businesses; however, it require a lot of hours and manpower to run those enterprises. Because of the enterprise funds, the City recovers at least the cost associated with running them, and the intent of Dover's public utilities is to return money to the General Fund as internal profit for going through the pain of having to run the utilities, noting that they are 24/7 operations that require a lot of manpower, capital, and time from the Mayor, Council, and staff to keep systems functioning. He expressed his opinion that the City is in much better shape through owning the utilities as it can better control its own destiny.

In response to Mr. Neil regarding the cost to buy power if the City were not a generator, Mr. Koenig explained that the City's power plant and combustion turbine act as a physical hedge for the City, which provides leverage in buying power. It was his belief that Mr. Harry Maloney, Electric Director, may have estimated this cost at roughly $2M. With no ability to generate, the City would be completely at the risk of the market sale price. Because the City has its own generation, the market stops at the City's cost to produce into the market. Even though this cost can be relatively high in some cases, it is much less than if the City were at risk in the market. He noted that during really cold days this past winter, the per megawatt hour cost exceeded $1,000, $1,500, or $1,800 per hour; therefore, having generation gave an actual physical hedge that provided leverage in buying in the market.

Responding to Mr. Neil regarding whether a deal had been attained with Calpine, Mr. Koenig advised that the City did not have a deal worked out with Calpine on paper at this time. He stated that some regulation issues are being discussed with the EPA that have a significant impact on the products and prices that would be offered in the marketplace. Although the framework was in place, no one was willing to strike a price until those issues are resolved. Mr. Koenig stated that once they are resolved, staff would come before Council with a proposed agreement.

Responding to Mr. Anderson regarding the City's industrial rates, Mr. Koenig advised that commercial and industrial rates are grouped together and the City's rates rank in the middle to upper end.

TEA/NAES Reports (*March and April*)

The TEA/NAES Monthly Reports for March and April 2015 were provided to members to enable them to monitor electric sales and revenues received, which will provide a better understanding of any fluctuations that occur and allow the opportunity to make improvements if deemed necessary.

Mr. Blakeman expressed his preference for having actual PJM invoices included in the TEA/NAES reports versus the format used in the April report. In response to Mr. Blakeman, Mr. Koenig stated that would contact TEA/NAES to make this request.

Discussion Item Proposed During the FY 2015/16 Budget Review - Cost-Benefit Analysis of Power Plant Operation

Mr. Scott Koenig. City Manager, stated that a motion was made during the FY 2015/16 budget review that the City consider performing a cost/benefit analysis of its power plant operation. Mr. Koenig stated that in the five (5) year forecast, the power plant was slightly negative in cash during one (1) year but positive in all other years. Mr. Koenig noted that a one (1) year cost/benefit analysis would not be beneficial since a decision could not be made based on a return of one (1) year and stated the need to define the timeline of the analysis. He stated that, without question, owning the physical plant and having the ability to contract its operation

and oversee its contracts would be the right thing to do for the benefit of customers. Mr. Koenig felt that reviewing it on an annualized basis would provide only a snapshot, whereas a profile over years showed it had been a benefit to the City and would continue to be in the foreseeable future.

Responding to Mr. Blakeman regarding the life expectancy of Unit 3, Mr. Koenig stated that Mr. Harry Maloney, Electric Director, estimated there would be approximately 10 years before there were concerns regarding its life expectancy. When discussing the life expectancy of Units 1 and 2, North American Energy Services (NAES) engineers had indicated that the units could last as long as desired, depending on what the City wanted to put into them. Mr. Koenig indicated that the projected life expectancy of the turbine was roughly 50 years. He advised members that the City was doing everything it could to get it to 50 years, and when closing in on this time frame, would make decisions on whether to maintain or replace that unit. Mr. Koenig stated that replacement would cost roughly $1M per MW; therefore, replacing it would be more than a $120M expense.

Mr. Blakeman questioned if decreased prices due to the impact of older coal-fired generation units being replaced with gas turbines had been a concern when considering the life expectancy of this unit. He felt that it may be priced out of the market and not be called to run. Responding, Mr. Koenig stated that this was a concern; however, The Energy Authority (TEA) does a good job of looking at those numbers on an annualized basis. He reiterated that in spite of initial concerns that Dover would not be called upon once Calpine was on board, that had not been the case, but could potentially be in the future.

Mr. Blakeman stated his opinion that Calpine may be asking to put in a second unit a year from now. Mr. Koenig concurred that this was a possibility.

Responding to Mr. Hutchison regarding the projected cost associated with keeping Units 1 and 2 running, Mr. Koenig stated that the consensus was that it would be more cost effective to the City to build new generation versus maintaining the current units or to execute a purchase power agreement.

The Committee deferred Item #5, Updates, to the July 13, 2015 Utility Committee Meeting.

By consent agenda, Mr. Hare moved for acceptance of the Utility Committee Report, seconded by Mr. Hosfelt and carried by a unanimous roll call vote (Cole absent).

LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE REPORT - JUNE 22, 2015

The Legislative, Finance, and Administration Committee met on June 22, 2015 with Chairman Hare presiding.

Disposition of City Owned Land – Properties Located at 423 Collins Drive, 749 West North Street, and 29 South Governors Avenue

Mr. Scott Koenig, City Manager, informed members that the City of Dover acquired properties located at 423 Collins Drive, 749 West North Street, and 29 South Governors Avenue at a monition sale due to liens for taxes and demolition expenses. He stated that these are excess properties, as the City has no use for them and would be better served by the properties being redeveloped and restored as taxable properties.

Mr. Koenig advised that the City has a procedure for Sale and Disposition of Real Property, which includes a "Standard Method of Disposition" that begins at the Legislative, Finance, and Administration Committee. As articulated in the procedure, the first decision by Council (after a favorable recommendation by the Committee) is whether or not to dispose of the surplus property and, subsequently, to determine the method of disposal (auction or sealed bid).

Mr. Koenig reviewed the City's expenses and other charges, as well as the City's 2015 Assessed Land Value for each property, as follows:

Address	City Expenses and Other Charges	City's 2015 Assessed Land Value
423 Collins Drive	$ 20,481.13	$ 39,200.00
29 S. Governors Avenue	$ 23,828.90	$ 13,600.00
749 W. North Street	$ 19,889.45	$ 52,300.00

Mr. Koenig noted that the City's expenses and other charges are inclusive of property tax, sheriff sale preparation fees, grass charges, utility charges, and demolition charges. He explained that for two (2) of the three (3) properties, the City's expenses are less than the land value, and staff was of the opinion that these properties should be put back on the market through sealed bid versus being gifted. The City could potentially recover additional costs and reduce the amount of the potential write-off by seeking bids on the vacant property. Additionally, these properties were not located in the areas where local housing non-profit organizations were focusing their efforts to acquire and develop properties.

Staff recommended the following action: 1) determine that the properties are excess property; and 2) authorize the City Manager to dispose of the properties using the "Standard Method of Disposition."

Mr. Koenig stated that the "Standard Method of Disposition" for these properties would be through sealed bid, explaining that staff had put together a very generic bid package, including property information and zoning information. He informed members that those packages go to the City's purchasing agent and are posted on the City's website, and the City would receive bids on a specified date. Mr. Koenig

explained that staff had talked to several developers, in the context of the downtown development district, that had expressed interest in these properties. He stated that since staff believed that, at a minimum, there would be several people interested in bidding on these properties, the recommendation was to dispose of them through sealed bid.

The Committee recommended that the properties located at 423 Collins Drive, 749 West North Street, and 29 South Governors Avenue be designated to be sold and determined to be excess property, and that the City Manager be authorized to dispose of the subject properties using the "Standard Method of Disposition."

By consent agenda, Mr. Hare moved for approval of the Committee's recommendation, seconded by Mr. Hosfelt and carried by a unanimous roll call vote (Cole absent).

Discussion Items Proposed During Budget Review

Due Diligence Research on Health Insurance Costs

Mr. Anderson stated that he was definitely a supporter of maintaining the quality of the City healthcare plan and ensuring that there is no diminution of that quality. He expressed his opinion that the City employees and taxpayers would welcome looking at opportunities to see if they can have the same quality of coverage and pay less money, particularly since there is cost sharing. Mr. Anderson advised that Kent County pays less money than the City does for similar coverage. He suggested that the City at least look at and study the process to determine whether or not the City and the taxpayers can save money, since this is one (1) of the largest line items in the City's budget. He noted that it would be irresponsible for the City not to do so.

In reference to Mr. Anderson's statement that Kent County pays less than the City for the same healthcare coverage, Mr. Sudler questioned what agency Kent County uses. Responding, Mr. Anderson stated that Kent County uses L & W Insurance.

In response to Mr. Hare, Mr. Anderson stated that Kent County has the same Highmark Blue Cross Blue Shield insurance coverage as the City.

Mr. Sudler questioned whether the City had received any bid proposals from L & W Insurance and inquired as to the City Manager's thoughts on this company. Responding, Mr. Scott Koenig, City Manager, recalled that in 2011 the City did either a request for proposals or a request for cost, and L & W Insurance did submit information; however, the recommendation was to stay with the State of Delaware. He advised that the playing field changes yearly, so it would be something that the City would have to pursue for FY 2017. Mr. Koenig reminded members that currently all of the City's collective bargaining agreements reference the State of Delaware plan. He explained that for the City to change plans, the contracts would have to be altered going forward, noting that two (2) of the contracts are up for negotiation now.

Mr. Shevock questioned whether the City had ever considered putting a cap on what the City pays to cover an employee's healthcare coverage. In response, Mr. Koenig indicated that prior to 2011, the City had a committee with multiple stakeholders in the City that discussed ways to control costs. However, he explained that one (1) of the difficulties was that none of the unions would recommend ways to control costs because they thought that was part of the collective bargaining process for those particular groups. Mr. Koenig advised that, essentially, the City has six (6) different groups in the healthcare plan, including the four (4) unions; non-bargaining employees, which includes approximately 40 employees; and all of the retirees that are on the plan, who are not represented directly by anyone. He stated that a cap would have to be negotiated for any of the union contracts, and it would be a challenging task to implement a cap, dealing with six (6) different groups

Responding to Mr. Hare, Mr. Koenig explained that the language in at least two (2) of the union contracts is very specific in reference to the State of Delaware plans. He advised that if the City were to change its insurance plan, even if the same coverage was provided at a lower cost, it would have to be accomplished through the collective bargaining process, noting that there is a price to pay for that, just like everything else in the contract.

Mayor Christiansen questioned how much the City's healthcare cost with the State of Delaware had increased. In response, Mr. Koenig advised that it was a little more than 16%.

Mayor Christiansen indicated that the increase in the City's healthcare cost was one (1) of the reasons for the increase in the City's tax rate and budget, and questioned whether Kent County had fewer employees than the City. Responding, Mr. Hare stated that Kent County had 350 people on their health plan, including employees and retirees.

Mayor Christiansen offered to lead a committee consisting of himself, a human resource person, the Assistant City Manager, and the City Treasurer to compare what is available in healthcare benefits with L&W Insurance and perhaps others, put out a request for proposals (RFP), and make sure that the City is getting the biggest bang for its dollar. Mayor Christiansen noted that it was his understanding that with the continued State contracts, there is a possibility that next year the City's cost could go up 20 to 25%. He stated that this committee would report back to Council within 45 to 60 days.

Mr. Hare stated that he would like to include other people on the committee as well, and expressed his opinion that, with her current workload, Mrs. Donna Mitchell, Controller/Treasurer, may not need to be involved with this committee at this time. Responding, Mayor Christiansen suggested having the Assistant Treasurer serve on the committee, or someone who has the numbers.

Mr. Koenig stated that this would not be a 45 to 60 day undertaking, noting that it would probably take four (4) to six (6) months, at a minimum. He explained that the quotes would be for July of 2016 and an insurance provider may say that they can save the City money for one (1) year; however, they cannot guarantee anything after that. Mr. Koenig stated that this is currently one (1) of the most unstable areas in the economy to be reviewing. He reminded members that this was a huge issue related to the City workforce and would cause major strife moving forward.

In response to Mr. Hare, Mr. Koenig stated that no one could provide a guarantee on costs, even the State of Delaware; however, he expressed his opinion that being part of a larger group is more beneficial for the City of Dover.

Mrs. Mitchell clarified that the State is a self-insured plan; however, the insurance that Kent County has is not a self-insured plan. Mrs. Mitchell stated that Aetna and Blue Cross Highmark, and Blue Cross Blue Shield had gone to the insurance commissioner to request a 20% to 25% increase, which would affect the County plan, not the State self-insured plan.

Mr. Hare stated that he did not want to change the coverage or reduce it so that the deductible would be higher, etc. His concern was that the City did not know whether or not its insurance rates could have been reduced during the past four (4) to five (5) years. Mr. Hare stated that the rates were worth examining, even if it were to take four (4) to six (6) months, as long as the committee would be led by the Mayor.

Mayor Christiansen stated that he would take this responsibility and Council could set up the committee as it wants. He explained that the City had an obligation to the taxpayers and employees for maintenance of standards. Mayor Christiansen felt that the City needs to know whether the current insurance is the best deal available for all concerned, while maintaining the coverage employees had become accustomed to.

Mr. Shevock moved to recommend approval of Mayor Christiansen's proposal to go forward with the health insurance cost research, seconded by Mr. Sudler.

Mr. Cole questioned whether or not there would be a timeline or checkpoints associated with this recommendation, noting that, realistically, it would take a long time.

In response, Mr. Hare stated that the committee should have some results back by the first of the year. Mayor Christiansen suggested the beginning of the budget process.

Mrs. Traci McDowell, City Clerk, questioned whether the Committee wanted to define the number of members and the charge of the recommended committee, so that Council will know exactly what they are voting on when this recommendation is considered.

Responding, Mr. Hare suggested that the committee consist of at least two (2) members of Council, the City Manager, Mayor, Human Resources Director, and the Controller/Treasurer or her assistant.

Mr. Shevock and Mr. Sudler agreed to the amendment to the motion as recommended by Mr. Hare.

The Committee recommended approval of Mayor Christiansen's proposal to go forward with the health insurance cost research, as amended to include the creation of a committee to consist of at least two (2) members of Council, the City Manager, Mayor, Human Resources Director, and the Controller/Treasurer or her assistant.

By consent agenda, Mr. Hare moved for approval of the Committee's recommendation, seconded by Mr. Hosfelt and carried by a unanimous roll call vote (Cole absent).

Performance Audit of Civilian Side of City Government

Mr. Anderson suggested that members begin to look at city government from the perspective of efficiency and examine the benefits of a performance audit, noting that there are many ways to look at better ways of governing. He informed members that the State of Delaware has some processes with the Baldrige Awards, through which the City could get money to look at efficiency. Mr. Anderson stated that these excellence awards provide different goals, and there are options for various other performance audits. He recommended that the City explore these options since Council was considering tax and utility rate increases, and members need to be able to tell people, with assurance, that the City is using their money in the best way.

Mayor Christiansen reminded members that the City had an Ad Hoc Financial and Operational Advisory Committee; however, they seemed to have fallen by the wayside. He suggested that the City take advantage of professional people within the community, including citizens, retired business executives, etc. in order to complete a review of each department with in-house personnel. Mayor Christiansen expressed his opinion that the City should re-energize the Ad Hoc Financial and Operational Advisory Committee with new members to review all departments and report back to Council with their findings. He stated that he would like to serve as the chairperson, noting that he had the time and could do an in-depth review. Mayor Christiansen reiterated that this review should be done in-house, although the committee could include a member or two (2) of Council, if the Committee so wished. He noted that this suggestion was not to be critical of any City staff; however, he felt it important to develop mechanisms to streamline some of the departments in the interest of the taxpayers.

Responding to Mr. Hare, Mrs. Traci McDowell, City Clerk, stated that the Ad Hoc Financial and Operational Advisory Committee consisted of seven (7) members.

Mrs. Donna Mitchell, Controller/Treasurer, expressed her appreciation of everyone's interest in this topic. She agreed that the City should look at some things to determine whether anything can be done differently or better. Mrs. Mitchell

requested that staff be allowed to brainstorm ideas and bring them back to Council, prior to the appointment of an ad hoc committee. She advised that throwing together a committee could result in the same issues that the City experienced with the previously ad hoc committee.

In response to Mrs. Mitchell's comments, Mayor Christiansen stated that this would be a different committee, and expressed his opinion that time was of the essence and the committee could coordinate its efforts before moving forward.

Mrs. Mitchell agreed that time was of the essence and requested an opportunity for staff to bring recommendations to the Committee within July or the first week of August. She stated that staff could work with Mayor Christiansen to include his thoughts prior to bringing it back to Council.

Mr. Anderson stated that Mrs. Mitchell had been working on some efforts with the City Warehouse and Finance Department, and the library had been conducting its own efforts. He questioned if Mrs. Mitchell had any success in her efforts with the City Warehouse or Finance Department. Responding, Mrs. Mitchell stated that staff had not yet had success in those efforts and that is why she requested an opportunity for staff to meet to discuss the roadblocks they had experienced and potential bottlenecks so that they can try to resolve those issues and get everyone on the same page. This would allow staff to present solutions and/or processes which they believe will work and be accomplished in a timely manner.

Mr. Hare suggested that the Committee start by recommending a format for the ad hoc committee. He inquired as to Mayor Christiansen's opinion regarding having seven (7) people on the committee, noting that two (2) members of Council could agree to appoint one (1) member from each district, the at-large Council member could appoint one (1) member, and the mayor could appoint two (2) members. He suggested that the mayor would also serve as the chairperson.

In response to Mr. Hare, Mayor Christiansen expressed his opinion that the committee format should serve the best interest of the citizens and include representation throughout the entire City, and preferably the members would not have predisposed agendas.

Council President Slavin advised that the Ad Hoc Financial and Operational Advisory Committee was appointed by the Council President. He stated that he would not be opposed to having an appointment of that type, explaining that the Legislative, Finance, and Administration Committee could make a recommendation and the full Council would then take action on it to form the ad hoc committee. Mr. Slavin offered a Plan B, which would allow members of Council to provide him recommendations and he could simply reappoint the Ad Hoc Financial and Operational Advisory Committee.

Mr. Hutchison reminded members that there were five (5) new members of Council and suggested that Council have an opportunity to discuss ideas in a workshop with staff in order to develop a master plan to help the City move forward.

Mr. Hare agreed that a workshop may be the best first step, noting that it would provide staff an opportunity to meet and bring their ideas forward to Council for discussion. He stated that Council could then decide if this committee is necessary.

Mr. Anderson stated that he did not have any objections to staff taking a month, noting the importance and benefits of staff buy-in. Referring to the potential of forming a committee, Mr. Anderson expressed his hope that Council would allow the City Manager's appointee and the finance director, or her appointee, to be ex-officio members.

Mr. Sudler stated that he liked both ideas, noting that the workshop idea would be very beneficial to the new members of Council and that it is also important to have buy-in from the community and involve them in the decision-making process.

Mr. Hosfelt requested clarification regarding the independent study which Council previously voted in favor of conducting. Responding, Mr. Hare stated that the independent study was for police and fire, and this study would include everything else.

Mr. Cole moved to recommend that staff and Council report back their findings in one (1) month. The motion failed for lack of a second.

Mr. Hare suggested that staff have their information ready by August 1, 2015 and that a workshop be scheduled for the first part of August.

Mrs. McDowell requested clarification regarding what type of findings the Committee was looking for. In response, Mrs. Mitchell explained that she was referring to strategic plans or strategic ideas that staff believes would improve processes and gain more efficiencies. She noted that these findings would not be all inclusive.

Mrs. McDowell questioned if members of Council would be bringing their ideas to a workshop. Responding, Mr. Hare clarified that Council would not do this; rather, Council would meet to review staff's ideas and proceed from there.

Mr. Scott Koenig, City Manager, expressed his opinion that members of Council should bring their ideas to the Council workshop in order to have a two-way dialogue, since staff and Council may have different ideas regarding efficiency improvements. He stated that he did not wish to present only staff's ideas and requested that members of Council provide staff with any specific ideas that they would like to discuss prior to the workshop, so that staff can bring information to the workshop.

In response to Mr. Koenig's comments, Mayor Christiansen expressed his opinion that the committee needs to move forward.

Mr. Sudler requested Mrs. Mitchell to provide five (5) sections or segments of the City that staff may consider first. Responding, Mrs. Mitchell stated that one (1) example of the types of ideas she is considering is a central services fund which would centralize fleet and operations in an effort to inventory all of the fleets and implement cross-divisional fleet sharing. She explained that there would be a central services manager who would schedule the fleet, ensure that the City is not buying more equipment than necessary, and log the current equipment's usage to determine things like how often it is used and whether the City can rent equipment.

Mr. Sudler suggested that Mrs. Mitchell provide members of Council and the Legislative, Finance, and Administration Committee with the flowchart that she will develop to direct staff's focus, in order for everyone to focus on the same areas for discussion at the workshop.

Mr. Hare questioned whether Mrs. Mitchell required Council approval to move forward with her idea regarding a central services fund. Responding, Mrs. Mitchell stated that she did not require Council approval and that she had begun discussing her ideas with Mr. Koenig. She advised that she would like to include all department heads in the strategic discussion because many have ideas that they would like to share. Mrs. Mitchell explained that when you have a committee first, employees and the public attend the meetings. She expressed her preference for department heads to be given an opportunity to discuss their ideas and bring them together first.

Mayor Christiansen questioned what staff discusses during department head meetings. In response, Mrs. Mitchell stated that staff's current department head meetings are for the discussion of agendas, and the City Manager also has individual meetings with department heads.

In response to Mr. Hare, Mrs. Mitchell explained that she is not the operations person, and allowing for a group discussion of all department heads would enable staff to determine if there are reasons why these types of changes have not been implemented in the past.

Ms. Maucher questioned whether a committee format would be more conducive to open discussion between staff and Council. She favored the idea of a committee, stating that this format allows for collaboration and for ideas to be sorted out.

Responding to Ms. Maucher, Mrs. Mitchell stated that she would not mind a committee meeting; however, she requested the opportunity for staff to meet independently prior to the committee meeting. Mrs. Mitchell reiterated that she was in favor of a workshop that would allow everyone to be a part of the discussion.

Ms. Maucher questioned whether there is a public document that details the functions, workflows, etc. of each department. In response, Mrs. Mitchell explained that this was included in the budget document and indicated that she would provide Ms. Maucher with a copy.

Mr. Anderson stated that there was a review being conducted by the Mayor, Assistant City Manager, and others, and suggested inviting them to provide their input as well.

Mr. Cole moved to recommend that the staff strategic planning team and members of Council develop ideas by August 1, 2015 and that a workshop be scheduled after August 1st. The motion was seconded by Mr. Sudler.

Mr. Hare noted that the Committee's agenda for this evening also included an item regarding Review of All Lifecycle Items (Report to Committee in 90 Days) and questioned whether this could be part of the performance audit discussion.

In response to Mr. Hare, Mr. Koenig advised that these items were motions made during the Special Council - Budget Review meetings and could all be part of the performance audit discussion. He reminded members that the issue of the City's form of government still needed to be solidified. He indicated that he did not have the ability to impose his goals for the entire organization because it was still unclear who reports to whom, since the motions had been somewhat contradictory. Mr. Koenig stated that staff looks for efficiencies across the organization; however, Mrs. Mitchell's idea regarding the creation of a centralized fleet was not a simple undertaking because the City does not currently have that type of facility. He advised that it may require construction of a new facility at an existing or new location. Mr. Koenig thought it would be great to do a strategic plan in order to get these ideas out there; however, he noted that these would be long-term goals.

Mr. Koenig stated that the items proposed during the budget hearings would require a significant amount of staff time to develop and bring forward for consideration. It was Mr. Koenig's understanding that the Committee was prioritizing these items in order for staff to bring them forward to Council on a regular basis. He informed members that there was a lot of difficulty with the Ad Hoc Financial and Operational Advisory Committee because the workforce got extremely agitated by some of the discussion. Mr. Koenig reminded everyone that he must keep the organization moving forward and focused on the task while discussing all of these issues. He stated that this needs to have a very position spin, explaining that these are improvements to better the organization and service delivery, noting that everyone wants to provide services to the City at the lowest cost possible.

Mr. Koenig stated that the City needs to decide step by step how to move forward. He reiterated his request for a resolution to the form of government issue, so that there is a clear understanding of what items needs to be brought forward to Council. Mr. Hare agreed that the City does need to fix the form of government.

Mayor Christiansen concurred with Mr. Koenig; however, he stated that a new committee with responsibilities assigned by the Legislative, Finance, and Administration Committee and Council could prove to be very productive on behalf of the citizens.

Mrs. Mitchell stated that she did not go into all of the details with the Committee; however, when she discussed the idea of central services with the City Manager, it did include a building project. She expressed her thoughts that the list of proposed items discussed during the Special Council - Budget Review meetings could be prioritized first and then brought back to Council. Mrs. Mitchell agreed that many of these items could be included in the strategic plan discussion in August.

The Committee recommended that the staff strategic planning team and members of Council develop ideas by August 1, 2015 and a workshop be scheduled after August 1, 2015.

By consent agenda, Mr. Hare moved for approval of the Committee's recommendation, seconded by Mr. Hosfelt and carried by a unanimous roll call vote (Cole absent).

Proposed New Revenue Sources for FY 2016/17

Mr. Scott Koenig, City Manager, advised that staff would be prepared to bring forward recommendations for new revenue sources in the August/September time frame.

Public Safety Fee Study

Mr. Hare explained that he had contacted the City Solicitor's office and has appointments with other people to determine the feasibility of the City moving forward with this study and requested that discussion of this item be deferred.

The Committee deferred consideration of this matter.

Review of All Lifecycle Items (Report to Committee in 90 Days)

Mr. Hare reminded members that this matter was previously discussed during consideration of the Performance Audit of Civilian Side of City Government and staff indicated that it would be included as part of that discussion in the future.

Review of Internal Applicant Hiring/Training Opportunities

Mr. Sudler advised that the purpose of this discussion was to ensure that City employees have the opportunity to apply for other positions within the City and if they are not awarded a position because they do not meet the qualifications, that training is provided to enable them to be awarded the job in the future or be in a better position to compete for the job.

Mr. Cole questioned the Committee's position on this item, noting that in his professional career, this is a collective bargaining issue. Responding, Mr. Sudler stated that this would be for all employees because any employee can apply for an

internal position, whether or not they are in a union. Mr. Sudler advised that management previously indicated that the City does provide employees with opportunities for professional enhancement training.

Mr. Hare clarified that the City provides employees training for their current positions. He explained that an accountant who was interested in become the finance director could go to school and take accounting classes; however, the City would not send an accountant to school to become a city planner. Mr. Hare also noted that the employee must take the initiative; management does not approach them regarding their desire to move up within the organization.

Mr. Scott Koenig, City Manager, explained that this is a two-way street. Referring to some of the City's labor positions, he stated that there is always follow-up with an employee who is not selected for a position to help prepare him/her for the next job opportunity with the City; however, there are issues, such as the ability to use computers or basic software.

Mr. Koenig advised that it is somewhat incumbent on the employee to make management aware of their desire to move up, to find out exactly why they were not selected for a position, and to ask about future training opportunities. He explained that the City does not pre-select employees to go to training or move up; an employee must identify themself as someone who wants to move up and meet the qualifications.

Mr. Koenig reminded members that training and travel had been cut from the City budget for several years; however, that approach impaired the City and the employees from being in a position to understand current trends and technology, as well as being prepared for the next round of supervisory positions and promotions. He stated that funding for training had been added back into each division budget over the past four (4) fiscal years to allow for at least a basic level of training. Mr. Koenig noted that once employees have met the basic level, they can seek more advanced levels of training. He explained that this funding had been reinstated, with the understanding of each department head that it must be used for training. Mr. Koenig stated that managers had generally met challenges and sent people to training. He reiterated that employees must meet managers halfway, and managers have to hold employees accountable to get training to qualify for the next level within the organization.

Review of the Pay System

Mr. Hutchison recommended that the City complete an internal review of the market value of all City of Dover employees to assess whether or not they are at market value. He suggested that the City compare the market with the State of Delaware, Kent County Levy Court, City of Wilmington, City of Newark, and City of Milford. Mr. Hutchison expressed his opinion that once an individual reaches market value, they should be redlined. He explained that the individual would be entitled to bonuses but not an increase in base salary. Mr. Hutchison suggested that the Committee should meet with the City Manager and Controller/Treasurer to address this issue.

Mr. Hare questioned whether Mr. Hutchison would be opposed to including additional cities, such as Smyrna and Lewes, to the review. Responding, Mr. Hutchison stated that he would not be opposed to additional cities; however, it was his opinion that the comparison should be done within Delaware.

Mr. Hare suggested that the cities should have similar tax situations as the City of Dover, noting that the City of Wilmington's tax bracket was a little higher than the City of Dover and they also have a City wage tax. He stated that the City of Newark would be a good comparison.

In response to Mr. Hare, Mr. Hutchison explained that he had suggested the cities of Wilmington and Newark because they are the same size as the City of Dover, in terms of land, and they also face many of the same issues as the City of Dover.

Mr. Sudler moved to recommend that the Legislative, Finance, and Administration Committee review other cities in order to complete a comparison of the pay for the City's employees versus other cities' employees. The motion was seconded by Ms. Maucher.

Mr. Sudler moved to amend the motion to include a recommendation to create a list of cities that members deem appropriate to review for recommendations. The motion was seconded by Ms. Maucher.

Mr. Shevock questioned who would compile this information and bring it back to the Committee. Responding, Mr. Hare clarified that the motion before the Committee was to get the list of positions from Mr. Hutchison before moving forward.

The Committee recommended that the Legislative, Finance, and Administration Committee review other cities in order to complete a comparison of the pay for the City's employees versus other city employees, as amended to include that a list of cities be created that members deem appropriate to review for recommendations.

By consent agenda, Mr. Hare moved for approval of the Committee's recommendation, seconded by Mr. Hosfelt and carried by a unanimous roll call vote (Cole absent).

Review of Planning Application, Zoning Verification, Itinerant Merchant, Safe Communities, Residential Vacant Building and Housing Violation Fees

Mrs. Ann Marie Townshend, Director of Planning and Community Development, stated that this item and the next item, Review of Planning and Inspections Fees (by December 31, 2015), were really the same item. She advised that she had begun work on this and would be prepared to bring a recommendation forward to the Committee in late July.

The Committee deferred consideration of this matter.

Review of Planning and Inspections Fees (by December 31, 2015)
Mrs. Ann Marie Townshend, Director of Planning and Community Development, stated that this item and the previous item, Review of Planning Application, Zoning Verification, Itinerant Merchant, Safe Communities, Residential Vacant Building and Housing Violation Fees, were really the same item. She advised that she had begun work on this and would be prepared to bring a recommendation forward to the Committee in late July.

The Committee deferred consideration of this matter.

Timeline for Review of Fiscal Year 2016/17 Budget
Mr. Hare proposed having a preliminary budget by February 1, 2016, to allow more time for review.

Mr. Scott Koenig, City Manager, advised that any request to compress the time would create a set of challenges for staff. He informed members that it takes staff several months to compile and review the information, which must then be formatted for members of Council. Mr. Koenig stated that changing the budget timeline would add more uncertainty, explaining that if Council would like to see a budget in February, all of the numbers would have to be finalized by January, which would result in the budget being compiled based on only five (5) to six (6) months of current year revenue and expense. Based on his experience over the last four (4) years, Mr. Koenig stated that the compressed period would cause the City to make decisions in a strict time frame.

Mr. Hare stated that his intention was not to have a full budget or even exact numbers by February or even March 1st. He simply wanted to know what the department heads were projecting for the fiscal year, explaining that he would like a head start if the City was going to have an unexpected $2M expense.

Mr. Koenig advised that the FY 2015/2016 operating budgets were basically status quo because that was the budget direction that was provided to staff last fall. He explained that the original budget direction was for a 2% reduction in operating budgets; however, that got off track when the City added officers mid-year. Mr. Koenig stated that he could provide a projection in February, noting that his expectation would be status quo. He noted that there should not be any unplanned $2M increases to any budget unless there is a drastic change in some market, which Council would be made aware of.

Mr. Hare suggested having a preliminary budget by April 1, 2016.

Mayor Christiansen questioned if a preliminary budget could be delivered by the end of March that would provide a more realistic view of what staff would present at the end of April.

Mr. Koenig requested that this item be deferred until the next meeting to allow time for him and Mrs. Mitchell, Controller/Treasurer, to discuss the possibility of delivering the draft budget on April 2, 2016.

The Committee deferred consideration of this matter until their next meeting.

Mr. Hare requested the addition of an item to the next Legislative, Finance, and Administration Committee meeting for discussion of the City's form of government. Responding, Mrs. Traci McDowell, City Clerk, advised that the proposed ordinances and charter amendments related to the City's form of government were included on the draft agenda for the July 13, 2015 Committee meeting.

By consent agenda, Mr. Hare moved for acceptance of the Legislative, Finance, and Administration Committee Report, seconded by Mr. Hosfelt and carried by a unanimous roll call vote (Cole absent).

MONTHLY REPORTS - MAY 2015

By motion of Mr. Hare, seconded by Mr. Hosfelt, the following monthly reports were accepted by consent agenda:

City Assessor's Report
City Manager's Report
City Planner's Report
Controller/Treasurer's Budget Report
Economic Development Office Report
Fire Chief's Report
Police Chief's Report

GRANT APPLICATION EVALUATION - WATER TREATMENT PLANT PROCESS IMPROVEMENTS

Mr. Scott Koenig, City Manager, explained that, in Fiscal Year 2015, the City began working on a project to improve the treatment processes at the Long Point Road Water Treatment Plant, which began operation in approximately 1994. The treatment equipment is original and it has aged over time. Mr. Koenig noted that it has gone from being state-of-the-art equipment to being obsolete in the treatment industry.

Mr. Koenig advised that the original intent was to replace the existing treatment methods with similar technology and more state-of-the-art machinery. After the consulting engineers visited the site and began the sampling, as well as trying to anticipate how the City's treatment methods will coincide with current standards and regulations, it was determined that the methods they originally intended to use will not function at the level anticipated, so the design requirements were modified at an additional cost.

Noting that the anticipated design budget had increased from $175,000 to $310,275, Mr. Koenig advised members that staff was requesting authorization to submit a drinking water matching planning grant in the amount of $79,744. He advised that staff intends to apply for the grant, complete the rest of the design in FY16, and then reevaluate the construction costs once the final design is complete. Mr. Koenig stated that they believe the construction costs will be significantly higher than the anticipated $1.2M, which will require a funding plan for the capital improvements associated with the construction costs. He advised that they will evaluate the project with the FY17 budget and the five (5) year plan going forward.

Mr. Koenig explained that this treatment facility is one (1) of the primary sources of production for the new Calpine plant. He noted that when the Long Point Road Treatment Plant was originally constructed, it was anticipated that this would be the baseline flow for the system. Mr. Koenig stated that, in the 20 years since it was constructed, it has been used as a peaking plant, especially in the summertime for the increase in water usage across the system. He stated that, now that the Calpine facility is in operation, this is an important facility for stable production across the City.

Staff recommended authorization to submit the grant application to Delaware Health & Social Services (DHSS) for a Drinking Water Matching Planning Grant for the second phase of design for the City of Dover Water Treatment Plant Process Improvements project in accordance with the Finance Department's Grant Application Procedure F317.

Mr. Anderson asked if this was a state grant or if it was a pass-through from the federal government. Responding, Mr. Koenig stated that it was part of the state revolving fund, similar to the money that was used for the tar ditch project.

Mrs. Donna Mitchell, Controller/Treasurer, stated that several of the revolving loan funds include federal funds and would be included in the annual federal audit.

Mr. Anderson asked what obligations would be attached to the grant. Responding, Mr. Koenig stated that he did not believe that there were specific obligations with the planning grant. He noted that construction financing would obligate the City in regard to wage rates.

Mr. Anderson asked if this was a grant or a loan. Responding, Mr. Koenig stated that the City would pay the contractor or the engineering firm and then submit the bills for reimbursement. He noted that repayment to the state was not required.

Mr. Hutchison moved to authorize staff to submit the grant application to Delaware Health & Social Services (DHSS) for a Drinking Water Matching Planning Grant for the second phase of design for the City of Dover Water Treatment Plant Process Improvements project in the amount of $79,744. The motion was seconded by Mr. Anderson and carried by a unanimous roll call vote (Cole absent).

COUNCIL APPOINTMENTS - YOUTH ADVISORY COMMITTEE - ONE (1) YEAR TERMS TO EXPIRE MAY 9, 2016

By consent agenda, Mr. Hare moved for approval of appointments to the Youth Advisory Commission. The motion was seconded by Mr. Hosfelt and, by a unanimous roll call vote (Cole absent), the following appointments were made for a one (1) year term to expire May 9, 2016:

Jordan Harmon
Rocher Hopkins
Zorana Ilic
Michael Kosior
Theresa Morris
Lauren Scott

COUNCIL MEMBERS' ANNOUNCEMENTS

Mr. Anderson announced that on Monday, July 20, 2015, the Delaware Attorney General's Office will be holding a housing workshop at the Modern Maturity Center between 1:00 p.m. and 7:00 p.m. He noted that they will have educational sessions on housing rights, how to avoid scams, and how to find certified housing counselors and mortgage lenders. Mr. Anderson stated that there would be services on-site, along with representatives from the Attorney General's office, the police, the Housing Authority, and other agencies. He noted that more information was available at DelawareHomeownerRelief.com.

Mr. Sudler announced that he and Councilman Anderson, in partnership with Mt. Zion AME Church Social Action Commission, will conduct a roundtable dialogue concerning the City of Dover's off-road vehicle ordinance and constituents' reports of shots fired in residents' homes on Kirkwood, Queen, and New Streets in Dover. The dialogue will be held on Thursday, July 16, 2015 from 7:00 p.m. to 9:00 p.m. at the Solid Rock Baptist Church Community Outreach Center, 113 North West Street, Dover. Mr. Sudler suggested calling either him or Councilman Anderson for additional information.

Mr. Sudler moved to adjourn into the Special Council meeting to discuss legal matters. The motion was seconded by Mr. Neil and unanimously carried.

Meeting adjourned at 8:20 p.m.

TRACI A. McDOWELL
CITY CLERK

All orders, ordinances, and resolutions adopted by City Council during their Regular Meeting of July 13, 2015, are hereby approved.

ROBIN R. CHRISTIANSEN
MAYOR

/TM
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Exhibits
Exhibit #1 - Presentation - Violation of Dangerous Building Ordinance - 200 North West Street
Exhibit #2 - Presentation - Violation of Dangerous Building Ordinance - 311 North Governors Avenue

Violation of Dangerous Building Ordinance 200 N West St

Planning & Inspections Department

Dover, Delaware

July 13, 2015

200 N West St
Case History

- 20 code enforcement cases since 2002
  - Abandoned/Junked vehicles – junk & debris
  - Parking on the grass – old tires in yard
  - Numerous grass violations – tree overgrowth
  - Closing of a vacant structure, busted doors & windows
- The utilities were terminated on January 28, 2008 and remained off until new services were connected on August 4, 2014.
- Registered vacant by the city on January 11, 2013
- Condemned by City Staff on June 6, 2013 due to no active utilities, open code violations, busted windows and doors. City Staff had the windows and doors boarded.

200 N West St
Case History

- Residential use not permitted in the M (Manufacturing) Zone.
- January 15, 2014 – Board of Adjustment issued a variance to allow residential use to continue
- December 9, 2014 – Building Inspection – work was disapproved.
- Variance has expired, as work has not commenced and continued diligently within the year since variance was issued.

Dangerous Building Code – Chapter 22 Article XI, Sec. 22-381

(5) *Unfit for habitation.*

(9) *General welfare.*

(10) *Code violations.*

(12) *Unoccupied buildings.*




FOR
SALE
BY OWNER
200




WIDE LOAD












05/07/2013 09:20


05/07/2013 09:20


05/07/2013 09:20


05/07/2013 09:20


05/07/2013 09:20


05/07/2013 09:21


05/07/2013 09:24


05/07/2013 09:22


05/07/2013 09:22

Recommended Council Action

- Declare this building and all accessory structures on this property dangerous.
- Order the property repaired or demolished by **August 13, 2015** by the owner or equity owner at their own risk.
- Order the Building Inspector to cause the repair or demolition of the structures if not completed by the owner **within 10 days of the date established by City Council**.
- Order the City Manager with the assistance of the City Solicitor to cause the cost of repairs or demolition to be charged against the land on which the building exists as a municipal lien or cause such cost to be added to the tax duplicate as an assessment, or to be levied as a special tax, or to be recovered in a suit at law against the owner.

Violation of Dangerous Building Ordinance 311 N Governors Ave

Planning & Inspections Department

Dover, Delaware

July 13, 2015

311 N Governors Ave
Case History

- 16 code enforcement cases since 2002
  - Exterior code violations – trash/debris in yard
  - Vehicles parked on the grass – flaking paint
  - Interior violations – excessive load to the structure caused by the hoarding conditions within the home – weak floors
- Utilities were terminated on April 1, 2014.
- Condemned by City Staff on April 8, 2014
- Registered as a vacant building.
- A renovation permit has been submitted and approved by staff.
- $400.00 in unpaid Code Enforcement Fines.

Dangerous Building Code – Chapter 22 Article XI, Sec. 22-381

(5) *Unfit for habitation.*

(9) *General welfare.*

(10) *Code violations.*

(12) *Unoccupied buildings.*


POSTED
KEEP OUT
















CATS PRIDE
CATS PRIDE


WASH/RINSE TEMPERATURES




MORTON
ORIGINAL
OLD BAY
Black
Pepper


SEQUENCE
Fabreze


bingo
336V
State News


Please Ship To Pharmacy
CL-43
1-Clic Closures






FIRE
MARSHAL

U-HAUL
Moving and Storage Boxes
www.uhaul.com
1-800-GO-UHAUL
1-800-468-4285
UP
EUREKA


UP
EUREKA
BigSingt
ENVIRO STEAMER


Sterilite
Sterilite
HOMELAND HOUSEWARES
www.HomelandHousewares.com


HOMELAND
HOUSEWARES

Recommended Council Action

- Declare this building and all accessory structures on this property dangerous.
- Order the property repaired or demolished by **August 13, 2015** by the owner or equity owner at their own risk.
- Order the Building Inspector to cause the repair or demolition of the structures if not completed by the owner **within 10 days of the date established by City Council**.
- Order the City Manager with the assistance of the City Solicitor to cause the cost of repairs or demolition to be charged against the land on which the building exists as a municipal lien or cause such cost to be added to the tax duplicate as an assessment, or to be levied as a special tax, or to be recovered in a suit at law against the owner.

ACTION FORM

PROCEEDING: City Council

DEPARTMENT OF ORIGIN: Planning & Inspections **DATE SUBMITTED**: 7-16-2015

PREPARED BY: Ann Marie Townshend, AICP, Director of Planning and Community Development

SUBJECT: 110 Rustic Ln, Dover, Delaware – Violation of Dangerous Building Ordinance

REFERENCE: Chapter 22, Article XI – Dangerous Buildings, Sec. 22-385 - Hearing before Council and Chapter 22, Article XI - Dangerous Buildings Case # 15-435 & 14-949

RELATED PROJECT: N/A

APPROVALS: N/A

EXHIBITS: PowerPoint Presentation and File Photos to be presented at the Council meeting.

EXPENDITURE REQUIRED: Preliminary estimate is $20,000 - $30,000
AMOUNT BUDGETED: $175,000.00 Budgeted for all demolitions Citywide in the FY-2016 Budget
FUNDING SOURCE (Dept./Page in CIP & Budget): 110-1600-534-30-33.

TIMETABLE: As soon as possible.

RECOMMENDED ACTION:

1. Declare this building and all accessory structures on this property dangerous.
2. Order the property repaired or demolished by **August 27, 2015** by the owner or equity owner at their own risk.
3. Order the Building Inspector to cause the repair or demolition of the structures if not completed by the owner **within 10 days of the date established by City Council**.
4. Order the City Manager with the assistance of the City Solicitor to cause the cost of repairs or demolition to be charged against the land on which the building exists as a municipal lien or cause such cost to be added to the tax duplicate as an assessment, or to be levied as a special tax, or to be recovered in a suit at law against the owner.

BACKGROUND AND ANALYSIS

The property is owned by Taililou LLC. The property is a one-story wood-framed single family home with an attached enclosed in-ground concrete pool. The house was registered as a vacant building on April 9, 2014 and condemned on February 19, 2015 as unfit for human occupancy due to no utilities and the deteriorated condition of the property. The owner was ordered to board the property in April of 2015. Currently the home is still vacant, with no active utilities and numerous outstanding code violations.

PARKS, RECREATION, AND COMMUNITY ENHANCEMENT COMMITTEE

The Parks, Recreation, and Community Enhancement Committee meeting was held on July 13, 2015, at 3:30 p.m. with Chairman Anderson presiding. Members present were Mr. Hosfelt, Mr. Lewis, Mr. Caldwell, and Mrs. Horsey (arrived 3:32). Councilman Hutchison was also present.

AGENDA ADDITIONS/DELETIONS

By unanimous consent, the agenda was approved as presented.

Review of Revised Active Recreation Area Plan - Eden Hill Farm Traditional Neighborhood Design - Residential District

Mrs. Dawn Melson-Williams, Principal Planner, stated that this application is associated with the Residential District Revised Implementation Plan for the Traditional Neighborhood Design project known as Eden Hill Farm and advised members that a representative of the ownership company was present and available to answer any questions.

Mrs. Melson-Williams explained that the project began in 2006 and is now under new ownership, stating that the new owners have brought forth a revised implementation plan for how the property will be developed. Mrs. Melson-Williams explained that the Planning Commission approved 742 units which are a mix of single-family, duplex, townhouse, and multi-family units. Mrs. Melson-Williams stated that the original plan for the open space and active recreation area included a series of individual park areas scattered throughout the residential area. The proposed revision is to develop a large central open space area, just over nine (9) acres, while retaining a series of the smaller parks throughout the residential area.

Mrs. Melson-Williams explained that there is currently a total of approximately 83 housing units constructed in the neighborhood, noting that the Zoning Ordinance for the City of Dover prescribes how much active recreation space is required based on the number of units. She stated that this project would require 4.68 acres of open space and active recreation area; however, the proposed revisions well exceed that minimum requirement.

Referring to the Overall Open Space Site Plan, Mrs. Melson-Williams pointed out the nine (9) acre central open space area. Mrs. Melson-Williams then referred to the Clubhouse Open Space Plan, which focuses on the central open space and the number of amenities being proposed. She advised members that this would include a clubhouse building, which has internal spaces such as a gym and meeting rooms; a swimming pool; parking area to serve the facility; tennis courts; a basketball court; a community garden; a playground; picnic area; and various amenities that go along with that, as well as benches and bicycle racks.

Mrs. Melson-Williams stated that Eden Hill Farm has a traditional neighborhood design for which there is an associated pattern book with the details of what would have to be included in the project. She indicated that, upon staff approval of the plan, staff provided the developer a series of recommendations to be included. Mrs. Melson-Williams explained that staff is in support of the concept for a large open space area, noting that staff had provided a series of comments to either

clarify items on the plan or improve the project. Mrs. Melson-Williams asked the Committee to review the active recreation plan and provide any comments or guidance on the parks and recreation component of the proposal, stating that those comments would be forwarded to the Planning Commission for consideration during their August meeting.

Staff recommended approval of the revised active recreation plan for the Eden Hill Farm Traditional Neighborhood Design - Presidential District with the comments and conditions provided.

Ms. Andrea Finerosky, Pettinaro Construction Company, stated that they were representing Eden Hill and were also the developer of Blue Hen Apartments. Ms. Finerosky advised members that the clubhouse proposed for Eden Hill is similar to the one at Blue Hen Apartments; however, the one at Blue Hen is only 2,200 sq. ft., whereas the clubhouse for Eden Hill will be 5,000 sq. ft. to accommodate the larger tenant base.

In response to Mr. Caldwell, Ms. Finerosky stated that the open space will either be maintained by the developer or the homeowners association (HOA).

Responding to Mr. Hosfelt, Ms. Finerosky stated that Pettinaro is overall in agreement with the recommendations made by staff, noting that Pettinaro needs further clarification on some points.

In response to Mr. Hutchison, Ms. Finerosky stated that Pettinaro will manage the project and the management team will be similar to the team at the Blue Hen Apartments. Mr. Hutchison stated he was very pleased with the management at Blue Hen Apartments and that they do a great job.

Responding to Mrs. Horsey, Ms. Finerosky stated many of staff's comments are just general suggestions and reminders of what needs to be done to be in compliance; however, there are one (1) or two (2) things that they had not yet determined if they are in agreement with, noting that this will be worked out and they are largely in support of the comments.

In response to Mrs. Horsey, Mrs. Melson-Williams stated that the Committee would be advised if there are any concerns; however, she reminded members that the role of the members is to provide a recommendation that will go to the Planning Commission for a final plan to be presented to Council.

Responding to Mrs. Horsey, Ms. Finerosky stated that the larger acreage for the open space was designed to accommodate the additional units. She stated that they believe a larger area would serve the community better than several smaller pocket parks, noting that the plan includes those as well.

In response to Mrs. Horsey, Ms. Finerosky stated that the layout and design of the office area attached to the clubhouse matches the apartments. She noted that it is not residential and would be used as a leasing office. Ms. Finerosky noted that part of the space may also serve as a model.

Mr. Hosfelt moved to recommend approval of the revised Active Recreation Area Plan for Eden Hill Farm Traditional Neighborhood Design - Residential District, as recommended by staff. The motion was seconded by Mrs. Horsey and unanimously carried.

Community Development Block Grant (CDBG) Program Quarterly Update

Mrs. Ann Marie Townshend, Director of Planning and Community Development, stated that the Department of Housing and Urban Development (HUD) had approved the 2015 Community Development Block Grant (CDBG) Five (5) Year Consolidated Plan and staff would be moving forward with entering into agreements with sub-recipients. Mrs. Townshend stated that focus has been on the Restoring Central Dover Initiative and working to leverage CDBG funding sources to promote home ownership in the downtown area.

In regard to the Mayor's Challenge to End Veterans' Homelessness, Mrs. Townshend advised members that, although the report indicated that 24 veterans had been housed by June 12, 2015, three (3) additional veterans had found housing; therefore, this was a successful effort.

Responding to Mr. Anderson, Mrs. Townshend stated that unrecovered funds would not roll over but would stay with the National Council on Agricultural Life and Labor Research (NCALL).

In response to Mr. Anderson, Mrs. Townshend stated that all six (6) homebuyers have been approved.

Responding to Mr. Anderson, Mrs. Townshend stated that there have not been any home repair projects this year. She indicated that some funding had carried over from the previous year; however, it had been expended, noting that this was handled through the Milford Housing Development Corporation (MHDC).

Draft Recreation Needs Assessment/Strategic Planning and Goal Setting (Restoring Central Dover Strategic Plan)

Mrs. Ann Marie Townshend, Director of Planning and Community Development, reviewed the City of Dover 2015 Recreation Needs Assessment report. Mrs. Townshend pointed out that the maps that they were able to obtain from the Department of Natural Resources and Environmental Control (DNREC) were useful in helping to identify some of the under-served areas. Referring to the map on Page 7 of the report, Mrs. Townshend explained that the colored areas indicate neighborhoods that are not within 15 minutes walking distance to a public recreation facility. She noted; however, that the map does not take into account that a lot of communities have open space which may contain a playground or some other type of recreation. Mrs. Townshend identified the City's anchor parks (Schutte Park, Dover Park, and Silver Lake Park) and the walk zones around those parks. She stated that one (1) of the criticisms that initiated the assessment was that the bulk of the investment in recreational facilities has been in an area that has the least amount of population served in terms of walking distance.

Mrs. Townshend noted that one (1) of the providers that the City does not have a very strong working relationship with is Kent County Parks and Recreation, and this was identified as a priority to improve; however, the City has a very strong relationship with the Capital School District and the YMCA. Mrs. Townshend stated that the YMCA brings kids to Camp Small Wonder, which the City runs through a grant at Delaware State University, and the City does a lot of joint programming with the Capital School District to support their athletics and get people involved who are interested in the City's Parks and Recreation programs.

Mrs. Townshend stated that the report included information about how the services the City provides are paid for, noting that 21% of the Parks and Recreation Department's budget is supported by fees. When including the Public Works Grounds Division, who maintains the parks and flower beds, this percentage drops to 8%.

Mrs. Townshend advised that one (1) of the recommendations in the comments section of the survey was to seek sponsorships, noting success in this area in regard to the Concerts on the Green. She stated that this area could be expanded upon if other corporate sponsorships are available.

Mrs. Townshend stated that an important component of the assessment was the percentage of feedback that came from City residents versus non-City residents. She advised members that 28% of the people who responded did not live in the City, 20% declined to answer, and more than half of the responses were from individuals who live in the City. Mrs. Townshend shared that there was a lot of support for funding the City's programs largely by fees, and grants and General Fund dollars were also suggested. Mrs. Townshend advised that data from the State of Delaware's state-wide survey was also used, and 267 people who responded to that survey lived in the City of Dover. She noted that the State's survey was a phone survey, whereas the City had an online survey. Although it helped to gauge what the citizens wanted, it did not indicate a strong preference for any particular amenity, noting that the highest response for any particular amenity was 17%, and the amenity with the biggest response was restrooms at Silver Lake and Dover Parks. Mrs. Townshend stated that portable bathrooms are currently at those locations; however, if a patron does not utilize the facilities after a recent cleaning, they could likely have a bad experience.

Mrs. Townshend indicated that other items of interest were paved trails, fitness stations, and lawn trails, which was consistent with the State survey, and there was strong support for walking and biking trails. She indicated that this was good because the State has made some significant investments in those areas. Mrs. Townshend noted that the biggest reason people go to Dover Park is to walk or jog; however, Dover Park does not have a path and she advised members that is something that could be put into the capital plan using both City and State funds.

Referring to Page 12 of the report, Implementation Strategies, Mrs. Townshend stated that the first implementation strategy was to develop a master plan for each of the three (2) anchor parks, starting with Dover Park. She advised that the Request For Proposal (RFP) for Dover Park will address indoor restrooms, a paved loop trail system, potentially fitness stations along the trail, a skate park, a splash pad, and bicycle racks. Mrs. Townshend noted that everything will not happen at once; however, the master plan will identify where each item will go and how it will be implemented. She advised that this process has already begun at Schutte Park with a land survey. She indicated that

there are about 14 undeveloped acres there that need to be utilized and parking is something that needs to be considered as well. Mrs. Townshend explained that the City will be using in-house engineering staff to review the results of the land survey to begin laying out a plan for the undeveloped acres at Schutte Park. She noted that Silver Lake will likely be the last park to be addressed because the survey indicated that amenities desired at that location included an indoor restroom and a splash pad; however, infrastructure is not in place to provide those amenities at this time and the park is heavily utilized without them.

Mrs. Townshend advised members that another amenity that surfaced as a result of the survey was a request for a pickleball court and a dog park, and those requests will be considered. She reiterated the importance of continuing to improve and monitor the neighborhood parks and playgrounds as well.

Mrs. Townshend stated that one (1) of the biggest challenges is that there is not a stable funding stream for the Parkland Reserve Fund, which funds improvements to the parks. She stated that she is working on expanding and improving partnerships to help fund those improvements and find other ways to increase the Parkland Reserve. Mrs. Townshend explained that one (1) of the resources used to increase this fund is a cash-in-lieu contribution from residential developments that do not provide recreation. She indicated that when a developer puts in amenities, they often do not know the needs of the potential residents, which can lead to amenities that are not used and become dilapidated. Citing some examples, Mrs. Townshend mentioned the basketball court at Village of Westover, which has stood without backboards, hoops, and nets, etc., and the playground equipment at Maple Glen, which houses mostly retirees. The few families that do have young children in Maple Glen have play sets in their back yards. She indicated that these types of amenities often become a burden to the homeowners associations and code enforcement.

Mrs. Townshend advised that one (1) recommendation was to amend the zoning ordinance to eliminate the requirement to provide active recreation areas and instead impose a surcharge on building permits to generate revenue toward the Parkland Reserve, along with putting in other mechanisms, such as sponsorships.

Mrs. Townshend advised members that 67% of the responses to the survey included a request to have City residents pay a lower fee than non-City residents.

Responding to Mr. Hosfelt regarding the City of Dover's relationship with Kent County Parks and Recreation, Mrs. Townshend stated there is a spirit of friendly competition; however, she spoke to Mr. Jeremy Sheppard, Director of Parks and Recreation for Kent County, about shifting gears and working more toward collaboration, noting that Mr. Scott Koenig, City Manager, and Mr. Mike Petit DeMange, Kent County Administrator, had also had discussions in an effort to work collaboratively.

In response to Mr. Hosfelt, Mrs. Townshend confirmed that City recreation fees are currently the same for residents and non-residents.

Mr. Hutchison expressed the importance of the City Manager, Finance Director, and City staff putting together a master plan forecasting three (3) to 25 years ahead to determine how the City will continue to support financing the recreational needs of the City. He pointed out that the needs of the City are going to continue to grow in all areas, including infrastructure, and stressed the importance of developing a plan to financially support those needs, noting the recent tax increase that was necessary to maintain the needs of the City and its residents.

Mrs. Townshend stated that various parks and amenities require different levels of maintenance, staff time, cost, and enforcement, noting that adding indoor restrooms and splash pads requires water and sewer usage, as well as more time and money to maintain, versus a path system which requires less maintenance.

Mr. Anderson stated that it was important to find out what the people want and need. Referring to the Implementation Strategies for Dover Park on Page 12 of the report, Mr. Anderson noted the park's playground, driving trails, softball field, tennis court, and basketball court, and stated that the request of the community was to have a walking trail and fitness station. Responding, Mrs. Townshend advised that those requests would not be difficult to achieve; however, some things that need to be considered include vegetation and lighting, which are areas of concern for the safety needs of park users. Mrs. Townshend pointed out that, although the parks are technically closed at dusk, the reality is that people still go into the parks and lighting and other safety measures need to be considered.

Responding to Mr. Anderson regarding the status of the plans for Dover Park, Mrs. Townshend advised that vendors have been contacted to obtain information on portable bathrooms, reminding members that Dover Park still has plumbing to support indoor bathrooms, but Silver Lake does not and it is the most popular park.

In response to Mr. Anderson, Mrs. Townshend stated that the survey indicated a splash pad was one (1) of the amenities desired but was not very high on the list for any of the parks.

Mrs. Townshend advised that the survey measures how many people request an amenity but not how strongly or how high of a priority it is, which is hard to measure. She stated that when people make specific comments, such as those related to the skate pad, dog park, and splash pad, that gives a stronger indication of what they want versus just answering yes or no on a survey.

Responding to Mr. Anderson, Mrs. Townshend stated that a lot of interest was expressed for indoor bathrooms; however, she noted they require maintenance and it would be important for them to be locked at night for security reasons.

In response to Mr. Anderson, Mrs. Townshend advised that she had not heard any feedback concerning a rugby field or football field at Schutte Park. She had heard feedback for a turf field at Schutte Park; however, that is very expensive and would be difficult to lay out with the parking. She stated that the challenge with a football field is the wear and tear it puts on specific areas of the field, and public input from the various park users helps to determine the layout of the park and what activities are of interest. Mrs. Townshend noted that currently the Delaware Union and the

Delaware Diamonds girls lacrosse groups use the fields at Schutte Park, stating that it would be useful to get some feedback from them. She indicated that she has heard that the boys lacrosse team that currently uses the field at Brecknock Park may be interested in using the fields if some improvements are made.

Responding to Mr. Anderson regarding feedback on current programs, Mrs. Townshend stated that one of the complaints she has heard is that people do not seem to know about the programs currently being offered. She said she was trying to find ways to make the public more aware of the programs through email, facebook, and other methods.

Referring to page 2 of the City of Dover Recreation Needs Assessment, Mr. Anderson felt this was a good summary of what the City is trying to offer. He stated that it reflects the City's Comprehensive Plan which calls for city-wide parks, open space plans, and individual parks.

Mr. Anderson suggested that the Committee review the Recreation Needs Assessment and provide positive suggestions to continue to improve the recreation plan and determine what is needed and what funding mechanisms will be necessary. He stated that the City of Dover was a prosperous and healthy city where families can enjoy the amenities of the city with a good quality of life and access to recreation and arts for people of all ages; however, it is important to continue to improve and look at other areas of community development and make sure housing is revitalized.

Responding to Mr. Anderson, Mrs. Townshend stated that the capital budget for the Parks and Recreation Department had $180,000 remaining for Dover Park and $66,000 for Mallard Pond.

In response to Mr. Anderson, Mrs. Townshend stated that she believed there was about $300,000 remaining in the Parkland Reserve Fund. Regarding splash pads, Mrs. Townshend confirmed that, while the splash pads themselves are not expensive, pipes and infrastructure can become very expensive very quickly.

Responding to Mr. Anderson concerning cost examples and proposed plans for next year's budget, Mrs. Townshend explained that the idea, once the Recreation Needs Assessment was complete, was to reevaluate the capital plan and base it off the Needs Assessment and master plans to develop the park. Mrs. Townshend stated that the master plan for Schutte Park needed to be completed and that a master plan for Dover Park would likely use some funds from the capital fund.

In response to Mr. Anderson, Mrs. Townshend stated that she did not have information on the cost of portable restrooms at the moment but would be happy to provide the information after the meeting.

Ms. Theresa Morris, 1378 Old White Oak Road, stated that she helps with the Youth Advisory Committee and would like to see a lot more activities for teenagers. Ms. Morris referred to the recent shootings and drug activity, stating she felt it important to create activities geared toward the teenage group to keep them busy and out of trouble.

Ms. Morris stated that there seemed to be a lot of activities for younger kids; however, it appears there is a lack of activities and organizations available for the teenaged group. She stated that she has heard feedback expressing interest in a skate park, noting that Smyrna has one. As the capital of the First State, she would like to see as much offered for the youth in Dover. Ms. Morris noted that Mr. Anderson had discussed bringing back First Night for New Year's and that she would love to see that return. She suggested block parties allowing the kids to participate, show their talents, and keep them involved and off of the streets.

Ms. Morris expressed her appreciation to Mr. Anderson for reviving the Youth Advisory Committee, stating that she anticipates a lot of good things for the youth of the community.

In regard to Strategic Planning and Goal Setting, Mr. Anderson, referred members to the Executive Summary of the Restoring Central Dover report, "Our Vision for Vitality." He advised members that the reason for the strategic plan, as stated by Mr. Hutchison, was to focus on three (3) things when considering future budgets: 1) why something is being done, 2) how it can be accomplished, and 3) what is being offered. Mr. Anderson reiterated the importance of determining these things to ensure that what is being offered is what is needed and will be used by the people. He explained that the report was completed using focus groups, surveys, and town meetings to find out in a comprehensive way what people want. He stated that this was a great starting point for central Dover and essential to its revival. Mr. Anderson stated that the plan had been very useful as a blueprint to the City Planning and Community Development offices. He stated that the plan focuses on recreation, economic inclusion, safety, and restoring and revitalizing neighborhoods.

Mr. Anderson called for an "at ease" to give members an opportunity to review the Restoring Central Dover Strategic report.

Mr. Anderson suggested further future discussion on the Recreation Needs Assessment, State survey, and Restoring Central Dover report.

Mr. Hosfelt moved to recommend continued discussion of the Recreation Needs Assessment and Restoring Central Dover Strategic Plan at the next Parks, Recreation, and Community Enhancement Committee meeting, seconded by Mrs. Horsey and unanimously carried.

Discussion - Community Partnerships

Mrs. Townshend advised members that the Parks and Recreation Department plans to meet with Pastor Will Grimes to collaborate on recreation programming at the new community outreach center for the Solid Rock Baptist Church, hoping to make that a hub of activity in the downtown area for youth and people of all ages.

Responding to Mr. Anderson, Mrs. Townshend advised that she has only heard general discussion regarding revitalizing the Police Athletic League. She stated that there had not been many discussions regarding the Inner City Cultural League; however, she noted that once they are settled into their new location it was her hope to discuss opportunities to work on programming there as

well. Mrs. Townshend explained that the Parks and Recreation Department does not get very involved in the area of the arts; however, Ms. Margery Cyr, Director of the Dover Public Library, was working on some collaborations related to theater.

In response to Mr. Anderson, Mrs. Townshend explained that the Boys and Girls Club is currently focused on getting their new facility established and had been working very closely with the County on getting that up and running. She stated that, while there have not been a lot of discussions with the Boys and Girls Club in terms of working together, once they are established and their facility is open, it was her hope to resume discussions on working together on various programming.

Mrs. Townshend stated that staff had been working closely with the YMCA and Ms. Mary Ellen Gray, Kent County Planning Services. Mrs. Townshend advised members that she also sits on an informal working group to discuss plans for the former Kent Swim Club in Dover and how it could best serve the community as a whole. She anticipates a positive outcome from those discussions.

Mrs. Horsey moved for adjournment, seconded by Mr. Caldwell and unanimously carried.

Meeting adjourned at 4:56 p.m.

David L. Anderson
Chairman

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UTILITY COMMITTEE

The Utility Committee Meeting was held on July 13, 2015 at 5:01 p.m. with Chairman Hutchison presiding. Members present were Mr. Neil, Mr. Blakeman, and Ms. Stewart. Mr. Cole was absent. Members of Council present were Mr. Anderson, Mr. Hare (arrived at 5:02 p.m.), and Mr. Slavin (arrived at 5:36 p.m.). Mayor Christiansen was also present.

AGENDA ADDITIONS/DELETIONS

Mr. Blakeman moved for approval of the agenda, seconded by Mr. Neil and unanimously carried.

North American Energy Services (NAES) Amended and Restated Operating Agreement

Mr. Scott Koenig, City Manager, introduced the City's Power Supply Attorney, Mr. Kirk Betts, Betts & Holt, LLP, who worked on the renegotiation of the North American Energy Services (NAES) agreement.

Mr. Betts reviewed his memorandum dated July 13, 2015 regarding Proposed Agreement for Plant Operating Services ***(Attachment #1)***. He advised that in 1996, the City entered into a contract with Duke Energy and its subsidiaries to operate the power plant on the City's behalf. He stated that the Duke contract was unique because Duke assumed all of the responsibility for everything, including fuels, and sold energy to the City. Mr. Betts stated that in 2006, Duke was no longer interested in that type of service and the City had to change the contract style.

Mr. Betts explained that the 2006 contact bifurcated the services. Dispatch, design, fuel purchasing, etc. were completed by PACE Global, while NAES operated the plant, integrated, and interfaced every day to determine what the dispatch should be. He stated that all of the plant employees, including former City employees who went to Duke and those that stayed with NAES, remained at the plant; however, over time NAES managed the level of employees in order to operate the plant.

Mr. Betts informed members that, under the NAES contract, NAES provides an annual budget for the operation of the plant, which City staff negotiates prior to budgeting any staffing or operating costs. He stated that fuel costs and services are managed by The Energy Authority (TEA), and TEA operates as a dispatching advisor to the plant. Mr. Betts explained that the current contract was a four (4) year contract which the City let renew annually under an evergreen provision. In order for the contract to be terminated, 18 months notice had to be given. He advised that one (1) of the reasons that the City had a shorter contract was because it had an escalation provision in it that went up according to a Bureau of Labor Statistics (BLS) standard for professional employees in this region. Mr. Betts stated that, on average, the cost had escalated approximately 21%, since 2006. He noted that the belief had been that the City would probably renew, renegotiate, or rebid that contract prior to this time.

Mr. Betts explained that, after evaluating the quality of the services and the market for companies that do this type of work, and given the age and the institutional knowledge that NAES has on operating the plant, he and staff agreed that there is an inherent value in trying to sole source negotiate the contract. He stated that he, Mr. Harry Maloney, Electric Director, who is an

experienced power plant supervisor, and NAES worked together to develop a slightly different contract that operates at a lower cost and has some new orientation on how the City wants the project to be operated.

Mr. Betts informed members that the proposed agreement would be for five (5) years (2015 - 2020). He explained that he, the City Manager, and the Controller/Treasurer agreed that five (5) years would be a good transitional period for the City because it is toward the end of the age of this plant and also a period of great transition for PJM. Mr. Betts stated that this proposal would allow the City to capture and hold onto the institutional knowledge that exists, and provide some opportunity for managing the longer term International Brotherhood of Electrical Workers (IBEW) labor contract. He noted that the IBEW contract had been extended for one (1) year; however, staff had been advised that the IBEW contract would now be finalized for a longer duration.

Mr. Betts explained that the proposed agreement provides for a fixed annual fee for management, and the amount of this fee would decrease from the current fee. He stated that this fee would include the management fee, home office support, which previously averaged at approximately $75,000 per year, and operating incentives, employee bonuses, and burdens.

Mr. Betts informed members that, in the past, there was an incentive fee provision which provided an annual bonus of several hundred thousand dollars if the plant achieved specific operational parameters. He explained that the proposed contract includes a maximum performance reduction, which would allow for a contract price reduction between $500,000 and $550,000 per year if they fail to meet certain standards, such as availability and dependable capacity. Mr. Betts stated that the City has to meet certain standards in order to get the full value out of the PJM Reliability Pricing Model (RPM) payments, and this provision aligns the mutual interests of both parties in the operations of the plant.

Mr. Betts reminded members that two and one-half years ago, the City decided to allow for the retirement of Units 1 and 2. He stated that these units are 50 year old, 17 MW steam units which are difficult to find parts for, and they are not as reliable as they need to be. Mr. Betts advised that the decision to retire these units would change the operations of the plant and, as a result, the City would realize a several hundred thousand dollar reduction in operating costs in the proposed contract.

Mr. Betts informed members that, between the changes in the way the management fee is structured, the way the incentive fee and performance penalty pieces are constructed, and with the change in how the plant will operate, he anticipates that the City will realize an annual cost reduction in excess of $300,000 within a year and a half and will not reach the current contract price of $6M per year within the next five (5) years. He explained that, overall, the objectives were to save the institutional knowledge, preserve the operation of the plant, and reincentivize the plant in order to earn money as opposed to keep costs down. Goals would be to operate more efficiently, dispatch more frequently, reduce the number of outage days, change the scheduled outage, and raise performance so the plant is not offline for as long as it has been in the past, and ultimately earn more money for

the City by having this unit online. Mr. Betts stated that the proposed contract would provide the City with a reduction in cost and provide the performance that the City needs to maintain a competitive posture in the marketplace.

Responding to Mr. Hutchison, Mr. Betts stated that Units 1 and 2 would be retired on May 31, 2017.

Mr. Anderson stated that he had concerns regarding the contract, whether or not it should have been put out for bid, the amount that the City is spending, and whether or not the City is getting the most for its money. He questioned what the City's five (5) year plan was and whether the City should lock in a manager prior to deciding what to do with the City's plants. Mr. Anderson stated that he liked the inclusion of the six (6) month provision.

Mr. Anderson requested further explanation of the negotiated cost savings. Responding, Mr. Betts stated that the biggest savings would be realized in the management fee costs and staff savings. He reiterated that the fixed management fee, the amount held for performance, and bonuses that are part of their compensation package would be lower. Additionally, he explained that there was an expectation that there will be a change in how the plant is managed staff-wise, which would add several hundreds of thousands of dollars in benefits. Mr. Betts noted that some of the City's risk associated with using back office personnel would also be mitigated by fixing that as part of the base contract. He explained that the City would receive all of the services that are now prescribed, without the risk of having hourly rates based upon how the City uses those services. Mr. Betts reminded members that the proposed contract also included a maximum performance reduction. For example, he explained that if the City is penalized through PJM for too many forced outages, NAES would be penalized as well. Mr. Betts stated that this provision would help compensate the City in the event that NAES fails to perform on those important criteria for availability, dependability, unit capacity dependability, etc.

Mr. Betts stated that Mr. Anderson's concerns regarding whether or not this agreement should have gone out to bid were important. He explained that it would be difficult to find people in the marketplace who have the skill sets to deal with a 40 to 50-year-old plant. Additionally, the people who run a unit develop a sensitivity about the equipment, they know how an engine is supposed to work, when the steam is supposed to be going through, and what it sounds like before you synchronize, and Mr. Betts and staff believed that these skills could help negotiate the price down, because they have mitigated some of the risk of not knowing how this plant functioned. Mr. Betts explained that a new supplier may not want to guarantee the plant's availability because of the unknown factors; therefore, it was his recommendation to try to negotiate a fairer price to operate the plant with the same entity, based on the City's criteria, rather than going out to the marketplace and bringing in an entity that would add to the risk premium for operating a plant like the City's. He believed it was wiser to stay with the same entity and the people who know how to operate the plant rather than taking that risk at this point in the plant's history.

Mr. Hare asked if NAES could provide an estimate of the maintenance costs for the next three (3) or four (4) years. In response, Mr. Betts stated that NAES knows how the City's plant functions, noting that they have approximately six (6) steam plants of similar vintage within their system and they have monthly manager meetings to discuss equipment. He explained that there are two (2) types of maintenance, major maintenance and annual scheduled maintenance, and the annual

scheduled maintenance is estimated for five (5) years. Mr. Betts expressed his opinion that, with the experience of TEA and Mr. Maloney, there would be more than just an annual projection of plant costs and types of maintenance.

Mr. Betts reminded members that one (1) of the reasons the City decided to proceed with closing the two (2) oldest units, aside from their inefficiency, was the high cost of performing the next level of maintenance. He stated that the approximate cost was $500,000 and would have included opening up the units, working on the turbines, and attempting to provide some life extension.

Mr. Betts stated that by looking at the five (5) year projection, the City can determine what expenses are appropriate, given where it is in its life cycle. He expressed his opinion that NAES has very sophisticated people and Mrs. Donna Mitchell, Controller/Treasurer, has done a great job of assuring that the City receives a budget with accurate estimates.

Mr. Betts informed members that a major part of the discussions regarding the proposed contract focused on ensuring that the City receives accurate estimates for the budget to ensure staff does not have to request additional funds from Council and because it affects the customer's rates.

Mr. Hare asked whether the City could provide a six (6) month notice and get these credits cheaper elsewhere if PJM were to stop giving the City capacity credits. Responding, Mr. Betts explained that there are a lot of strategies that the City would want to review prior to making that decision. He advised that some municipal clients were looking at going behind the meter, explaining that the City can take that capacity inside and plan against peaks to achieve similar results, so that the City is not getting hit with the PJM charges. Mr. Betts stated that, with the proposed contract, the City would have an option to terminate the agreement; however, the City would want to thoroughly study and line up alternatives prior to providing a six (6) month notice.

Mayor Christiansen stated his appreciation for the work Mr. Betts had done and asked what he projected may happen over the next five (5) years, particularly with the PJM grid requirements. Noting that this is one (1) of the City's major sources of revenue, Mayor Christiansen also questioned if the City should be looking at the possibility of moving out of the utility business or looking for another deal to keep the City as a competitive player in the business.

In response to Mayor Christiansen, Mr. Betts stated that Mr. Maloney has been proactive in looking to the future and trying to determine different alternatives. He stated that technological advancements are changing the market. Mr. Betts thought that some of the questions members should ask are what the future would look like in terms of how the City will use and produce energy and how its customers will use it. He explained that the City needs to understand how customers will use energy in the future to ensure that whatever the City does matches the market and to ensure that the City does not end up overbuilding and overcharging for services based on year 2000 ideas that the City is trying to implement in 2020.

Mr. Betts informed members that he had recently read an article about a municipal utility in the Midwest that is building a 40MW battery station instead of a power plant. He explained that it takes in energy during the day, feeds it out at the night, and deals with solar and wind factors. Mr. Betts noted that this balances the frequency problems that PJM and all the utilities are having today because of the variety of sources coming in.

Mr. Betts stated that Mr. Maloney has proposed reviewing everything comprehensively to determine what would make sense for the future. He stated that this would include a review of fixing McKee as a power plant, generation options, where to get the best deal on a unit, consideration of recent gas issues on the peninsula, PJM requirements for two (2) forms of fuel, solar which is being incentivized, renewable portfolio standards, etc. Mr. Betts noted that this was an exciting time to be on the Utility Committee because there is so much going on, with many variables and ways to look at how to solve customer needs.

Mr. Betts stated that there is a difference in thinking today from 20 or 30 years ago. He reminded members that Kraft wanted to build a coal-fired plant 20 or 30 years ago and 10 years later it was not a good idea; however, they kept it going and ultimately sold it to a third-party to operate. Comparatively, he stated that P&G is currently considering building two (2) MW solar on some of their properties. Mr. Betts stated that some of these decisions are driven by tax credits or the desire to have a green energy facility. He explained that, in contrast, the City is trying to figure out how to balance those interests and still provide the revenue that supports the City. Mr. Betts advised that he would not encourage the City to get out of the business, if for no other reason than that the City owns the distribution rights and can control all the electricity that goes out to the customers. He stated that, even if the City got out of generation, it would still have a resource for revenue through the distribution system. Mr. Betts expressed his opinion that the City has resources in place, a great 69kV loop, a good distribution system, and is in a really good spot, as an entity, to be in the utility business.

Mr. Betts stated that he was very encouraged and excited by all of the changes in the industry, noting that there are new ideas every day that are changing the way people use energy and the way energy can be produced and delivered more efficiently. It was his opinion that the City is almost in a perfect spot by having a facility that can be given up to switch to something that would allow the City to leap ahead from where it would otherwise have been (5) years ago.

Mr. Neil questioned how long the bid process would take and what effect it would have on the City if the proposed contract were not accepted and the City put this out to bid. Responding, Mr. Betts estimated that it would take a minimum of six (6) to eight (8) months. He reminded members that the City would remain under the old contract, which has an 18-month notice period; therefore, the City would probably want to give notice right away and take the risk of completing that process in time. Mr. Betts stated that he did not have the same confidence that he had 10 years ago when he suggested that there were a lot of people out in the marketplace that are providing these types of services and are willing to take the type of risks that the City would ask them to assume. He noted that he is an advocate of RFPs; however, the current market is narrow, which creates a greater risk. Mr. Betts reiterated that it was his recommendation to try to negotiate a sole-source deal, due to where the City is with the cycle of this plant and the knowledge of the type of plant it is.

Mr. Hutchison reminded members that the City had been working on this for a while and the playing field will be changing in 2017. He stated his support for Mr. Betts' recommendation and the proposed contract. Although he recognized members' concerns, Mr. Hutchison expressed his opinion that dealing with a known partner was critical.

Mr. Betts advised that one (1) of the challenges that the City has faced since transitioning out of operating the plant relates to employees. He explained that, in the past, the City has negotiated a responsible transition for those individuals to have the first opportunity for positions; however, he was not certain how that would work in today's market. Mr. Betts stated that there is a value to those people and it is potentially disruptive to put this out to bid. He reminded members that over a year ago when the City discussed whether or not to continue in the utility business or sell to Delaware Electric Cooperative, it had an effect on the morale of the people who work in the utility part of the City, which always affects how a system functions. Mr. Betts stated that settling this issue had provided real value to the City. He stated that the uncertainty of the bid process has a potential impact on the City's capacity to operate as efficiently as it does now and also on what happens to those employees.

Mr. Hare expressed his opinion that the City's value is not in the plants but the network, noting that if the City has to shut the plants down, it will still be in the business of supply through the network.

Mr. Betts stated that he had previously discussed the net benefit of the utility with Council. He advised members that half of the cost of the NAES contract is for labor and the management fee, while the other half is the traditional costs for operation and maintenance. He stated that there is an approximate cost of $6M with PJM; therefore the City makes approximately $3M by having the plant, whether or not it is working, and the City makes money because of the capacity value, as long as it functions. Mr. Betts explained that the City needs to ensure that the plant is ready to operate, because if the City has a forced outage at a really bad time, the City gets penalized. He reiterated that the proposed contract is meant to ensure that the plant is always ready to operate over the next five (5) years, with the inclusion of the maximum performance penalty. Mr. Betts stated that there are now weekly meetings between Mr. Maloney, as the owner's representative, and the plant manager. He noted that there is not a separate entity operating with TEA telling them when to run, the City is in the middle of the process now to ensure the plant is ready, able, and capable of producing, so that the City gets the optimum value for the plant. Mr. Betts informed members that the City is also in a good position because the City is connected to a gas line and has oil. He stated that in the new capacity product that PJM is requiring, you have to have alternative fuel if you are on gas. Mr. Betts explained that the City has the potential to get the optimal value in PJM for the plant, at least until the City decides to shut it down, based on the differential between the operating costs and what the City can get in terms of capacity payments from PJM.

Mr. Neil explained that he did not doubt that this was a good contract and that his question pertaining to an RFP was intended to ensure that the City had looked at the alternatives and this was the best alternative. He noted that if the City were going to do an RFP, it should have been done eight (8) months ago, not now. Mr. Neil expressed his support for the contract, noting that it is the alternative that serves the citizens well.

Mr. Neil moved to recommend approval of the contract, seconded by Mr. Blakeman and unanimously carried.

Annual Engineering Consultant's Report on the Operation and Maintenance (O & M) of the Electric System - Fiscal Year 2014

Mrs. Donna Mitchell, Controller/Treasurer, reviewed the conclusions of the Annual Engineering Consultant's Report on the Operation and Maintenance (O & M) of the Electric System - Fiscal Year 2014, prepared by Burns & McDonnell Engineering Company, Inc. She reminded members that the Annual Engineering Consultant's Report was required by the 1985 Bond Resolution for the electric utility.

Mr. Blakeman noted that the Engineering Consultant had endorsed the fact that the electric system has been well run and well maintained. He advised that Page 1-3 of the Report stated that "specifically, the generation facilities have demonstrated a high level of availability despite the dispatching of the units primarily for peak demand." Additionally, in regard to the transmission and distribution (T&D) system, the Report stated that "In recent years, the City has made appropriate upgrades and improvements which the Engineering Consultant has observed while conducting the reviews and assessments to complete the annual reports."

Mrs. Mitchell informed members that the City's debt calculation requirement was 1.5%. Referring to Page 4-6 of the Report, she noted that in FY14 the City had a net loss of $2.3M. She explained that although the City met the debt calculation, the loss was a result of the polar vortex which caused the City to increase the transfer from the Rate Stabilization Reserve from the budgeted amount of $4M to $7M. Mrs. Mitchell stated that the City's sales were $2M under the estimated amount and that created the net loss. She advised that she was in current conversation with Moody's and they have some concerns with the transfer because there is a clause in the City's resolution that indicates if the transfer will cause the City to miss the covenant, the City is to hold that transfer. Mrs. Mitchell explained that the City has the Rate Stabilization Reserve for that purpose, noting that if the power supply spikes, the City covers it. She stated that she had another call with Moody's scheduled for Tuesday, July 14, 2015 and would keep members apprised.

Mayor Christiansen asked if it would be convenient for the Chairman of the Utility Committee, himself and, perhaps, the Council President to sit in on that call as well. In response, Mrs. Mitchell stated that this was not typical; however, they could sit in on the call if they wished. She explained that she simply wanted to make members aware of the discussion, noting that staff had already had two (2) discussions with Moody's. Mrs. Mitchell advised that she had also sent Moody's several pieces of information, one (1) of which was the balance in the Rate Stabilization Reserve as of June 2013, which was 35% of revenue. She explained to Moody's that the policy is 10% and the City was more than well enough funded, had set aside those funds to cover volatile issues such as this, and was following financial procedures.

Mayor Christiansen questioned how it would affect the City's bond rating if Moody's does not understand the reason why the City increased the transfer. Responding, Mrs. Mitchell stated that, based on her previous conversations with Moody's, she did not think that they would downgrade the City; however, rather than putting the City on a positive outlook, they may put the City on a stable or a watch, or possibly a negative.

Mayor Christiansen asked if the City of Dover was the only utility that they deal with that had to take such action because of the change in the weather. In response, Mrs. Mitchell stated that she could not answer that question; however, she stated that Moody's would be reviewing the credit of many other entities at a meeting scheduled with a utility review committee, not just the City of Dover's credit. *[City Clerk's Office Note: Subsequent to the meeting, members were informed that Moody's had affirmed the Aa2 rating of the City of Dover's electric bonds.]*

Responding to Mayor Christiansen, Mrs. Mitchell stated that on a scale of one (1) to 10, the City's concern regarding this matter should be around three (3).

In response to Mr. Hutchison's question regarding the additional $6M or $7M expense last winter related to peaking time, Mrs. Mitchell explained that the City was required to run the plant and could not because there was no oil available. In addition, she stated that the City had to purchase off the open market, through PJM, and the price escalated because of the cold weather. As a result of these factors, the City had to transfer an additional $3M from the reserve to the operating fund.

Responding to Mr. Hutchison, Mrs. Mitchell advised that everyone under PJM, including the City, has the same reliability standards and must be able to run when they are called on or be penalized. She explained that there was not a problem with the operation of the plant or the people who operate it; the plant was unable to run when called on because there was a problem with oil deliveries across the peninsula.

Mr. Blakeman noted that this was not the first time that the City had to take units offline because of fuel unavailability.

Mr. Kirk Betts, Betts & Holt, LLP and the City's Power Supply Attorney, reviewed background information regarding some of the market forces involved in what happened during that polar vortex period. He stated that he has other clients who require gas and they have had more interruptions in the past two (2) years than in the past 15 years. In terms of their demand on the system, gas supplies on Delmarva have gone down and the pipes have not been able to supply it. He advised that many people are relying on oil during that time of year and the City should pay in advance or have a contract to ensure they have oil deliveries scheduled. Mr. Betts noted that this is a new way for them to exercise their market power to guarantee that they receive payment.

Additionally, Mr. Betts informed members that PJM has lifted the cap on pricing. He explained that, previously, there was always a market price based on dispatched prices; however, during the first polar vortex, it capped out at $1,000 and people complained that they could not get the gas or oil and pay for it, even at $1,000 per megawatt hour (MWh). Mr. Betts stated that $1,000/MWh equated to $1.00 per kilowatt hour (KWh), noting that the City normally pays $0.04 per KWh.

Mr. Betts advised that many companies were affected when PJM lifted the cap on pricing because they did not have contracts that allowed them to float through the extraordinary costs. He stated that it was done very quickly in order to get the market back in balance and many utilities could not recover that cost. Mr. Betts explained that some companies may have had a guaranteed price of

$0.09 per kilowatt hour in the wholesale market and had to take a loss on the other $0.91 because their contracts did not allow it. He stated that companies like Washington Gas Energy Services have gone out of the business because of that year and all of the changes that happened suddenly. Mr. Betts advised that one (1) of the things that Moody's and others are looking at is if the City is able to pass through and recover extraordinary costs, noting that if an entity's rate structure allows for that, the entity is in a better position.

Mr. Betts advised members that last year The Energy Authority (TEA) assumed that the City's plant was not going to dispatch and then it needed to dispatch. He stated that having Mr. Harry Maloney, Electric Director, onsite will add insight to the plant since he can probably predict when the plant is going to run. Mr. Betts noted that TEA's dispatching gas, the plant being ready, and onsite understanding regarding what to do next will really help the City in the future.

Mr. Blakeman questioned whether the cap had been reinstalled. Responding, Mr. Betts stated his understanding that the cap was now at $1,800, which is pretty high. He expressed his excitement about where the City is in terms of planning the next set of generation, noting that gas is one (1) of the factors in the mix but it is not the whole answer.

Mr. Blakeman moved to recommend acceptance of the report as presented, seconded by Mr. Neil and unanimously carried.

TEA/NAES Report (*May*)

The TEA/NAES Monthly Report for May 2015 was provided to members to enable them to monitor electric sales and revenues received, which will provide a better understanding of any fluctuations that occur and allow the opportunity to make improvements if deemed necessary.

Referring to the year-to-date summary on Page 12 of the TEA Report, Mr. Scott Koenig, City Manager, stated that the Variance indicated that the Actual YTD was approximately $1.3M more than the Budget YTD, noting that this was in part due to the City's load being up slightly. He advised that the variance had decreased fairly substantially over the last couple of months and he was hopeful that the variance would continue to close, as he expected that the numbers for June would be relatively strong because it was warm.

Mr. Koenig advised that the Final Cost of Service to City of Dover Ratepayers was budgeted at $63.42 per megawatt hour (MWh) and the Actual YTD was approximately $64.02 per MWh. Noting that there was only a slight variance, he stated that this was a good indication that things were tracking as expected throughout the year.

Referring to the Generation Summary on Page 4 of the TEA Report, Mr. Blakeman noted that the actual revenue had come in below budget for seven (7) out of the 11 months. He questioned if the City would be able to recover that revenue during the last month, or if it would even out since the actual revenue far exceeded the budgeted amount during a couple of the months. Responding, Mr. Koenig stated it would be very close.

Mr. Neil moved to recommend acceptance of the TEA/NAES Report for May 2015, seconded by Mr. Blakeman and unanimously carried.

Updates (Deferred during the meeting of June 22, 2015)
By unanimous consent, Item #4 - Updates was deferred.

Mr. Neil moved for adjournment, seconded by Mr. Blakeman and unanimously carried.

Meeting adjourned at 5:55 p.m.

James Hutchison, Sr.
Chairman

JLH/TM/dd
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Attachments
Attachment #1 - Memorandum dated July 13, 2015 from Kirk Betts Regarding Proposed Agreement for Plant Operating Services

BETTS & HOLT LLP

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July 13, 2015

To: Scott Koenig, City Manager; Donna Mitchell, Controller/Treasurer;

Harry Maloney, Electric Director

From: Kirk Howard Betts, Betts & Holt LLP

RE: Proposed Agreement for Plant Operating Services

Background

On May 4, 2006, the City of Dover entered into an Operations & Maintenance Agreement with North American Energy Services (NAES) to maintain and operate Dover's generation.[1] The contract had an initial four year term and it was extended four times automatically for one year terms.

Dover's generation consists of three steam units in the McKee Run plant and one combustion turbine at VanSant. NAES is responsible for operating and maintaining Dover's generation, staffing and collective bargaining, managing dispatch, environmental controls and complying with permits, guaranteeing capacity performance, maintaining records, preparing budgets, outage plans, and reports to governmental authorities.

The current contract provides for a management fee and reimbursement for all other costs, including staffing, relocation, insurances, training, permit fees, and advisors. All other plant operating costs (consumables, tools, spare parts, equipment, capital improvement projects, etc.) are paid directly by Dover. NAES management fee started at $175,000/year in 2006 and has escalated annually to almost $212,000 in 2015.

The contract also provides an incentive bonus (which started at $140,000 and is now approx. $173,000 for 2015-16) structure that rewards NAES and its personnel for achieving certain goals, such as commercial availability, dependable capacity, safety, and environmental performance. With the exception of 2014, NAES regularly achieved the full incentive bonus.

Both the management fee and the bonus escalated annually based on the Employment Cost Index for private industry works by industry and occupational group, published by the Bureau of Labor Statistics. The minimum was fixed at 1% per year. Since inception, escalation has increased the fixed fee and incentive fee components by 21.1%.

Negotiation Objectives

Discussions with Dover representatives produced the following objectives:

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[1] The Agreement has been amended three times, June 1, 2006, July 1, 2007, and July 1, 2008.

- Update contract to address changes in operations, law, PJM, and decommissioning of McKee Units 1 and 2.
- Reduce the cost of NAES services.
- Address Dover financial concerns, including training, cost estimates for special services, cost of "home office services," qualifying suppliers and bidders, compliance with Dover procurement policies and practices.
- Address issues around performance incentives and accountability
- Incorporate market conditions affecting revenue and load growth
- Set new term and provide more flexibility for termination

Proposed Amended and Restated Operation and Maintenance Agreement

The proposed agreement addresses Dover's express objectives.

1. Lower the annual costs. The proposed agreement provides for a fixed annual management fee, paid monthly, that will have a starting cost $43,000 lower than the current agreement, but will be reduced further during the second and third years as staffing changes are implemented corresponding to the scheduled decommissioning of McKee Units 1 and 2. See Section 2.2 Management Fee. The fixed fee portion of the proposed agreement will be less than the current agreement costs in 2015-16 when it expires in 2020. Overall, fixed fee and reimbursable staffing expenses are estimated to reduce annual expenditures by more than $300,000/year compared to the current agreement, in addition to O&M costs avoided by closing Units 1 and 2. Some of these reductions start immediately, but the major reductions will be realized in 2017. The proposed effective date is July 1, 2015.

A major change in the proposed agreement is the shift to a fixed annual fee for management. The fee includes the management fee (which is decreased from the current fee), and home office support (previously billed hourly as a reimbursable expense), operating incentives, employee bonuses, and burdens (previously computed and reimbursed by Dover). In this agreement, if NAES needs more staff or if Dover require more home office support, the risk of higher costs reside with NAES. In other words, this agreement provides greater predictability. However, while also putting full responsibility on NAES to manage down the size of the staff while maintaining reliability, it also puts more of NAES' fee at risk, as described below.

2. Changed the focus from incentive bonus paid at year-end to performance based reduction where NAES pays Dover. The prior agreement had an incentive fee that had escalated to approximately $173,000 that would be awarded to NAES if it met certain criteria for availability, commercial unavailability, dependable capacity, safety performance, and environmental performance. Each performance standard had a dollar value. The proposed agreement contains objective performance standards that if not achieved penalize NAES. Under the proposed agreement, Dover negotiated a substantially higher amount of compensation at risk, defined as

the Maximum Performance Adjustment, if NAES does not the performance standards. See Section 2.2 Definition of Maximum Performance Adjustment and Appendix B. The performance adjustment puts more of NAES' fee at risk every year of the contract—over $500,000/year compared to $172,000 now. NAES's bottom line will "feel" the implications of a plant failure and share in the cost that would be imposed on Dover by PJM and aligns the performance interests of both parties more closely.

3. Clarifies scope of services included. The proposed agreement clarifies staffing and home office staff responsibilities that are included in the monthly fee. These services have been billed on an hourly basis and averaged about $75,000/year. They will be included in the Management Fee going forward. See Appendices A and F.

4. Procurement obligations. There is a positive tension on how costs are managed and contracts awarded. This tension also creates conflicting objectives between lowering costs and increasing plant operating revenue. The current draft seeks to focus on increasing revenue through more attention to reliability to maximize the generating resource and the City's investment in those resources. We have heard during these negotiations an appreciation for oversight and a concern about micro-management and mixed signals. The approach that is being recommended necessarily involves the terms of the contract and the collaboration of NAES and the City's finance office, particularly procurement, to make it work smoothly.[2]

The original and current agreement are based on having a third party operate and maintain Dover's generation. The agreement provides for an annual operating and capital budget and regular consultation concerning plant performance and costs. The plant operating and maintenance budget is provided as part of the Dover budget development cycle. A substantial part of the budget is for staffing, planned maintenance, and capital repairs and replacements (also planned). We are recommending a contingency in the budget for unplanned work. It is not intended to be a fund for cost overruns or discretionary projects, but it is intended to address the reality that generating plants, particularly of this vintage, experience equipment failures.

The procurement process follows the 2012 procurement procedures, Administrative Manual, AMP 501, latest edition, which was approved by the City. Although this appears to be a parallel procurement system, our recommendation is to continue using these procedures since the equipment and services are within NAES' particular expertise and it has the greatest knowledge of suppliers for the types of equipment and services needed. Moreover, planned maintenance and CIPs would all be reviewed as part of the budget process and also during periodic meetings with Dover's Representative, Electric Utility Director Harry Maloney. We believe his presence provides a day-to-day awareness of the utility, oversight, and qualified point of contact for NAES and the City who also is in regular consultation with the City Manager and Finance

[2] A recent inquiry involving cell phone service highlights the overlapping work and interests of the parties. It may expedite matters if the City and NAES clarify the scope of procurements, i.e., which are general services and which require specific plant expertise, to determine which services and types of procurements may be most efficiently managed by the City and by NAES.

Director. Mr. Maloney provides a level of technical capability regarding plants, PJM, and municipal procurement that has not been present in recent years.

Another consideration is that the agreement and PJM impose substantial penalties for failure to dispatch (availability). Consequently, both NAES and the City have an aligned interest in assuring the generating plants are ready to be dispatched and that unplanned outages, as well as planned outages, are as short as possible.

5. Duration of Agreement. The proposed agreement is for five years (2015-2020). Notice for termination or renewal has been shorted to six months for Dover, and twelve months if requested by NAES. The agreement expires in 2020.

6. Updated Agreement. The proposed agreement deletes all references to the transition period when NAES assumed responsibility for plant operations. It incorporates the changes anticipated by the scheduled withdrawal of McKee Units 1 and 2 from service in 2017. All the appendices have been updated.

LEGISLATIVE, FINANCE AND ADMINISTRATION COMMITTEE

The Legislative, Finance, and Administration Committee meeting was held on July 13, 2015, at 6:03 p.m. with Chairman Hare presiding. Members present were Mr. Sudler (arrived at 6:08 p.m.), Ms. Maucher, and Mr. Shevock. Mr. Cole was absent. Members of Council present were Mr. Anderson, Mr. Neil (arrived at 7:02 p.m.), Mr. Lewis (arrived at 6:55 p.m.), Mr. Hosfelt, Mr. Hutchison, and Mr. Slavin. Mayor Christiansen was also present.

AGENDA ADDITIONS/DELETIONS

Mr. Shevock moved for approval of the agenda, seconded by Ms. Maucher and unanimously carried.

Fiscal Year 2014/15 Edward Byrne Justice Assistance Grant Program - Police Vehicle Computer/Video Technology Upgrades & SORT Firearms

Major Marvin Mailey, Deputy Chief of Police, advised members that the Dover Police Department recently submitted a grant application through the Office of Justice Programs (OJP) for the 2015 Justice Assistance Grant (JAG). He stated that the Dover Police Department intends to upgrade/replace nine (9) additional vehicle computer/video systems. Grant funding will be combined with $54,000 budgeted for the mobile data computer (MDC) portion of the system for this purchase. Major Mailey stated that these systems will be purchased for the nine (9) new vehicles that will be coming on line during FY16. The vendor for the purchase would be COBAN and was approved as a sole vendor last year when grant funds were used for the same purpose. This brand of equipment is currently being used by the State Police and other agencies throughout the state.

Major Mailey indicated that a portion of the funds would also be used to replace three (3) shotguns and night scopes for the department's Special Operations Response Team (SORT), noting that the weapons are more than 20 years old. This purchase would be awarded to a state contract vendor that is an authorized gun dealer.

Major Mailey stated that this grant request is for $48,891 from the state to assist with the purchase of these items. He informed members that the grant had been applied for; however, to date, it had not been approved. Major Mailey indicated that the police department was quite certain that the grant would be approved, since it is an annual application.

Staff recommended approval of the grant project, as requested.

Ms. Maucher moved to recommend approval of the grant project, as requested. The motion was seconded by Mr. Shevock and unanimously carried.

Disposal of Excess Property - Silver Lake Drive (East Lake Gardens)

Mr. Scott Koenig, City Manager, informed members that the City Manager's Office had received a request to abandon a certain portion of right-of-way adjacent to property owned by Bruce and Della Parham at 107 Silver Lake Drive in the East Lake Gardens Subdivision. He stated that Mr. and Mrs. Parham wished to make various improvements to their property and would like to take ownership of an irregular piece of right-of-way adjacent to it.

Mr. Koenig reviewed a property survey for 107 Silver Lake Drive and explained that Mr. Parham's driveway is located off of the odd shaped right-of-way on Silver Lake Drive and Mr. Parham mows approximately 40 feet of grass before he gets to the actual edge of the roadway. Mr. Koenig stated that Mr. Parham contacted him to determine the City's interest in disposing of this excess right-of-way because he is desirous of expanding his house and adding on a garage.

Mr. Koenig reviewed the real property tax map for the subdivision outlining the varying widths of the rights-of-way for Silver Lake Drive, noting that the right-of-way adjacent to 107 Silver Lake Drive is 85 feet wide; whereas, other rights-of-way in the subdivision are only approximately 50 feet wide. Mr. Koenig informed members that approximately 39 feet of the 85 foot right-of-way is unimproved. He stated that Mr. and Mrs. Parham are currently maintaining this area adjacent to their property and the City of Dover has no plans to further improve or enhance this right-of-way. Mr. Koenig explained that the City may have previously desired to put in an additional boat ramp in this area; however, during his employment with the City, it has never been pursued, nor had there been any indication that the City would pursue adding a boat ramp or any type of parking in this area. He stated that Mr. Parham's request is essentially that the City allow him to hire a surveyor and create a deed to transfer this excess right-of-way to his property. Mr. Koenig explained that once this parcel is transferred, it would become part of Mr. Parham's lot and part of the taxable real property in the City.

Mr. Koenig stated that the excess right-of-way is not large enough to create a buildable lot in this subdivision; therefore, it was his recommendation that the excess property be conveyed to the abutting property owner in accordance with Exception C of the Procedures for Sale and Disposition of Real Property. He advised that all costs to survey the land and prepare a deed for the transfer of the area shall be the sole responsibility of Mr. and Mrs. Parham, if they wish to proceed, and that staff would review all of the documentation prior to signature.

Staff recommended the following: 1) determine that the property is excess property; and 2) authorize the City Manager to convey the excess property in accordance with Exception C of the Procedures for Sale and Disposition of Real Property.

Referring to the excess property to be conveyed to Mr. Parham, Mr. Shevock questioned the amount of money that this would add to the tax roll. Responding, Mr. Koenig explained that the amount was difficult to distinguish as an unbuildable lot by itself, noting that it would essentially be added to the land value of Mr. Parham's parcel and the assessor would appropriately value it.

In response to Mr. Hare, Mr. Koenig explained that if Mr. Parham were to build a garage, this would add another assessment.

Responding to Mr. Hare, Mr. Koenig stated that he could not determine that the City had any use for this property; therefore, it is excess.

In response to Mr. Anderson and referring to the real property tax map for the subdivision, Mr. Koenig explained that Mr. Parham's property was labeled as parcel 06 and is located immediately adjacent to Silver Lake Drive, beginning where the right-of-way increases to 85 feet and running all the way to the lake.

Mr. Anderson questioned whether this property was near Sunset Drive, noting that residential complaints were previously received because people did not have access to get out of the driveway. Responding, Mr. Koenig referred to the real property tax map for the subdivision, explaining his understanding that Garden Lane used to extend further to the right of the word Garden as depicted on the map. He stated that the right-of-way was abandoned to a property owner in 1985 and became part of the subject property. Mr. Koenig indicated that this situation was similar but not quite the same. Referring to the complaints, he stated that staff had reviewed the surveys of at least one (1) of the property owners, as well as the Council minutes where the right-of-way was abandoned. Mr. Koenig stated that, based on his non-legal review, it appeared that the property owner had done things correctly in accordance with what he was granted by the City.

In response to Mayor Christiansen, Mr. Koenig advised that, to his knowledge, there were no utilities in this right-of-way and that the survey of the area would determine the existence of any utilities. Mr. Koenig explained that there was an overhead pole line on the east side of the property where the right-of-way becomes 85 feet, which carries electric, telephone, and cable. He stated his understanding that the water and sewer lines were in Silver Lake Drive. Mr. Koenig informed members that the City would maintain a utility easement over any utilities indicated by the survey.

Regarding the access issue referred to by Mr. Anderson, Mayor Christiansen stated that there is a fire hydrant that is located on private property due to the City conveying the property. Mr. Koenig stated that the fire hydrant in this area would most likely be abandoned or moved in the future.

Mr. Hutchison questioned whether the City had canvassed the neighborhood to determine what the feelings were regarding this matter. Responding, Mr. Koenig stated that the neighborhood had not been canvassed and letters were not sent to the neighborhood because this situation was different than when the City abandons the full right-of-way. He stated that if members would like that to be done, staff could do it just to make sure there are no objections.

Mr. Shevock moved to recommend, provided local property owners are surveyed and there are no problems, that a certain portion of right-of-way adjacent to property located at 107 Silver Lake Drive in the East Lake Gardens Subdivision, owned by Bruce and Della Parham, be determined to be excess property, and that the City Manager be authorized to convey the excess property in accordance with Exception C of the Procedures for Sale and Disposition of Real Property, as recommended by staff. The motion was seconded by Ms. Maucher and unanimously carried.

Timeline for Review of Fiscal Year 2016/17 Budget (Deferred during the meeting of June 22, 2015)

Mr. Scott Koenig, City Manager, reviewed the FY16 Budget Calendar ***(Attachment #1)***. He explained that advancing the timeline would create challenges regarding revenue projection. Mr. Koenig informed members that City Council recently adopted the FY16 Budget which included the expected revenue projections, and the State did maintain the expected levels; however, it remained an unknown factor until the end of June. He stated that passing a budget in April would create uncertainty, noting that it would be difficult to provide accurate numbers and predict what would happen at the end of the State's session. Mr. Koenig indicated that there are ways for staff to provide additional information as the budget year progresses to try to fine tune expectations.

Mr. Koenig reminded members that staff had kept spending and costs down in the 20 and 30 series of the operating budget. He stated that staff had done a fair job of maintaining the capital plan during the last few years, noting that although staff had to adjust project budgets occasionally, the actual total funding stream was consistent. Mr. Koenig advised that staff expected to keep that trend going forward, explaining that large increases in the FY16 budget were the result of additional personnel and increased healthcare costs.

Mr. Koenig stated that if Council wanted to accelerate the budget schedule, he would comply; however, he reiterated that it would be more difficult for staff.

Mr. Shevock questioned if the City received funding other than municipal street aid from the State of Delaware. Responding, Mr. Koenig advised that, for FY16, the City received municipal street aid based on a formula; payment in lieu of taxes (PILOT), which remained fairly consistent; and realty transfer tax. He explained that when State budgets are very tight, PILOT is often an item that they think about adjusting. Mr. Koenig informed members that after Council completed their budget hearings for the FY16 budget, the State began discussing the possibility of adjusting the local share of the realty transfer tax. He stated that the vote taken by the State would have affected the FY17 budget; however, it highlighted the potential impact on local governments of the State voting very late in the budget year. Mr. Koenig indicated that any type of legislation being considered by various committees or legislators could potentially impact the City, especially if it affects property assessment, licensing, or any type of additional tax that the City may want to incorporate.

Mayor Christiansen stated that he had spent a few days at Legislative Hall during the last session and expressed his opinion that it would not hurt the City to have a preliminary budget that reflects the possible shortfalls that the State of Delaware is going to have. It was his feeling that staff should develop the budget ahead of time, not taking into consideration Community Transportation Funds (CTF) or transfer tax monies. Mayor Christiansen advised that the City may see an increase in PILOT from the State, since the City's delegation was asked to request the appropriate amount of PILOT. However, he noted that transfer tax is not sacred, healthcare costs continue to increase, and municipal street aid may disappear altogether. Mayor Christiansen suggested providing Council with a preliminary draft budget by the middle of March to give members a rough idea of the City's future and the revenues that will be available. It was his feeling that although this may place additional stress on staff, it would certainly relieve Council of surprises.

Mr. Hare stated that his primary concern was expenses, not revenues. He suggested that staff prepare a preliminary budget by the end of March using FY16 revenues and projected increases in expenses. He expressed his opinion that Council needed more than three (3) weeks to review and address expenses.

Mr. Shevock noted that the City may not receive funding from the State next year; therefore, he suggested that staff prepare a preliminary budget excluding State funding.

Mr. Anderson reminded members that in previous years, Council held their first budget workshop around February to discuss the status of the economy and City revenues and expenses. He stated that he would like to see this type of workshop resumed. Mr. Anderson expressed his opinion that Council did not need to pass a budget in March or April; however, Council could hold a workshop in February or March to set priorities, and staff could hold budget workshops beginning in April. It was his feeling that the workshops did not have to be held all at once; instead, he would prefer some in April and May, with the Council mark-up to conclude in late May.

Mayor Christiansen noted that having a preliminary budget in March would also allow members of Council, staff, and the public an opportunity to present an alternative budget.

Mr. Hare informed members that the PILOT the City receives from the State of Delaware had been addressed with the City's legislators. He explained that the City currently has approximately $300M worth of assessed State property; however, the City only received $270,000 in PILOT. Comparatively, Mr. Hare stated that the City of Wilmington has $188M worth of State property and they receive $2.7M in PILOT. Responding, Mayor Christiansen advised that a resolution had been submitted that would change this but he was not certain how far it would go.

Mr. Koenig reiterated that a lot of work goes into the budget, but explained that if members request a preliminary budget for all funds earlier, staff would meet the schedule. He stated that his only caveat was that the revenue numbers would be less solid as they moved further away from the end of the June.

Mr. Hare stated that he was really only concerned with the projected expenses and the preliminary budget could include the FY16 revenues.

Mr. Sudler moved to recommend that staff provide a preliminary FY17 budget between March 15 and March 31, 2016, to review expenses. The motion was seconded by Ms. Maucher.

Noting that the City of Dover relies on funds from the State of Delaware, Mr. Slavin questioned whether the City had ever examined the possibility of changing the fiscal year to align with the federal government, which begins October 1st. Responding, Mr. Koenig stated that he would need to consult with Mrs. Donna Mitchell, Controller/Treasurer, to determine if the fiscal year was related to an accounting standard.

Mayor Christiansen advised that the City's fiscal year used to be January through December.

Mr. Slavin stated that he was unaware of what might be involved in making the first adjustment; however, he believed it would require more than one (1) discussion by the Legislative, Finance, and Administration Committee, noting that he was not requesting a response at this time.

Mrs. Donna Mitchell, Controller/Treasurer, stated that changing the City's fiscal year would require research. She advised that most municipalities and the State of Delaware begin on July 1st; however, the federal government begins its fiscal year on October 1st and some municipalities may begin then as well. Mrs. Mitchell stated that another possibility would be to begin the fiscal year on January 1st, noting that the City of Newark does this.

Referring to Mr. Koenig's comment, Mr. Slavin stated that a two (2) year budget cycle may also have merit and suggested that the committee come back with pros and cons regarding these suggestions, including what confusion may be caused by having a different fiscal year than the State.

Mr. Hare stated that he liked the idea of beginning the City's fiscal year on October 1st, since all of the State monies would be in by then.

Mr. Slavin noted that the City does not receive a significant amount of funding from the federal government. Responding, Mrs. Mitchell advised that it is confusing that the federal fiscal year is different than the City's when dealing with grants and overlapping years.

Mr. Shevock noted that the City's tax bills go out on July 1st each year and are part of that fiscal year budget. He questioned how the tax year would be affected by a change in the fiscal year. In response, Mrs. Mitchell stated that everything, including taxes, would have to be changed to coincide with the new fiscal year. Mr. Slavin suggested that the City could have a 15-month tax year, followed by a 9-month tax year in order to implement the change.

The motion to recommend that staff provide a preliminary FY17 budget between March 15 and March 31, 2016, to review expenses, was unanimously carried.

Proposed Amendments to the City of Dover Code of Ordinances - Chapter 2 - Administration, Article IV - Officers and Employees, Division 4 - Controller/Treasurer and Division 5 - City Clerk; Chapter 54 - Health and Sanitation, Article I - In General, Section 54-1 - Health inspector Generally; Chapter 82 - Planning, Section 82-2 - City Planner; and Chapter 102 - Taxation, Article I - In General, Section 102-3 - Administrative reporting

Mrs. Traci McDowell, City Clerk, informed members that during the Regular Council meeting of March 23, 2015, City Council adopted a motion "to maintain a full time mayor and that all departments, excluding the City Clerk's Office and the Finance Department, will report to the City Manager who is appointed by and will report to City Council."

Mrs. McDowell reviewed proposed ordinance amendments which would change the selection and/or reporting of the City Planner and the City Assessor to the City Manager. She advised that the Economic Development Office is not referenced in either the City of Dover Charter or the Dover Code of Ordinances, and City Council's motion of March 23, 2015 effectively moved the Economic

Development Office from the Mayor to the City Manager. Mrs. McDowell stated that Charter amendments would be necessary to complete the transfer of the City Assessor and the Police Department to the City Manager. She informed members that the proposed amendments also remove the requirement for the annual reappointment of these positions.

Staff recommended directing the City Clerk to prepare the necessary ordinance amendments for presentation to City Council/First Reading.

Mr. Hare questioned whether members would want to leave the City Assessor as a Council appointee. Responding, Mrs. McDowell stated that would be a discussion for the next agenda item, noting that the proposed Charter amendments were suggestions based on Council's previous motion and comments.

Mayor Christiansen informed members that on March 9, 2015, City Council made a decision regarding the direction of the City, which gave the Mayor some responsibility; however, 14 days later, Council changed their mind. He questioned if any members knew or had researched why the City Clerk, Assessor, Planner, or Controller/Treasurer were put under the direction of City Council. Mayor Christiansen expressed his opinion that is was imperative that these departments remain under the control of City Council. While he stated that he did not want to appear self-serving, Mayor Christiansen expressed concern that the public had repeatedly told Council, in different ways and by different actions, that they want a strong mayor who works in consort with the Chief Operating Officer of the City, and for public safety to remain under the control of the Mayor. He stated that, through various elections, the public had reaffirmed that they want a strong Mayor who has the responsibilities of at least public safety and economic development. Mayor Christiansen reminded members that during the last municipal election, the two (2) top mayoral candidates debated the fact that the City needed a strong Mayor and a number of council members who did not believe in that are gone. He expressed his opinion that members should take a second look at the actions of March 23, 2015, give the Mayor some responsibility and allow him/her to work in consort with the City Manager on a daily basis, since the Mayor is the elected official who is present on a daily basis.

Mayor Christiansen informed members that the City Clerk, Assessor, Planner, and Controller/Treasurer were put under the direction of City Council because, at the time, the City Manager told members of Council that unless they came back with four (4) other Council members, he did not have to talk to them. Mayor Christiansen cautioned members not to give away their responsibility, noting that they could take his away, but to take away Council's responsibility would be a disservice to the public who had reaffirmed the direction they wished the City to take. He stated that his comments were no reflection on the current City Manager, explaining that the current City Manager and Assistant City Manager did a terrific job. Mayor Christiansen suggested that members take a long, hard look at the proposed ordinances and changes, rather than having one (1) committee meeting to discuss this matter.

Responding to Mr. Hutchison, Mayor Christiansen stated that he would not have a problem with the City Manager being the Chief Operating Officer of the City who reports to the Mayor and Council.

Mr. Hutchison stated that was the intent of this change. He explained that the City Manager is chosen based on education, knowledge, and skill sets that enable him/her to run a city and have responsibility for the budget, along with the City's Controller/Treasurer. Mr. Hutchison reminded members that he had served the City of Dover as the Police Chief, Mayor, and a member of Council and expressed great concerns regarding the day-to-day operations and loss of control compared to what the City used to have. He stated that giving the City Manager the authority to be the Chief Operating Officer does not mean that he would run the Police Department; rather, the City Manager would be responsible for the operations and the finances, and would report to the Mayor or Council. Mr. Hutchison noted that the City Manager has the expertise, while elected officials are here to listen and be guided by the information provided. He stated that the proposal could be fine-tuned, and noted the Mayor would still be the point person and serve on top with the Council. Mr. Hutchison explained that the City was very complex, including the overall operation, various departments, personnel issues, labor contract negotiations, etc. He reminded members that, most importantly, under the current structure, the Police Department does not report to the City Manager and has nothing to do with the City Manager from a financial point of view. As an example, he reminded members that the Police Department requested ten (10) additional police officers in the middle of FY15, noting that you cannot run a city that way and no business plan would justify that type of change.

Responding to Mr. Hutchison, Mayor Christiansen stated that the matter with the Police Department was something that should not have happened; however, he stated that the City knew that the need was there when Councilman Hosfelt was Chief of Police but the problem was deferred.

Mayor Christiansen expressed his opinion that no one, including himself, who could get elected to serve as Mayor would ever want to interfere with the daily operations of the City; however, the Chief Executive Officer should either work in consort with or report to the Mayor. He reiterated that it was imperative to maintain checks and balances through Council retaining responsibility over the City Clerk, Assessor, Planner, and Controller/Treasurer; otherwise, the Mayor and Council would become non-entities in the government, and the citizens did not elect the Mayor and Council to be non-entities. Mayor Christiansen informed members that the City's Charter was adopted in 1929 when people did not trust politicians; however, he stated that the Mayor and members of Council were not politicians but public servants, and the City's hybrid form of government allows the public to get the most out of their money.

Mr. Hutchison noted that it was important for the citizens of Dover to understand that the City Manager works at the pleasure of the Mayor and Council. He stated that the City Manager and other department heads do not have contracts; they perform their jobs on a daily basis and it is Council's job to ensure that the City provides the best service for its citizens. Mr. Hutchison explained that the City needed to make some modifications within the structure in order to make the City Manager a chief operating person with a greater authority to bring together all of the departments within the City, including the Police Department, to present and deal with issues and

accomplish the job that is asked by Council and the City's citizens. He requested that members consider these issues, noting that he believes that the City can become better and more efficient by putting better controls in place.

Mr. Sudler informed members that he had previously voiced his opinion in his proposal of Option A (a full-time Mayor's position, with consideration of changing the City's current form of government to a Mayor/Council form of government, where the City Manager and Chief of Police would be appointed by the mayor and confirmed by City Council, and that any positions which currently report to Council that are moved to report to the Mayor would only be removed for cause and with Council approval.) He stated his belief that the City is growing to the point where a strong mayor form of government is necessary. Mr. Sudler advised that this type of strong mayor/council form of government would allow Council to focus strictly on legislative issues and ordinances. It was his opinion that a city manager should be the chief administrative assistant, working with the Mayor and under his supervision, and they should work together to come up with departmental goals and ensure that those goals are met. He stated that this would also provide the criteria for a job description for the Mayor, which needs to be developed.

Mr. Sudler stated that he strongly believes that the City needs a strong mayor form of government, noting his belief that it could work. He agreed with Mayor Christiansen and Mr. Hutchison that it needs to be fine-tuned and requested that members work together on this matter. Mr. Sudler informed members that the people had spoken, noting that during previous Legislative, Finance, and Administration Committee meetings members of the public expressed that they wanted the Mayor to be the focal point. It was his thought that a lot more could be accomplished if the City were to allow the Mayor to have the City Manager under his supervision, explaining that the Mayor would be able to address, and help the City Manager address, issues that arise on a daily basis, even departmental issues, since he is here on a daily basis and members of Council are not.

Mr. Slavin stated that he has worked in the public sector for approximately 25 years and that reorganizations can certainly have value; however, especially in the public sector, they tend to be messy, confusing and often expensive. He stated that reorganizations are expensive in terms of actual dollars as well as in the trust that members build with the voters and taxpayers who support the positions. Mr. Slavin also stated that reorganization does not always work, noting that there is no guarantee that the new thing that members try will be successful.

Mr. Slavin advised that Council had never really achieved consensus regarding this issue. While he did not want to denigrate this matter, he expressed his opinion that this matter has been a distraction. Mr. Slavin stated that the new members of Council had inherited a suggestion on this issue, not a mandate. He explained that this issue is open for debate and decision by the current Council; however, it was his opinion that Council has a lot of bigger issues to get to. He stated that he did not desire further discussions regarding this matter and would prefer, with five (5) new council members, that Council leave things the way they are and focus their time, energy and efforts on running things efficiently and, more importantly, effectively for the City.

Mr. Anderson stated that this was a complicated situation and questioned whether leaving things the way they are would require a vote at this time, due to Council's motion of March 23, 2015. He expressed his opinion that the City did not need to rush into a decision. Mr. Anderson stated that this is a definite concern to him and, if he were to make a choice today, he would probably agree with Mr. Sudler.

Mr. Hare agreed that this issue had been on the table for a long time. He stated that he did not care what decision Council made on this matter; however, he urged members to make a decision. Mr. Hare reminded members that the City currently has a City Manager and an Assistant City Manager that are only responsible for half of the City, explaining that it is impossible to hold the City Manager accountable for the City's budget, which is his responsibility, since he is not responsible for all of the departments. Mr. Hare expressed his opinion that members give the City Manager responsibility for the budget and everything that happens in the City, in order to hold him accountable if there is a problem. Additionally, he noted that the City Manager is currently unable to make recommendations in regard to matters that are not his responsibility, regardless of whether they are good recommendations. It was Mr. Hare's thought that one (1) person should be responsible for the entire City so that Council can hold that person accountable. Referring to Mr. Hutchison's comment, Mr. Hare stated that the Mayor could be the chief of the City and be responsible for managing the Police Department, but not the financial side of it.

In response to Mr. Hare, Mayor Christiansen agreed that having one (1) budget was an important detail that may be lacking. He did not believe the City should have separate budgets for the City and the Police Department.

Mr. Hare reiterated that the City Manager is not responsible for the Police Department, economic development, or any of the other responsibilities that fall under the Mayor, and if the Mayor remains the chief executive, he could also deal with the Police Department, except for the financial part of it.

Mr. Hare suggested that this matter should be discussed during a separate meeting, in order for members to make a final decision.

Mr. Hosfelt stated that, unless something had changed drastically in the past one (1) and one-half years, as the Chief of Police he always worked directly with Mr. Koenig and Mrs. Mitchell in developing the budget. He explained that he knew that what he did in regard to the budget had to go through the City Manager's Office and Finance Department, and the Police Department did not operate independently from the rest of the City. Mr. Hosfelt noted that the Police Department was always deeply involved in the budget process, probably because it is the largest department. He did not think it was fair to say that the Police Department had a separate budget or were separate from the rest of the City because he did not believe that was ever the case. Mr. Hosfelt stated that the Police Department was always included as part of the package deal.

Referring to the discussions pertaining to a strong mayor, Mr. Hutchison reminded members that the Mayor was previously a member of Council, presided over Council meetings, and had a vote but no veto power. He stated that the Mayor was a member of the team then; however, now the Mayor has a voice but no vote. Mr. Hutchison suggested that if members want the Mayor to be in charge, then he should earn his/her income by presiding over the meetings. He informed members that, currently, the Mayor does not have to attend any committee or Council meetings.

Responding to Mr. Hutchison's comments, Mayor Christiansen noted that the Mayor is an ex-officio member of all of the committees and it is his responsibility to attend all of the meetings.

Mr. Hutchison indicated that when he served as Mayor he attended all of the meetings as well. He reiterated that years ago, the Mayor was really in charge and the responsibilities had been diluted over time. Mr. Hutchison stated that, as members review the issues and try to resolve the problems, if they choose to have a strong mayor, he would prefer to see the Mayor actively involved with the City every day.

Mr. Hutchison questioned if Mayor Christiansen thought that presiding over Council would make him a greater part of the City. In response, Mayor Christiansen expressed his opinion that it would not make him a greater part of the City because Council should be the legislative body of the City and not administrative.

Mr. Hare suggested that members continue this discussion at a separate meeting. He also indicated that the City could have the Mayor as the chief executive officer with no control over finances.

Mayor Christiansen suggested making the Mayor part of the budget process in order to hold him accountable, along with the City Manager. Responding, Mr. Hare reminded members that the City Manager would be reporting to members of Council.

Mr. Sudler expressed his opinion that the Mayor should have a vote since he represents the mass of the people in the City. He thought that the Mayor's vote is valid and that the Mayor should participate in the process since he/she is an elected voice for the people. Mr. Sudler stated that he was uncertain how it would work but thought that the Mayor should play a more significant role. He informed members that he had researched this topic and found that in a strong mayor form of government, the mayor can have veto power and a vote.

Mr. Hare moved to defer this matter as well as Item #5 - Proposed Amendments to the City of Dover Charter, and schedule a special meeting, without a time limit, to allow for further discussion. The motion was seconded by Mr. Shevock.

Mr. Sudler suggested allowing for more input from the community, to provide the new members a new perspective. Responding, Mr. Hare indicated that the community could attend the meeting and share their comments during the open forum. He stated that he would also like to begin having quarterly town meetings again.

Mr. Hosfelt expressed his opinion that it is the responsibility of each member of Council to talk to their constituents to find out what they want, noting that they were elected to represent their district.

Mr. Hare stated that members could speak directly to their constituents and the public could also attend the meeting to speak.

Mr. Sudler suggested that members could have a survey orchestrated for each member of Council to provide to their constituents during their individual district meeting. He noted that this would provide some type of tangible scale and members could report the data, since any member of Council could misrepresent their constituency.

Mayor Christiansen reminded members that the Mayor had the responsibility to hold quarterly town meeting and stated that he would like to schedule a quarterly town meeting to discuss the issues and provide an opportunity for people to attend and give members their input.

Mr. Hare indicated that the Mayor should proceed with scheduling the quarterly town meeting.

The motion to defer this matter, as well as Item #5 - Proposed Amendments to the City of Dover Charter, and schedule a special meeting, without a time limit, to allow for further discussion was unanimously carried.

Proposed Amendments to the City of Dover Charter
This item was deferred during consideration of the previous item.

By unanimous consent, the meeting adjourned at 7:04 p.m.

William F. Hare
Chairman

WFH/TM/dd
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Attachments
Attachment #1 - FY16 Budget Calendar

FISCAL 2015-2016
BUDGET CALENDAR*

10/17/2014	Budget Memo & Instructions to be distributed
10/20/2014– 2/13/2015	Departments' budget preparation; All inclusive of CIP, revenues & expenses
11/03/2014 – 12/12/2014	Personnel budget changes, including reclassifications are reviewed by the City Manager & Human Resources Director. Meetings held with Department Heads to discuss.
12/30/2014	Personnel budget file and instructions distributed
~~1/5/2015~~ 1/20/15	CIP Budget completed and entered into financial systems
1/20/2015	Completed personnel budget files due back to City Manager's Office
1/20/2015	CIP support documentation submitted to City Manager's Office
~~1/30/2015~~ 2/13/15	Entry lockout end of day; All budget items entered into financial systems
~~2/2/2015 –~~ 2/13/2015	Draft Budget summaries prepared by City Manager's Office
2/19/2015 – 2/20/2015	Draft Budget summaries and historical trend reviews by City Manager & Controller
2/23/2015– 3/20/2015	Draft Budget Review meetings held with Department Heads
3/23/2015 – 3/31/2015	Revised Draft Budget and CIP prepared; Organizational Charts due to City Manager;
Week of 4/6/15	Council workshop to review Draft Budget and Financial Forecast
4/13/2015 – 5/1/2015	Preparation of Draft Budget and Financial Forecast
5/11/2015	Final draft budget and CD to Council
5/18/2015 – 5/29/2015	Budget review meetings as needed (members of LF&A Committee invited)
6/8/2015	Electric public hearing; first reading of draft budget
6/22/2015	Second reading of draft budget
7/1/2015	Fiscal Year 2015-2016 budget goes into effect

**** All dates are tentative and subject to change.***

ACTION FORM

PROCEEDING: Utility Committee and City Council
DEPARTMENT OF ORIGIN: Electric **DATE SUBMITTED**: 7/15/2015
PREPARED BY: Scott D. Koenig, P.E., Donna Mitchell, Kirk Betts and Harry Maloney
SUBJECT: Contract Award - North American Energy Services (NAES) Amended and Restated Operating Agreement
REFERENCE: N/A
RELATED PROJECT: N/A
REVIEWED BY: Scott D. Koenig, P.E, City Manager and Donna Mitchell, CPA, Controller
EXHIBITS: Exhibit A – Letter dated July 15, 2015 from Mr. Kirk Betts; Exhibit B – Amended and Restated Operation and Maintenance Agreement dated July 1, 2015
EXPENDITURE REQUIRED: $ 797,304.00 **AMOUNT BUDGETED**: $ 859,200.00 **This expenditure represents the First Year of the agreement retroactive to July 1, 2015.** **FUNDING SOURCE (Dept./Page in CIP & Budget)**: Electric page 317
TIMETABLE: Utility Committee was briefed on July 13, 2015 and staff is requesting City Council approval July 27, 2015 with retroactivity back to July 1, 2015.
RECOMMENDED ACTION: Authorize the City Manager to execute the Amended and Restated Operation and Maintenance Agreement dated July 1, 2015 between the City of Dover and North American Energy Services (NAES).

BACKGROUND AND ANALYSIS

The City's power supply attorney, Mr. Kirk Betts, has been negotiating an agreement with North American Energy Services (NAES) on behalf of the City of Dover. Exhibit A highlights the parameters of the proposed agreement. Exhibit B represents the amended and restated operation and maintenance agreement between the City of Dover and North American Energy Services (NAES). The proposed contract term is July 1, 2015 through June 30, 2020. Mr. Betts will be in attendance at both the Utility Committee meeting as well as the City Council meeting on Monday, July 27, 2015 to discuss the proposed agreement and answer any questions that may arise.

Exhibit A

BETTS & HOLT LLP

COUNSELLORS AT LAW

1100 17th STREET ● SUITE 901 ● WASHINGTON, DC 20036
TELEPHONE 202.530.3380 ● FAX 202.530.3389

July 15, 2015

To: Scott Koenig, City Manager; Donna Mitchell, Controller/Treasurer;

Harry Maloney, Electric Director

From: Kirk Howard Betts, Betts & Holt LLP

RE: Proposed Agreement for Plant Operating Services

Background

On May 4, 2006, the City of Dover entered into an Operations & Maintenance Agreement with North American Energy Services (NAES) to maintain and operate Dover's generation.[1] The contract had an initial four year term and it was extended four times automatically for one year terms.

Dover's generation consists of three steam units in the McKee Run plant and one combustion turbine at VanSant. NAES is responsible for operating and maintaining Dover's generation, staffing and collective bargaining, managing dispatch, environmental controls and complying with permits, guaranteeing capacity performance, maintaining records, preparing budgets, outage plans, and reports to governmental authorities.

The current contract provides for a management fee and reimbursement for all other costs, including staffing, relocation, insurances, training, permit fees, and advisors. All other plant operating costs (consumables, tools, spare parts, equipment, capital improvement projects, etc.) are paid directly by Dover. NAES management fee started at $175,000/year in 2006 and has escalated annually to almost $212,000 in 2015.

The contract also provides an incentive bonus (which started at $140,000 and is now approx. $173,000 for 2015-16) structure that rewards NAES and its personnel for achieving certain goals, such as commercial availability, dependable capacity, safety, and environmental performance. With the exception of 2014, NAES regularly achieved the full incentive bonus.

Both the management fee and the bonus escalated annually based on the Employment Cost Index for private industry works by industry and occupational group, published by the Bureau of Labor Statistics. The minimum was fixed at 1% per year. Since inception, escalation has increased the fixed fee and incentive fee components by 21.1%.

Negotiation Objectives

Discussions with Dover representatives produced the following objectives:

[1] The Agreement has been amended three times, June 1, 2006, July 1, 2007, and July 1, 2008.

- Update contract to address changes in operations, law, PJM, and decommissioning of McKee Units 1 and 2.
- Reduce the cost of NAES services.
- Address Dover financial concerns, including training, cost estimates for special services, cost of "home office services," qualifying suppliers and bidders, compliance with Dover procurement policies and practices.
- Address issues around performance incentives and accountability
- Incorporate market conditions affecting revenue and load growth
- Set new term and provide more flexibility for termination

Proposed Amended and Restated Operation and Maintenance Agreement

The proposed agreement addresses Dover's express objectives.

1. Lower the annual costs. The proposed agreement provides for a fixed annual management fee, paid monthly, that will have a starting cost $43,000 lower than the current agreement, but will be reduced further during the second and third years as staffing changes are implemented corresponding to the scheduled decommissioning of McKee Units 1 and 2. See Section 2.2 Management Fee. The fixed fee portion of the proposed agreement will be less than the current agreement costs in 2015-16 when it expires in 2020. Overall, fixed fee and reimbursable staffing expenses are estimated to reduce annual expenditures by more than $300,000/year compared to the current agreement, in addition to O&M costs avoided by closing Units 1 and 2. Some of these reductions start immediately, but the major reductions will be realized in 2017. The proposed effective date is July 1, 2015.

A major change in the proposed agreement is the shift to a fixed annual fee for managing Dover's generation. The fee includes the management fee (which is decreased from the current management fee), home office support (previously billed hourly as a reimbursable expense), operating incentives, employee bonuses, and burdens (previously computed and reimbursed by Dover). In this agreement, if NAES needs more staff or if Dover require more home office support, the risk of higher management costs resides with NAES. In other words, this agreement provides greater predictability. However, while also putting full responsibility on NAES to manage down the size of the staff while maintaining reliability, it also puts more of NAES' fee at risk, as described below.

2. Changed the focus from incentive bonus paid at year-end to performance based reduction where NAES pays Dover. The prior agreement had an incentive fee that had escalated to approximately $173,000 that would be awarded to NAES if it met certain criteria for availability, commercial unavailability, dependable capacity, safety performance, and environmental performance. Each performance standard had a dollar value. The proposed agreement contains objective performance standards that if not achieved penalize NAES. Under the proposed

agreement, Dover negotiated a substantially higher amount of compensation at risk, defined as the Maximum Performance Adjustment, if NAES does achieve not the performance standards. See Section 2.2 Definition of Maximum Performance Adjustment and Appendix B. The performance adjustment puts more of NAES' fee at risk every year of the contract—over $500,000/year compared to $172,000 now. NAES's bottom line will "feel" the implications of a plant failure and share in the cost that would be imposed on Dover by PJM, better aligning the performance interests of both parties more closely.

3. Clarifies scope of services included. The proposed agreement clarifies staffing and home office staff responsibilities that are included in the monthly fee. These services have been billed on an hourly basis and averaged about $75,000/year. They will be included in the Management Fee going forward. See Appendices A and F.

4. Procurement obligations. There is a positive tension on how costs are managed and contracts awarded. This tension also creates conflicting objectives between lowering costs and increasing plant operating revenue. The current draft seeks to focus on increasing revenue through more attention to reliability to maximize the generating resource and the City's investment in those resources. We have heard during these negotiations an appreciation for oversight and a concern about micro-management and mixed signals. The approach that is being recommended necessarily involves the terms of the contract and the collaboration of NAES and the City's finance office, particularly procurement, to make it work smoothly.[2]

The original and current agreement are based on having a third party operate and maintain Dover's generation. The agreement provides for an annual operating and capital budget and regular consultation concerning plant performance and costs. The plant operating and maintenance budget is provided as part of the Dover budget development cycle. A substantial part of the budget is for staffing, planned maintenance, and capital repairs and replacements (also planned). We are recommending a contingency in the budget for unplanned work. It is not intended to be a fund for cost overruns or discretionary projects, but it is intended to address the reality that generating plants, particularly of this vintage, experience equipment failures.

The procurement process follows the 2012 procurement procedures, Administrative Manual, AMP 501, latest edition, which was approved by the City. Although this appears to be a parallel procurement system, our recommendation is to continue using these procedures since the equipment and services are within NAES' particular expertise and it has the greatest knowledge of suppliers for the types of equipment and services needed. Moreover, planned maintenance and CIPs would all be reviewed as part of the budget process and also during periodic meetings with Dover's Representative, Electric Utility Director Harry Maloney. We believe his presence provides a day-to-day awareness of the utility, oversight, and qualified point of contact for NAES and the City who also is in regular consultation with the City Manager and Controller.

[2] A recent inquiry involving cell phone service highlights the overlapping work and interests of the parties. It may expedite matters if the City and NAES clarify the scope of procurements, i.e., which are general services and which require specific plant expertise, to determine which services and types of procurements may be most efficiently managed by the City and by NAES.

Mr. Maloney provides a level of technical capability regarding generating plants, distribution, PJM, and municipal procurement that has not been present in recent years.

Another consideration is that the agreement and PJM impose substantial penalties for failure to dispatch (availability). Consequently, both NAES and the City have an aligned interest in assuring the generating plants are ready to be dispatched and that unplanned outages, as well as planned outages, are as short as possible.

5. Duration of Agreement. The proposed agreement is for five years (2015-2020). Notice for termination or renewal has been shorted to six months for Dover, and twelve months if requested by NAES. The agreement expires in 2020.

6. Updated Agreement. The proposed agreement deletes all references to the transition period when NAES initially assumed responsibility for plant operations. It incorporates the changes anticipated by the scheduled withdrawal of McKee Units 1 and 2 from service in 2017. It clarifies areas of responsibility between distribution and generation, and updates all the appendices.

AMENDED AND RESTATED

OPERATION AND MAINTENANCE AGREEMENT

between

THE CITY OF DOVER, DELAWARE

and

NAES CORPORATION

Dated as of

July 1, 2015

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AMENDED AND RESTATED
OPERATION AND MAINTENANCE AGREEMENT

This AMENDED AND RESTATED OPERATION AND MAINTENANCE AGREEMENT (the "Agreement") dated as of July 1, 2015 (the "Effective Date") by and among the City of Dover, Delaware (the "Owner" or "City"), a Delaware municipality, with offices located at 15 Loockerman Plaza., Dover, Delaware 19903, and NAES CORPORATION (f/k/a NORTH AMERICAN ENERGY SERVICES COMPANY) ("NAES"), a Washington corporation, with offices located at 1180 NW Maple Street, Suite 200, Issaquah, WA 98027.

RECITALS

1. Owner owns the Facility (this and other capitalized terms are defined in Article II).

2. Owner and NAES entered into that certain Operation and Maintenance Agreement dated as of May 4, 2006 (as amended on June 1, 2006, July 1, 2007, and May 5, 2008) pursuant to which NAES is performing operation and maintenance services on behalf of Owner at the Facility (the "Existing Agreement").

3. The Parties desire to amend and restate the Existing Agreement in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and of the mutual covenants, undertakings and conditions set forth below, the Parties agree as follows:

ARTICLE I - AGREEMENT

1.1. Agreement. This Agreement consists of the recitals, and the terms and conditions set forth in this Agreement, as well as the appendices that are referenced in the table of contents and attached to this Agreement. The recitals, appendices and terms and conditions must be read together to obtain a full understanding of the intent of the Parties.

1.2. Relationship of the Parties. Owner is retaining NAES as an independent contractor to operate and maintain the Facility on behalf of Owner. Subject to any limitations expressly set forth in this Agreement, Owner delegates to NAES, and NAES accepts from Owner, the responsibility of operating and maintaining the Facility, as more specifically described below.

1.3. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to operation and maintenance of the Facility and supersedes all prior negotiations, undertakings, agreements and business term sheets. Neither Party will be bound by or deemed to have made any representations, warranties, commitments or undertakings, except as expressly stated in this Agreement.

ARTICLE II - DEFINITIONS

2.1 Rules of Construction. For all purposes of this Agreement (including the preceding sections and recitals) unless otherwise required by the context in which any defined term appears, capitalized terms have the meanings specified in this Article II. The singular includes the plural, as the context requires. "Includes" or "including" means "including, but not limited to." The terms "ensure" and "reasonable efforts" will not be construed as a guarantee, but will imply only a duty to use reasonable effort and care, consistent with Prudent Operating and Maintenance Practices, and will include reasonable expenditures of money and at least such efforts as NAES would undertake for its own assets or operations or for services provided to an Affiliate. "Gross negligence" will not be construed as simple or ordinary negligence, it being the intent of the Parties to preserve a distinction between errors made inadvertently while attempting to perform with due care and actions taken with a knowing disregard for a substantial foreseeable risk, notwithstanding whether a court would otherwise apply such distinction at common law. "Day" (regardless of capitalization) shall mean a calendar day, unless specifically designated as a Business Day. References to articles, sections and appendices mean the articles and sections of, and appendices to, this Agreement, except where expressly stated otherwise.

2.2 Definitions. For all purposes of this Agreement (including the preceding sections and recitals), unless otherwise required by the context in which any defined term appears, capitalized terms have the meaning specified in this Section 2.2.

"Administrative Procedures Manual" means the manual, developed and provided by NAES that includes, among other things, information, policies, and procedures pertinent to NAES's performance hereunder, including (i) reporting, (ii) correspondence and review procedures, (iii) procurement and contracting procedures, (iv) accounting, bookkeeping and record keeping, and (v) personnel procedures for NAES's activities at the Facility.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such first Person. The term "control" (including related terms such as "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Annual Facility Operating Plan" means the annual facility operating plan adopted pursuant to Section 5.3.

"Agreement" means this Operation and Maintenance Agreement, as the same may be modified or amended from time to time in accordance with its provisions.

"Applicable Law" means any federal, state or local laws, regulations, codes, judgments, orders, and PJM requirements applicable to the operation of generation, Permits, licenses or government approvals as may be applicable to the Facility, Owner or NAES.

"Bankruptcy" means a situation in which (i) a Person files a voluntary petition in bankruptcy or is adjudicated as bankrupt or insolvent, or files any petition or answer or consent seeking any reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution or similar relief for itself under the present or future applicable Federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, conservator or liquidator of such Person or of all or any substantial part of its properties (the term "acquiesce," as used in this definition, includes the failure to file a petition or motion to vacate or discharge any order, judgment or decree within fifteen (15) days after entry of such order, judgment or decree); (ii) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against any Person seeking a reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy act, or any other present or future Applicable Law relating to bankruptcy, insolvency or other relief for debtors, and such Person acquiesces and such decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or a trustee, receiver, conservator or liquidator of such Person is appointed with the consent or acquiescence of such Person and such appointment remains unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive; (iii) a Person admits in writing its inability to pay its debts as they mature; (iv) a Person gives notice, to any Governmental Authority of insolvency or pending insolvency, or suspension or pending suspension of operations; or (v) a Person makes a general assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors (other than in the ordinary course of such party's business).

"Budget" means a budget adopted pursuant to Section 5.3.

"Business Day" means any day on which commercial banks in the location of the Facility are authorized to be open for business.

"CMMS" means the computerized maintenance management system utilized by NAES at the Facility.

"Confidential Information" has the meaning set forth in Section 12.1.

"Dispute" has the meaning set forth in Section 14.7.1.

"Due Date" means, with respect to any NAES invoice, the date that is thirty (30) days following the date on which NAES submits the invoice to Owner, except for charges that are disputed pursuant to Section 7.4 hereof, in which case the Due Date is thirty (30) days following the date of the final resolution of the dispute.

"Effective Date" means the date first above written.

"Emergency" means an event or act that is imminently likely to (i) endanger persons; (ii) damage, destroy, or cause a loss of all or any portion of the Facility; or (iii) damage, destroy, or

cause a material adverse effect on the integrity or security of, the Owner's electric distribution system; or (iv) an emergency declared by PJM.

"Energy Manager" means an entity appointed by Owner as its agent to perform strategic dispatch of the Facility, and acquire fuel and other products necessary to serve Owner's distribution load.

"Environmental Law" means any federal, state or local statute, rule, regulation, order, code, Permit, directive or ordinance and any binding judicial or administrative interpretation or requirement pertaining to (i) the regulation and protection of health, safety, and the indoor or outdoor environment; (ii) the conservation, management, development, control or use of land, natural resources, or wildlife; (iii) the protection or use of surface water and ground water; (iv) the management, manufacture, possession, presence, use, generation, transportation, or handling of, or exposure to any Hazardous Material; or (v) pollution (including release of any hazardous substance to air, land, surface water and ground water).

"Expiration Date" means May 31, 2020, or the last day of any Extended Term, as the case may be.

"Extended Term" has the meaning set forth in Section 8.1.

"Extra Work" has the meaning set forth in Section 7.2(x).

"Extraordinary Item" means any purchase order or contract for services issued by NAES on behalf of Owner in an amount greater than Twenty-five Thousand Dollars ($25,000) or an annual blanket purchase order or service contract or multiple purchase orders or service contracts with the same party that NAES reasonably anticipates will exceed Twenty-five Thousand Dollars ($25,000) during an Operating Year.

"Facility" means the McKee Run and VanSant 11 power generation facilities, collectively, located in Dover, Delaware, and includes all electrical or thermal devices and related structures and connections (up to the points of interconnection identified in Appendix C) that are located at the Site and used for the production of power for the benefit of Owner, all as more fully described in Appendix C.

"Facility Agreements" means this Agreement, the Interconnection Agreement, the Fuel Acquisition Agreements, the PJM Agreement, applicable equipment maintenance agreements in effect or entered into from time to time by Owner, and equipment contracts with regard to warranties and equipment design and specifications and portions of the Financing Agreements, if any, relevant to this Agreement.

"Facility Manuals" means Facility equipment manuals, system descriptions, system operating instructions, equipment maintenance instructions and pertinent design documentation

created by the Persons that constructed the Facility or manufactured its equipment, to the extent provided to NAES by Owner pursuant to Section 4.4.1.

"Financing Agreements" means any and all loan agreements, notes, bonds, indentures, security agreements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust, participation agreements and other documents relating to the construction, interim and long-term financing for the construction, operation and maintenance of the Facility and any refinancing thereof (including a lease pursuant to which Owner is the lessee of the Facility) provided by the Lenders, including any and all modifications, supplements, extensions, renewals and replacements of any such financing or refinancing.

"Force Majeure Event" has the meaning set forth in Section 14.6.1.

"Fuel" means natural gas and fuel oil.

"Fuel Acquisition Agreements" means, collectively, all agreements as shall be in effect from time to time between Owner and any other entity for the supply or delivery of Fuel to the Facility.

"Governmental Authority" means any federal, state, local or foreign governmental department, commission, board, bureau, authority, agency, court, instrumentality or judicial or regulatory body or entity.

"Hazardous Materials" means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyl's ("PCBs"); (b) any chemicals, materials or substances that are now or hereafter become defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under Applicable Law; or (c) any other chemical, material, substance or waste declared to be hazardous, toxic or polluting material by any Governmental Authority, exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority.

"Home Office Personnel" means the Project Manager and such other employees of NAES who are engaged in the provision of the Services, except for Site Personnel.

"Initial Term" has the meaning set forth in Section 8.1.

"Interconnection Agreement" means the agreement dated September 12, 2004 by and between Owner and Delmarva Power & Light Company, as the same may be modified or amended from time to time in accordance with its terms.

"Late Payment Rate" means the Prime Rate plus 1% of interest per annum as published in the Wall Street Journal, Credit Markets & Commodities, "Money Rates," Prime Rate.

"Lender" means any entity or entities providing financing or refinancing under the Financing Agreements in connection with construction or permanent financing for the Facility, and their permitted successors and assigns.

"Liabilities" has the meaning set forth in Section 10.1.

"Management Fee" means for each Operating Year during the Term, the amounts set forth in the table below:

Operating Year	Management Fee
2015-2016	$797,304
2016-2017	$781,287
2017-2018	$792,633
2018-2019	$815,289
2019-2020	$838,631

"Maximum Performance Adjustment" means for each Operating Year during the Term, the amounts set forth below:

Operating Year	Maximum Performance Adjustment
2015-2016	$532,304
2016-2017	$509,587
2017-2018	$514,043
2018-2019	$529,613
2019-2020	$545,667

"NAES" has the meaning set forth at the beginning of this Agreement and includes its successors and permitted assigns hereunder.

"NAES Indemnitees" has the meaning set forth in Section 10.2.

"NAES Proprietary Information" has the meaning set forth in Section 13.3.

"O&M Manuals" means the operating procedures and Facility systems descriptions, maintenance procedures, training, safety, chemistry and environmental manuals, together with the documents and schedules described in such manuals.

"Operating Costs" has the meaning set forth in Section 7.3.1.

"Operational Phase" means that period during the Term starting on the Effective Date and ending with the termination of this Agreement.

"Operational Phase Services" means those Services to be performed by NAES during the Operational Phase, as described in Section 3.1 and listed in Appendix A.

"Operating Year" means the period that commences on July 1 and ends on June 30 of the next calendar year, or such earlier date that this Agreement is terminated during any such Operating Year.

"Owner" has the meaning set forth at the beginning of this Agreement and includes Owner's successors and permitted assigns hereunder. The Owner may be represented by the Owner's Representative as described in Section 5.2.

"Owner Indemnitees" has the meaning set forth in Section 10.1.1.

"Owner's Representative" has the meaning set forth in Section 5.2.

"Party" means a party to this Agreement and "Parties" means, collectively, both Parties to this Agreement, unless the context clearly requires a different construction.

"Performance Adjustment" has the meaning set forth in Section 7.7.

"Permit" means any permit, license, consent or approval that is required for the operation or maintenance of the Facility or the performance of any Service and includes Permits required under Environmental Laws.

"Person" means any Party, individual, partnership, corporation, association, limited liability company, business trust, government or political subdivision thereof, governmental agency or other entity.

"PJM" means PJM Interconnection, LLC, its successors and assigns.

"Plan" means a plan adopted pursuant to Section 5.3.

"Plant Manager" has the meaning set forth in Section 5.1.2.

"Pollution and Contamination" means any ground or air pollution caused by NAES in violation of Environmental Law. "Pollution and Contamination" includes Hazardous Materials present on the Site on July 1, 2006 that are not managed by NAES thereafter in accordance with Environmental Law.

"Pre-existing Pollution and Contamination" means (i) ground or air pollution caused by Owner in violation of Environmental Law; or (ii) any Hazardous Material present at the Site on the Takeover Date or brought to the Site thereafter by the Owner.

"Project Manager" has the meaning set forth in Section 5.1.1.

"Prudent Operating and Maintenance Practices" means those practices, methods and acts generally employed in the power generation industry that at the particular time in question, in the exercise of reasonable judgment in light of the facts known at the time the decision in question was being made, would have been expected to accomplish the desired result of such decision consistent with the goals established in a Budget and Plan, and the requirements of Applicable Law. With respect to NAES, Prudent Operating and Maintenance Practices are not limited to the optimum practices, methods or acts to the exclusion of all others, but rather include a spectrum of possible practices, methods or acts commonly employed in the power generation industry, including taking reasonable actions to provide (i) adequate materials, resources and supplies, to the extent within the control of NAES and available to meet Facility needs; (ii) a sufficient number of operators who are available and adequately trained to operate the Facility; and (iii) the timely performance of preventive, routine, and non-routine maintenance and repairs, as exemplified and generally described in Appendix A, subject, in all cases, to the limitations on NAES's authority and duties as set forth in this Agreement.

"Rated Capacity" means the capacity of the Facility, expressed in megawatts for various Site ambient conditions, as the same shall be adjusted for degradation and actual equipment performance, from time to time, by agreement of NAES and Owner in good faith pursuant to protocols in the Administrative Procedures Manual.

"Reimbursable Costs" has the meaning set forth in Section 7.2.

"Services" means all the work to be performed by NAES as described or referenced in Article III and listed in Appendix A.

"Site" means the land on which the Facility is situated, as more fully described in Appendix E.

"Site Personnel" has the meaning set forth in Section 3.6.1.

"Standards of Performance" has the meaning set forth in Section 3.5.

"Term" means the Initial Term together with any Extended Term.

"Termination Payment" has the meaning set forth in Section 8.2.

"Termination Transition Period" has the meaning set forth in Section 8.5.

"U.S. Dollars" or "Dollars" means United States Dollars, the lawful currency of the United States of America.

ARTICLE III - RESPONSIBILITIES OF NAES

NAES will perform the Services listed in Appendix A, in order to operate and maintain the Facility on behalf of Owner. This Article III sets forth the processes, limitations and standards applicable to NAES's performance of the Services.

3.1 Operational Phase. During the Operational Phase, NAES will have day-to-day operational control over the Facility and will perform the Operational Phase Services.

3.2 Procurement.

3.2.1 General. Subject to a Budget and Plan, NAES will procure goods, services, consumables, parts, tools, and equipment as needed from time to time for the operation and maintenance of the Facility consistent with the Administrative Manual Procurement, "AMP 501", as amended and updated. NAES will nominate, subject to Owner's written approval, responsible Persons from among the Site Personnel to sign purchase orders on behalf of Owner; provided, however, that such purchase orders will be signed in the name of Owner, and will be for the exclusive benefit of Owner and the Facility. NAES will negotiate with vendors from standard terms and conditions that are set forth in the Administrative Procedures Manual, including reasonable warranties in favor of Owner. NAES will utilize AMP 501 purchasing procedures except when (i) the cost of conducting a competitive bidding process is likely to outweigh the potential savings it would produce; (ii) the goods, consumables, parts, tools, and equipment are not available from more than one vendor; (iii) purchases are required to respond to an Emergency; or (iv) such other purchasing procedures are likely to result in a price as low or lower than that resulting from competitive bidding. NAES shall consult with Owner, provide a complete explanation and rationale, and disclose all aspects of the transaction whenever, in its opinion exceptions (i), (ii), or (iii) apply. NAES may contract with one or more subcontractors to perform any part, but not all, of the Services, but any such subcontract shall not relieve NAES of any of its obligations under this Agreement or create any relationship between Owner or the subcontractor.

3.2.2 Non-Budgeted Items. Operator will not exceed the overall total spending approved in a Budget without prior written approval from Owner; provided, however, that subject to Section 3.13 hereof, no such approval by Owner is required if, in NAES's reasonable judgment, such purchases are required to address an Emergency.

3.2.3 Extraordinary Items. Notwithstanding that a purchase is contemplated by a Budget, NAES will obtain Owner's written approval prior to procurement of any Extraordinary Item. Owner may elect to directly procure Extraordinary Items.

3.2.4 Contract Administration. NAES will administer routine vendor relations under purchase orders and contracts for service issued by NAES on behalf of Owner. NAES will also perform those day-to-day operational tasks required under the Facility Agreements, as requested by Owner, including communicating fuel supply requirements and reporting power sales in accordance with Owner's written specifications. NAES will not be deemed to have assumed any of Owner's contractual obligations under the Facility Agreements by means of such performance.

3.2.5 Affiliate Contracts. If NAES intends to issue a purchase order to an Affiliate of NAES, the costs of which are Operating Costs, the terms of any such purchase order will be in accordance with normal commercial practice, at arm's length on such terms as would be appropriate if the purchase order had been entered into with a Person other than an Affiliate of NAES. All such purchase orders are subject to prior written approval by Owner.

3.3 Waste Management. In accordance with Applicable Law and subject to Section 3.15 hereof, NAES will collect, store and manage on the Site all wastes (including Hazardous Materials) generated by the operation and maintenance of the Facility. NAES will coordinate with third party waste transportation and disposal providers for the removal of wastes from the Site by such third parties for disposal.

3.4 Rated Capacity. NAES will use its reasonable efforts to operate the Facility at its Rated Capacity without unnecessarily decreasing its useful life or increasing the scheduled maintenance of the Facility, unless otherwise directed by Owner or constrained by Prudent Operating and Maintenance Practices, scheduled maintenance, insufficient fuel, restrictions of operating Permits, a Force Majeure event, a Budget and Plan, or the limitations or condition of the Facility (as degraded from time to time). In discharging its obligations under this Section 3.4, NAES will operate the Facility so as to comply with any applicable dispatch instructions of the PJM or Owner (or any successor of either, or other Person identified by Owner in writing to NAES as being authorized to provide dispatch instructions). In a situation not involving an Emergency, in the event NAES receives conflicting dispatch instructions, NAES will follow the dispatch instructions of Owner; provided, however, in the event of an Emergency, NAES will follow the instructions of PJM. NAES will inform Owner of any Emergency action as soon as reasonably practicable under the circumstances. NAES will give Owner prompt notice of any inability to make deliveries of power or capacity, and of any outages. In case of any interruption, curtailment or reduction in (i) supplies of fuel, or (ii) acceptance of energy or capacity by PJM, or in case of any other constraint being imposed on NAES, NAES will promptly upon such event or upon receipt of notice thereof, notify Owner thereof and of its plan to restore operation and of any plan by the counter-party (where a Facility Agreement is involved) to do so (if NAES has been notified thereof), and will upon removal of the constraint, use its reasonable efforts to restore full Facility operation in accordance with this Section 3.4.

3.5 Standards for Performance of the Services. NAES will perform the Services in all material respects in accordance with the following documents, which will be referred to in this

Agreement as "Standards of Performance": (i) the O&M Manuals, (ii) the contractor, manufacturer and vendor warranties and Facility Manuals provided by Owner to NAES, (iii) the applicable Budget and Plan, (iv) all Applicable Laws, (v) Prudent Operating and Maintenance Practices, (vi) insurer requirements delivered to NAES by Owner in writing, (vii) the requirements in the Facility Agreements (as and to the extent provided to NAES) in accordance with Section 3.8 and (viii) this Agreement. Subject to the other provisions of this Agreement, NAES will perform the Services and other obligations under this Agreement in a manner consistent with Owner's directions. Actions taken (or not taken) by NAES pursuant to Owner's direction will be deemed to be within the Standards of Performance, and NAES will have no liability for acting or refraining to act in accordance with Owner's directions.

3.6 Personnel Matters.

3.6.1 General. NAES will provide and make available as necessary, in accordance with the requirements of the Budget and Plan, all labor and professional, supervisory and managerial personnel required to perform the Services. Such personnel will be qualified for the duties to which they are assigned. All individuals employed by NAES in the performance of the obligations under this Agreement and who are permanently assigned to the Facility (the "Site Personnel") and "Home Office Personnel" will be employees of NAES or its Affiliates, and their working hours, rates of compensation and all other matters relating to their employment will be determined solely by NAES (subject to Owner's approval rights with respect to the Budget and with respect to certain Site Personnel as provided in Sections 3.6.2 and 3.6.3). NAES will retain sole authority, control and responsibility with respect to its employment policy and its employees. No City employee is included in the Site Personnel. NAES will submit for Owner's approval the staffing requirements for the Facility.

3.6.2 Selection of Plant Manager. NAES will submit its selection for Plant Manager to Owner, who will have written approval over NAES's selection of such person.

3.6.3 Replacement of Plant Manager. NAES will inform Owner of its intent to replace the Plant Manager. Prior to employment of the replacement Plant Manager, NAES will obtain Owner's written approval.

3.6.4 Recognition of Union. NAES shall recognize the Union and shall enter into good faith negotiations, taking into account the cost that staffing and operating the Facility has on overall utility rates charged by the Owner, when negotiating a Collective Bargaining Agreement.

3.6.5 Negotiating of a Collective Bargaining Agreement. NAES shall be responsible for the labor agreement, including any extension and/or modification to the existing agreement, however if any such negotiation results in a contingent or ongoing liability to the City upon termination of NAES for any reason including expiration of this Agreement, such obligation will be disclosed to and approved by the Owner prior to acceptance by NAES.

3.7 Inventory. NAES will be responsible for proper maintenance, control and storage of the inventory located at the Facility on the Takeover Date, and of all subsequently procured inventory throughout the Term, and will be responsible, subject to Section 3.2, for purchasing such additional inventory as NAES may determine to be necessary or appropriate from

time to time. NAES is authorized to receive and store materials and supplies on behalf of Owner that Owner directly purchased.

3.8 Compliance with Facility Agreements. NAES will abide by the requirements of the Facility Agreements as delivered to NAES, and will otherwise cooperate in good faith with and assist Owner in complying with all material terms contained in such Facility Agreements, in each case to the extent related to the performance of the Services. NAES will incorporate any requirements contained in Facility Agreements, as needed, into the Administrative Procedures Manual. This Section 3.8 will not be deemed to make NAES a party to the Facility Agreements or to impose any obligations on NAES under the Facility Agreements. NAES will not be charged with knowledge of the form or content of any Facility Agreement unless and until it has been provided to NAES by Owner.

3.9 Permits. NAES will obtain Permits required by Applicable Law to be in NAES's name. NAES will supply data and other information to support Owner's efforts to secure and maintain in effect all Permits in Owner's name. All environmental Permits (whether relating to Hazardous Materials or otherwise) will be solely in the name of Owner. NAES will assist Owner in securing renewals or replacements of all environmental Permits by supplying data and information to Owner with regard to the operation and maintenance of the Facility.

3.10 Compliance with Applicable Laws. NAES will comply with all Applicable Laws. NAES will notify Owner immediately upon becoming aware of any actual or potential non-compliance and will cooperate with Owner to remedy such non-compliance. To alert Site Personnel to compliance issues, NAES will insert appropriate procedures in the O&M Manuals, including procedures related to safety and environmental matters, and will conduct regular training sessions on compliance issues for Site Personnel. NAES will conduct all inspections or tests required by Applicable Law.

3.11 Operating Records and Reports. NAES will prepare and maintain in good order at the Site operating logs, records and reports documenting the operation and maintenance of the Facility. Such operating data will include meter, gauge and monitoring readings, maintenance records, fuel records, and other information required for compliance with the Standards of Performance. NAES will also compile and maintain such information, reports and data related to NAES's management of any wastes and Hazardous Materials located at the Site as required to comply with Environmental Laws. All operating data, reports, records, and other information that may be submitted to any Governmental Authority by NAES on behalf of Owner will be transmitted to Owner where possible prior to filing and in any event contemporaneously with such filing. Records and reports shall be maintained at the Facility and no records and reports shall be removed or destroyed without the prior written consent of the Owner.

3.12 No Liens or Encumbrances. NAES will keep and maintain the Facility free and clear of all liens and encumbrances resulting from the personal debts and obligations of NAES or the failure of NAES to perform its duties hereunder in accordance with the Standards of Performance.

3.13 Emergency Action. In the event of an Emergency, NAES will take immediate action to prevent or mitigate any damage, injury or loss threatened by such Emergency. NAES will notify Owner of such Emergency within thirty minutes following the Emergency's onset and will advise Owner about NAES's response thereto. NAES will submit a report to Owner

within 48 hours following the conclusion of the Emergency describing the cause of the Emergency (if known), NAES's response, and any measures recommended by NAES to prevent the Emergency's recurrence. NAES may expend such funds as necessary to respond immediately to an Emergency, but will advise Owner of such expenditures and obtain Owner's approval of any additional expenditures as soon as is reasonably practicable thereafter.

3.14 O&M Manuals. NAES will maintain, review, and submit to Owner for approval recommendations for changes to the O&M Manuals when NAES deems any changes are advisable. If Owner submits to NAES proposed revisions or updates to the O&M Manuals, NAES will, within thirty (30) days of receipt, submit written comments thereon to Owner, and thereafter the Parties will negotiate a final disposition of such proposal. The O&M Manuals will remain in effect for the Term, subject to such revision, amendment or supplementation as may be either (i) required to ensure continued compliance with Applicable Laws or the Standards of Performance, or (ii) agreed in writing by the Parties. NAES will draft, certify and comply with a Spill Prevention, Control, and Countermeasures Plan that is specific to the Facility.

3.15 Incorporated Services. The Services shall be deemed to include supplementary matters either practical or essential to the efficient execution of the Services, whether those supplementary matters are indicated by this Agreement, the Facility Agreements, or otherwise, so long as such supplementary matters are not outside of the scope of Services and would not otherwise materially and adversely affect NAES's obligations under this Agreement.

3.16 Site Procedures; Safety. NAES shall perform all Services in accordance with the Site Procedures, including those relating to safety, security and fire prevention. NAES shall establish and maintain a safety program designed so that the Services will be performed in a safe manner and in accordance with all Applicable Laws governing safety.

3.17 PJM Tariffs/Rules. NAES acknowledges that it is familiar with PJM's tariffs and other PJM system rules relating to the offering of the Facility into the PJM markets. NAES further agrees that its performance of its obligations under this Agreement will comply in all material aspects with these rules, and to exercise the degree of diligence required by Prudent Operating and Maintenance Practices to assure that any data or information provided to the Owner or the Energy Manager as to Facility availability, capacity and operating conditions are accurate at the time made based upon the best information available and the analysis of such information. NAES further agrees to: (i) perform its obligations under this Agreement, including the Services, in a manner to avoid and/or minimize any and all market consequences, sanctions or penalties that may result from the failure of the Facilities (or any portion thereof) to perform; (ii) comply with PJM dispatch instructions to the extent such information is received from Owner or Energy Manager; and (iii) provide Owner, Energy Manager and PJM such information as PJM reasonably requests.

3.18 Environmental Permits.

3.18.1 Air Permit. Owner is responsible for maintaining the air permit for the Facility in accordance with the State of Delaware Title V Air Permitting Program as authorized pursuant to Title V of the Clean Air Act, 42 U.S.C. 7651 et seq. NAES shall collect data, prepare reports and oversee Facility compliance with the air permit.

3.18.2 NPDES Permit. Owner is responsible for maintaining the wastewater discharge permit for the Facility in accordance with the State of Delaware National Pollutant Discharge Elimination System Permitting program as authorized pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. NAES shall collect data, prepare reports and oversee Facility compliance with the wastewater discharge permit.

3.18.3 Environmental Monitoring and Reporting. NAES shall be responsible for all environmental monitoring and reporting in connection with the Facility and the Site as required by Applicable Law, including all Toxic Release Inventory reports and chemical inventory reports required under the Emergency Planning and Community Right-to-Know Act, as codified in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq.

3.19 Environmental Responsibility.

3.19.1 Title to, ownership of, and legal responsibility and liability for, any and all Pollution and Contamination, other than Pre-existing Pollution and Contamination, shall at all times remain with NAES.

3.19.2 NAES will, at NAES's sole expense and risk, take such action as may be required to mitigate and correct the occurrence and effects of Pollution and Contamination. Such actions include arranging for handling, storage, transportation, treatment and disposal of all Pollution and Contamination. NAES will be solely responsible for obtaining a disposal site for Pollution and Contamination. Operator will look to the disposal facility and/or transporter for any responsibility or liability arising from improper disposal or transportation of Pollution and Contamination. Owner will not have or exert any control over NAES in NAES's obligations or responsibilities in the storage, transportation, treatment or disposal of any Pollution and Contamination. NAES will complete and execute any forms or other documents necessary to comply with any law or requirement of any Governmental Authority relating to the generation, storage, handling, treatment, transportation, or disposal of Pollution and Contamination. In the event that Owner executes or completes any such forms, Owner will be, and will be deemed to have acted as, NAES's agent. For the avoidance of doubt, the foregoing liability of NAES does not apply where NAES has managed Hazardous Materials on the Site in compliance with Environmental Law, and delivered such Hazardous Materials to licensed third party providers of transportation and disposal services, in which case title to, ownership of, and legal responsibility for, any and all releases of such Hazardous Materials shall remain with Owner.

3.19.3 NAES will not dispose of any waste or Hazardous Materials on the Site, nor will it bring any waste or Hazardous Materials from any other location for treatment, storage, or disposal on the Site. NAES will be responsible for discharging waste or effluent from the Site in violation of an applicable Permit.

3.19.4 NAES will not cut any trees, conduct any mining operations, remove any sand, gravel or similar substances from the ground, commit waste of any kind, or in any manner substantially change the contour or condition of the Site, except as required for maintenance of the normal right of way and Facility maintenance and operation as contemplated herein.

3.19.5 In the event NAES discovers any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity at the Site, NAES will immediately notify Owner before disturbing such artifacts, relics, remains or objects.

3.19.6 NAES will disclose fully to Owner in writing any operating changes, spills, releases, contamination or other environmental condition that could lead to degradation of the Site or violate any Applicable Law then in effect; any citations or warnings for violations of any Applicable Law; and any other act or omission that could lead to liability under any law or requirement of a Governmental Authority. NAES will inform Owner in writing within 24 hours of the occurrence of any of the foregoing of the measures NAES has undertaken and proposes to take and what other responses to address the situation and prevent its recurrence. Owner may conduct a Phase 1 environmental review during the Term; NAES shall cooperate in such environmental review.

3.19.7 Compliance with Environmental Laws. During the Term of this Agreement, NAES shall cooperate and assist Owner with Owner's acquisition of data and information, and preparation and filing with appropriate Governmental Authorities of any notices, plans, submissions, or other materials and information necessary for compliance with applicable Environmental Laws and the requirements of any Permits related to the Facility. All such environmental reports shall be submitted by, and in the name of, Owner and not NAES. All costs associated therewith, including the costs of any outside consultants, legal services, Governmental Authority charges, sampling and remedial work, shall be paid by Owner as an Operating Cost. Any action taken by NAES pursuant to any such applicable Environmental Law, including proceedings and filings made in connection therewith, shall be undertaken, and any Home Office Costs associated with any such compliance action shall only be incurred, by NAES with Owner's prior consent, unless a Governmental Authority or Applicable Law requires NAES to incur such costs and expenses prior to obtaining such consent.

3.19.8 Corrective Action. Nothing contained herein shall be construed as requiring NAES to take any corrective action with respect to the operation, maintenance, use or condition of the Facility unless (y) affirmatively and expressly directed in writing to so do by Owner and appropriate funding is made available by Owner, or (z) affirmatively and expressly directed to do so by a Governmental Authority, in order to comply with any Environmental Law, in which case the cost of any corrective actions so undertaken shall be deemed an Operating Cost. Owner shall serve as the "Responsible Official" for purposes of Clean Air Act permitting and reporting, as "Designated Representative" for purposes of applicable environmental "Cap and Trade" programs requiring such, including but not limited to Acid Rain Program, Clean Air Interstate Rule or its replacement and Regional Greenhouse Gas Initiative, as applicable, and as corporate responsible official for other environmental programs, permitting and reporting. NAES and Owner agree (i) in the course of performing Services under this Agreement, neither NAES nor any of its officers, directors, employees, agents, representatives or Affiliates (collectively, the "NAES Parties") is, has been or will be asserted by Owner to be, nor will any such Person have responsibility as, in each case before an environmental protection government agency, an "operator" of the Facility for purposes of, and as that term is used in, Environmental Law; and (ii) Owner shall not assert before any environmental protection governmental agencies that a NAES Party is the operator of the Facility for purposes of Environmental Law. Owner agrees to use its commercially reasonable efforts to take or cause to be taken all reasonable actions, to do or cause

to be done and to assist and cooperate with NAES in doing all reasonable things to establish before such environmental governmental protection agencies that no NAES Party is the "operator" of the Facility.

3.20 Income Taxes. Notwithstanding any other provision of this Agreement, NAES shall be responsible for and pay all income taxes and any withholding taxes or other taxes assessed or based upon NAES's corporate existence or income imposed directly or indirectly upon NAES.

3.21 Daily and Monthly Operations Reports. Each day during the Operational Phase, Operation will prepare and deliver an operation report to Owner (in a form approved by Owner) that summarizes the Services performed by NAES during the immediately preceding day. Upon Owner's request, each month during the Operational Phase, NAES will prepare and deliver to Owner an operation report (in a form approved by Owner) summarizing the Services performed by NAES during the immediately preceding month.

ARTICLE IV - ITEMS TO BE FURNISHED BY OWNER

4.1 General. Owner expressly reserves the authority to make, and will make, such business and strategic decisions as it deems appropriate from time to time in reference to the operation and maintenance of the Facility. Owner will furnish to NAES, at Owner's expense, the information, services, materials and other items described in this Article IV. All such items will be made available at such times and in such manner as may be reasonably required for the expeditious and orderly performance of the Services by NAES.

4.2 Information. Owner will provide to NAES copies of all Facility Agreements and any modifications or additional Facility Agreements promptly after execution of Facility Agreements, as well as copies of all technical, operational and other Facility information reasonably available to Owner or in Owner's possession and supportive of NAES's performance of the Services. Subject to the Standards of Performance, NAES will be entitled to rely upon any information provided by Owner or any of the other parties to the Facility Agreements in the performance of the Services.

4.3 Access to Facility. Owner will provide NAES unlimited access to the Facility and the Site as required to provide the Services.

4.4 Other Owner Supplied Items. Owner agrees to make, or cause to make, available to NAES the following items:

4.4.1 Facility Manuals. Owner will provide, or cause to be provided, the master copies of the Facility Manuals to NAES for use in development of the O&M Manuals. Thereafter, Owner will provide any updates to the Facility Manuals received from equipment manufacturers to NAES and NAES shall incorporate them into the O&M Manuals.

4.4.2 Fuel; Water; Stand-by Electricity. Owner will furnish and deliver, or arrange to furnish and deliver, to the Facility fuel, water and stand-by electricity.

4.4.3 Spare Parts and Supplies. Owner will provide and furnish, or cause to be provided and furnished, to NAES an inventory of spare parts and supplies as necessary for NAES to perform the Services and fund additional purchases as set forth in a Budget.

4.4.4 Instructions, Approvals. Owner will provide or cause to be provided to NAES all instructions NAES is required to obtain in accordance with this Agreement. Owner will not unreasonably withhold approvals required by this Agreement. Owner will not direct NAES to take any action inconsistent with Applicable Law or otherwise adversely affecting the safety, health or protection of, or otherwise endangering any persons or property located at or about the Facility.

4.4.5 Budgeting. Owner shall make timely and commercially reasonable budgeting decisions to permit the Facility to operate safely and in accordance with Applicable Law and to permit NAES to perform its obligations hereunder.

4.5 Facility Agreements. Owner will administer (except to the extent certain day-to-day operational tasks have been delegated to NAES under Section 3.2.4) and comply with the Facility Agreements. Owner will provide NAES written notice of any changes to requirements under the Facility Agreements or a copy of any agreement replacing any Facility Agreement.

4.6 Permits. Owner will obtain from the appropriate Governmental Authorities, all Permits for the ownership, operation and maintenance of the Facility other than Permits required by Applicable Law to be in the name of NAES.

ARTICLE V - REPRESENTATIVES, BUDGETS AND REPORTS

5.1 Representatives of NAES.

5.1.1 Project Manager. NAES has appointed a "Project Manager" from its Home Office Personnel who will be authorized to represent NAES with Owner concerning NAES's performance of the Services. The Project Manager will also supervise the Home Office Personnel in supporting the Site Personnel. NAES is bound by the written communications, directions, requests and decisions made by the Project Manager. NAES will notify Owner in writing of the identity of the Project Manager, and of any successors.

5.1.2 Plant Manager. NAES has appointed an individual (the "Plant Manager"), subject to approval of Owner as provided in Section 3.6.2, who will be one of the Site Personnel and who will direct and manage NAES's Site Personnel with full responsibility for the performance of all of the Services. For issues arising out of the day-to-day administration of the Operation Phase Services, the Plant Manager may communicate directly with Owner. Neither the Project Manager nor the Plant Manager has any authority to modify this Agreement.

5.2 Representatives of Owner. On or before the Effective Date, Owner shall appoint (i) an "Energy Manager" who shall be authorized and empowered to act for and on behalf of Owner on matters concerning the dispatch, scheduling, and fuel acquisition related to the administration of this Agreement; and (ii) an "Owner's Representative" who shall be the on-site person for budget, asset and property management (excluding the responsibilities assigned to the Energy Manager),

and Owner's other obligations hereunder. In matters delegated to the Energy Manager or Owner's Representative, Owner shall be bound by the written communications, directions, requests and decisions made by the Energy Manager and Owner's Representative. Owner shall notify NAES in writing upon the appointment of the Energy Manager, Owner's Representative, and their successors.

5.3 Plans and Budgets.

5.3.1 Adoption.

5.3.1.1 Process. On a date no later than the last day of January of every calendar year, NAES will submit to Owner a proposed budget and plan with respect to the Services (the "Budget" and the "Plan"). Each Budget will be structured on a monthly basis and will be a projection, in detail reasonably acceptable to Owner, of all Operating Costs and Reimbursable Costs to be expended in the performance of the Services. Each Plan will state the assumptions upon which the related Budget is based and the implementation plans for the Services, including: (i) anticipated operations and repairs, (ii) routine maintenance and overhaul schedules (including planned major maintenance), (iii) procurement, (iv) staffing, personnel and labor activities, (v) administrative activities, (vi) capital improvements, (vii) other work proposed to be undertaken by NAES, and (viii) a contingency for unplanned projects. Owner will review each proposed Budget and Plan as promptly as possible and may, by written request, require changes, additions, deletions and modifications. Owner and NAES will then meet and use reasonable efforts to agree upon a final Budget and Plan prior to the commencement of the applicable period. Each final Budget and Plan will remain in effect throughout the applicable period, subject to updating, revision and amendment proposed by either Party and consented to in writing by the other Party.

5.3.1.2 Adjustments. If either Party becomes aware of facts or circumstances that it believes necessitate a change to a Budget or Plan, that Party will immediately notify the other Party, specifying the impact upon the Budget and the reasons for the change. The Project Manager, Plant Manager, or his designee will then discuss appropriate changes to such Budget with the Owner's Representative.

5.3.1.3 Failure to Agree. The Parties acknowledge that it is necessary that Owner retain ultimate authority with respect to expenses incurred for operation of the Facility. Accordingly, NAES will accept each Budget as finally determined by Owner. If Owner does not authorize funds as requested by NAES, NAES will be relieved from providing the specific Services that have not been funded, provided that NAES delivers a written report to Owner that describes the reasons why NAES believes each disputed expense that NAES requested to be included in a Budget (or any request for modifications to a Budget pursuant to Section 5.3.1.2) is prudent.

5.3.2 Notification of Variance. NAES will submit a monthly report to Owner comparing the actual Operating Costs and Reimbursable Costs incurred during the current Operating Year with the projected Operating Costs and Reimbursable Costs projected in each line of the Budget. If, at any time during an Operating Year, NAES becomes aware that the aggregate of all Operating Costs or Reimbursable Costs exceeds or will exceed the amount provided in the applicable Budget or that the Facility is operating with any material deviations or discrepancies from the projections contained in the applicable Plan, NAES will promptly so notify

Owner. NAES will make no expenditures that exceed a Budget unless Owner grants prior written approval, except as otherwise permitted in response to an Emergency.

5.4 Availability of Operating Data and Records. NAES will make data prepared and maintained by NAES available to Owner (i) pursuant to requirements in any Facility Agreement or the Administrative Procedures Manual, or (ii) upon any request by Owner, on the Business Day following such request.

5.5 Accounts and Reports. NAES will assist Owner in complying with Owner's reporting requirements with regard to Governmental Authorities or counterparties to Facility Agreements, and will furnish or cause to be furnished to Owner certain reports regarding the Services and the performance of the Facility as defined by Owner and NAES.

5.6 Notices. Upon obtaining actual knowledge thereof, each Party will submit prompt written notice to the other Party of the following, to the extent relating to the Facility or the Services:

(a) Litigation and Permit Lapses. (i) Any litigation, claims, disputes, or actions filed in any way concerning the Facility, the Site, the Facility Agreements or the Services; (ii) any actual refusal to grant, renew or extend, or any action filed with respect to the granting, renewal or extension of, any Permit; (iii) all penalties or notices of violation issued by any Governmental Authority; (iv) any dispute with any Governmental Authority that may have a material adverse effect on the operation and maintenance of the Facility; and (v) with respect to the matters identified in clauses (i), (ii), (iii) or (iv), any threats of such matters, which matters may have a material adverse effect on the ownership, operation or maintenance of the Facility;

(b) Casualty. Any material damage or destruction to the Facility;

(c) Supplier Issues. The Parties shall promptly notify each other in the event of any issues such as non-delivery or nonperformance of any suppliers;

(d) Unscheduled Outages. NAES will notify Owner verbally of any unscheduled outage of all or any portion of the Facility as soon as is as reasonably possible (but in all cases within two hours) following commencement of the outage. Within fifteen days following the conclusion of such unscheduled outage, NAES will submit a report to Owner describing the cause of the outage (if known), NAES's response, and the measures, if any, undertaken by NAES to prevent the outage's recurrence; and,

(e) Community Complaints. The Parties shall promptly notify each other of any complaint received by the surrounding community.

5.7 Scheduled Outage Plan. NAES shall prepare and deliver to Owner by no later than first day of the fourth week of January a scheduled outage plan which sets forth the anticipated Scheduled Outages for the entire or part of the Facility ("Scheduled Outage Plan"). To the extent possible, Scheduled Outages shall be performed during non-peak seasons and comply with PJM Rules.

5.8 Reporting to Governmental Authorities. Unless otherwise directed by Owner or as set forth in Section 3.20, NAES shall prepare and file all reports with Governmental Authorities

as may be required in connection with the management, operation and maintenance of the Facility and the provision of the Services, and shall provide drafts of each such report to Owner for Owner's review and comment, where possible, prior to filing and, in any event, contemporaneously with such filing. Such reports shall be complete and accurate.

ARTICLE VI - LIMITATIONS ON AUTHORITY

6.1 General Limitations. NAES has no authority to make policies or decisions with respect to the overall operation of the Facility as a commercial enterprise; such matters will be determined by Owner. Notwithstanding any provision in this Agreement to the contrary, unless previously approved in a Budget and Plan or otherwise approved in writing by Owner, NAES will not (and will not permit any of its agents or representatives to):

6.1.1 Disposition of Assets. Sell, lease, pledge, mortgage, encumber, convey, or make any license, exchange or other transfer or disposition of the Facility, the Site or any other property or assets of Owner, including any property or assets purchased by NAES, the cost of which is an Operating Cost or a Reimbursable Cost;

6.1.2 Expenditures. Make any expenditure or acquire on an Operating Cost or a Reimbursable Cost basis any goods or services from third parties, except in substantial conformity with a Budget or as authorized by Owner, or consent or agree to do any of the foregoing; provided, however, that in the event of an Emergency, NAES, without approval from Owner, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss in accordance with Section 3.13;

6.1.3 Other Actions. Take or agree to take any other action or actions that, individually or in the aggregate, materially varies from the applicable Budget and Plan; provided, however, that in the event of an Emergency, NAES, without approval from Owner, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss in accordance with Section 3.13;

6.1.4 Lawsuits and Settlements. Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by Owner or NAES, the cost of which, in the case of NAES, would be an Operating Cost or a Reimbursable Cost hereunder, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to the same; or

6.1.5 Prohibited Transactions. Engage in any other transaction on behalf of Owner not permitted under this Agreement.

ARTICLE VII - COMPENSATION AND PAYMENT

7.1 General. As compensation to NAES for the performance of the Services hereunder, Owner will pay NAES, in the manner and at the times specified in this Article 7, all Reimbursable Costs, Operating Costs and the Management Fee, as applicable, all as further described below.

7.2 Reimbursable Costs. Subject to the applicable Budget, Owner will reimburse NAES for the following costs incurred by NAES in performing the Services (the "Reimbursable Costs"): (i) reasonable relocation and recruitment expenses for NAES's Site Personnel; (ii) costs incurred in response to an Emergency; (iii) gross receipts taxes; (iv) insurance maintained by NAES in accordance with Section 9.1, (v) training of Site Personnel to improve operator skills, Facility performance, PJM compliance, and safety conducted on-Site or off-Site and associated travel and living expenses; (vi) third party advisors, consultants, attorneys, accountants and contractors providing work in support of the Services that cannot reasonably be performed by Site Personnel; (vii) Permit fees for Permits required for NAES or Site Personnel to perform Services; (viii) labor relations activities; (ix) Site Personnel wages, salaries, overtime, customary or required severance payments, unemployment and disability insurance, payroll taxes imposed on wages and benefits, worker's compensation costs and holidays, vacations, group medical, dental and life insurance, defined contribution plans and other employee benefits; (x) time and expenses of NAES's Home Office Personnel when providing the services described in Appendix A, Part III ("Extra Work") at the applicable rates set forth in Appendix F; and (xi) any other reasonable cost designated by the Parties as a Reimbursable Cost that is approved in a Budget pursuant to the terms of this Agreement. In no event shall NAES add any mark-up to the Reimbursable Costs.

On or before the tenth (10^{th}) Business Day of each month, NAES will invoice Owner for Reimbursable Costs. All Reimbursable Costs shall be invoiced in arrears except for those defined in Section 7.2(ix), which shall be paid by Owner to NAES in advance of NAES's payments to Site Personnel. The invoice will be supported by receipts or other appropriate documentation. Owner will make payment to NAES of the invoiced amount no later than the Due Date.

7.3 Operating Costs.

7.3.1 Definition. "Operating Costs" include the following: (i) equipment, material, supplies, consumables, spare parts, replacement components, tools, office equipment and supplies and utilities used at the Facility Site; and (ii) any other purchase that NAES makes in accordance with Section 3.2 of this Agreement and that is approved in a Budget pursuant to the terms of this Agreement.

7.3.2 Payment Process. NAES shall receive, review, and confirm vendor invoices, then transmit them to Owner for direct payment by Owner to vendor. NAES shall transmit such invoices in a timely manner sufficient to enable Owner to make such payments when due. Owner shall permit NAES's Site Personnel limited access into Owner's accounting system (HTE) or provide NAES with accounts of payments made, sufficient to support NAES's ability to manage the budget for the Facility and to conduct budget variance analysis.

7.4 Disputes. Should Owner contest the validity, reasonableness or accuracy of any NAES invoice, Owner shall notify NAES in writing within ten days after receipt of such invoice,

explaining in detail the reasons for its contest. If Owner disputes only part of a statement submitted to it for payment, then it shall pay to NAES the undisputed portion of such statement in accordance with Sections 7.2 and 7.3.2 and notify NAES in writing of the amount disputed in accordance with Section 14.7. All such disputes shall be resolved pursuant to Section 14.7.

7.5 Cost Audit. No payment made pursuant to the foregoing provisions shall be considered as approval or acceptance of an invoice, and Owner shall remain entitled to conduct a subsequent audit and review of NAES's records with respect to all Reimbursable Costs together with any supporting documentation for a period of two (2) years from and after the date of the applicable payment. If, pursuant to such audit and review, it is agreed that any amount previously paid by NAES was not properly incurred as a Reimbursable Cost, NAES will credit such amount to Owner in the next subsequent invoice.

7.6 Management Fee. As compensation to NAES for the performance of the Operational Phase Services, Owner shall pay to NAES the Management Fee, which shall include the routine Home Office Personnel services described in Appendix A, Part II. The Management Fee shall be paid in monthly installments of one-twelfth (1/12) of such fee. On or before the tenth (10^{th}) Business Day of each month following the Effective Date, NAES shall submit monthly invoices to Owner for payment of the Management Fee. Owner shall pay the Management Fee no later than the Due Date for the applicable invoice. In the event that any of the units located in the Facility other than Units 1 and 2 are declared to be no longer commercially operational after 2018, the Parties will negotiate in good faith a reduction in the Management Fee to reflect the reduced level of Services.

7.7 Performance Adjustment. During each Operating Year, the Management Fee is subject to adjustment if NAES fails to meet the performance goals for the Facility defined in Appendix B. NAES will submit its calculation of the Performance Adjustment, if any, to Owner no later than February 1 following the Operating Year for which the payment is calculated together with a statement showing the change in the amount due to be paid in the March invoice.

7.8 Late Payment. To the extent Owner or NAES fails to pay any amount required to be paid under this Agreement by the Due Date, the unpaid amount will accrue interest each day at the Late Payment Rate from the Due Date until such amount (plus accrued interest) is paid in full.

ARTICLE VIII - TERM

8.1 Term. This Agreement is effective on the Effective Date and continues in effect through June 30, 2020 (the "Expiration Date"). The period beginning on the Effective Date and ending on the Expiration Date is the Initial Term. The Initial Term shall extend in increments of additional one year terms (each an "Extended Term") until a Party notifies the other Party in writing no later than (i) in the case of notice from NAES to Owner, twelve (12) months prior to the Expiration Date (or the end of an Extended Term, as the case may be); or (ii) in the case of notice from Owner to NAES, six (6) months prior to the Expiration Date (or the end of an Extended Term, as the case may be), that this Agreement will not be extended.

8.2 Termination by Owner. Owner is permitted to terminate this Agreement if any of the following events occur: (i) Bankruptcy of NAES, (ii) payment default by NAES (other than a disputed payment) that is not cured within ten (10) days after NAES has received notice of such default, (iii) default by NAES in performance of its obligations under this Agreement that has a material effect on operation of the Facility, provided, however, that NAES has up to sixty (60) days after notice to cure the default or make substantial progress (in the reasonable opinion of Owner) towards curing the default (but in no event to exceed ninety (90) days) or (iv) NAES incurs the maximum liability under Section 11.2.2 for two (2) consecutive Operating Years. Within thirty (30) days after the date of termination, Owner will pay NAES for Services rendered by NAES through the termination date, including all Reimbursable Costs, and the Management Fee, as applicable, and the Bonus, if any, earned through the date of termination but not paid (collectively, all such amounts due NAES upon any termination are the "Termination Payment").

8.3 Termination by NAES. NAES is permitted to terminate this Agreement if any of the following events occur: (i) payment default by Owner (other than a disputed payment) that is not cured within ten (10) days after the Due Date for any invoice, or otherwise within thirty (30) days after due hereunder; provided, however, that Owner has received notice of such default, (ii) Bankruptcy of Owner, (iii) a sale or transfer of the Facility (other than any sale- leaseback transaction undertaken as part of Owner's procurement of financing or the sale of the Facility to any Affiliate of Owner or any other Person that, in either case, (x) has comparable creditworthiness to Owner and (y) agrees in writing to be bound by all of the terms and provisions hereof for the express benefit of NAES), or (iv) default by Owner of any other obligation under this Agreement that has a material effect on NAES's ability to perform the Services; provided, however, that Owner shall have up to sixty (60) days to cure or make substantial progress (in the reasonable opinion of NAES) towards curing such other default. In the event of a termination by NAES under this Section 8.3, Owner shall pay to NAES the Termination Payment.

8.4 Transfer of Facility Custody. Upon expiration or termination of this Agreement, NAES will leave all Facility documents and records, tools, supplies, spare parts, safety equipment, O&M Manuals, and any other items furnished on an Operating Cost or a Reimbursable Cost basis at the Facility, all of which will remain the property of Owner without additional charge. NAES will execute all documents and take all other reasonable steps as may be reasonably requested by Owner to assign to and vest in Owner all rights, benefits, interests and title in connection with third party contracts, if any, NAES executed in its own name for the benefit of the Facility; provided, however, that Owner assumes all liabilities arising under such contracts after the date of assignment.

8.5 Services Upon Termination. Upon notice of termination of this Agreement by either NAES or Owner, provided that Owner has not defaulted on any payment obligations of this Agreement, Owner has the right to specify a period of transition (the "Termination Transition Period") during which NAES will (i) continue to operate the Facility in accordance with this Agreement, (ii) cooperate with Owner in planning and implementing a transition to any replacement NAES, and (iii) use its reasonable efforts to minimize disruption of Facility operations in connection with such activities. Owner will compensate NAES in accordance with this Agreement during the Termination Transition Period. NAES will permit the new operator to hire or to contract with the non-managerial Site Personnel that the new operator desires to retain at the Facility. To facilitate employee transfer, NAES will permit the new operator to interview non-

managerial Site Personnel in a manner and at times that do not interfere with NAES's responsibility to perform the Services.

ARTICLE IX - INSURANCE

9.1 NAES Insurance. NAES will maintain throughout the Term the insurance set forth below:

9.1.1 Workers Compensation. Workers compensation insurance covering NAES's employees as required by Applicable Law and employer's liability insurance with a limit of $1,000,000 per occurrence/annual aggregate.

9.1.2 Automobile Liability. Automobile bodily injury, including coverage for automobiles owned or hired by NAES with limits of not less than $1,000,000 per occurrence.

9.1.3 Commercial General Liability. Commercial general liability insurance with limits of not less than $1,000,000 per occurrence/annual aggregate.

9.1.4 Excess Coverage. Excess liability insurance covering liability in excess of the insurance described in Sections 9.1.1 (employers liability), 9.1.2 and 9.1.3. The policy will have a limit of $35,000,000 per occurrence/annual aggregate.

9.2 Owner Insurance. Owner will, prior to the date that notice to proceed is issued, and throughout the Term hereof, secure and pay for and maintain or will cause to be secured and maintained in effect during the operation of the Facility the following insurance:

9.2.1 Property. Property insurance, including boiler and machinery insurance, and business interruption insurance, in amounts determined in Owner's sole discretion.

9.2.2 Workers Compensation. Workers Compensation insurance covering Owner's employees as required by law and employer's liability insurance with a limit of $1,000,000 per occurrence/annual aggregate.

9.2.3 Commercial General Liability. Commercial general liability insurance with limits of not less than $1,000,000 per occurrence/annual aggregate.

9.2.4 Automobile Insurance. Automobile liability insurance covering automobiles owned or hired by Owner with limits of $1,000,000 per occurrence, and collision/comprehensive coverage in amounts deemed appropriate by Owner.

9.2.5 Additional Coverage. Umbrella or excess liability insurance in excess of the insurance described in Sections 9.2.2(employer's liability), 9.2.3 and 9.2.4 will be carried with limits determined in Owner's sole discretion.

9.3 Waiver of Subrogation; Additional Insured. Owner agrees to waive any rights of subrogation of its insurers against NAES and its Affiliates together with their respective officers, directors, Affiliates and employees and each such Person will be an additional insured with respect to all liability policies procured by Owner pursuant to this Agreement (other than workers

compensation policies). NAES agrees to waive any rights of subrogation of its insurers against Owner and Lenders together with their respective officers, directors, Affiliates and employees and each such Person will be an additional insured with respect to all liability policies procured by NAES pursuant to this Agreement (other than workers compensation policies). For the avoidance of doubt, the Parties intend that each Party will have the maximum protection available to that Party from the insurance policies owned by the other Party.

9.4 Form and Content. All insurance policies with respect to insurance maintained by either Owner or NAES pursuant to this Article IX will:

9.4.1 Insurer Rating. Be placed with insurance companies that have a Best's rating of at least A-VII or with companies that are otherwise reasonably acceptable to Lenders, Owner and NAES;

9.4.2 Claims-Made Form. If written on a claims made policy form, be maintained with a retroactive date that is prior to the Effective Date for a period of at least two (2) years following the last Operating Year in which such policy provides coverage under the terms of this Agreement;

9.4.3 Primary Coverage. State that such policy (other than an excess policy) is primary with respect to any other insurance coverage available to Owner or NAES or any additional insured, and that all provisions, except the policy limits, will operate in the same manner as if there were a separate policy covering such insured under each such policy;

9.4.4 Non-Recourse Premiums. Grant no recourse for payment of any premium against NAES or any additional insured for insurance required to be furnished by Owner pursuant to Section 9.2 and no recourse for payment of any premium against Owner or any additional insured for insurance required to be furnished by NAES pursuant to Section 9.1; and

9.4.5 Cancellation Notice. Provide that the insurer give ninety (90) days prior written notice of cancellation of such policies unless cancellation is for non-payment of premiums, in which case a minimum of ten (10) days' notice must be provided.

9.5 Certificates. Each Party will furnish the other Party with certificates evidencing that the required insurance is in effect.

9.6 Deductibles. Each Party is liable for the payment of all deductibles on insurance policies obtained by such Party pursuant to this Agreement, and, in the event of a claim under a policy described in Section 9.1 or 9.2, each Party will look solely to its policies for compensation. Owner will approve the deductibles under all policies provided by NAES under Section 9.1.

ARTICLE X - INDEMNIFICATION

10.1 NAES Indemnification. NAES will indemnify and hold harmless Owner and its Affiliates, and their respective officers, directors, employees, agents and representatives (the "Owner Indemnitees") from and against, and no Owner Indemnitee will be responsible

hereunder for, any and all claims, assertions, demands, suits, damages, judgments, losses, obligations, liabilities, actions and causes of action, fees (including reasonable attorneys' fees and disbursements), costs (including court costs), expenses, investigations, inquiries, administrative proceedings, penalties, fines and sanctions (collectively, "Liabilities") sustained or suffered by any Owner Indemnitee in connection with injury or death to third parties or loss of or damage to the property of third parties, to the extent caused by NAES's negligent acts or omissions, willful misconduct, violation of any Applicable Law or breach of any representation, warranty or covenant in this Agreement. Any Liabilities paid by NAES pursuant to its indemnity obligation under this Section 10.1 are not Reimbursable Costs.

10.2 Owner Indemnification. Owner will indemnify and hold harmless NAES and its Affiliates, and their respective officers, directors, employees, agents and representatives (the "NAES Indemnitees"), from and against, and no NAES Indemnitee will have responsibility hereunder for, any and all Liabilities sustained or suffered by any NAES Indemnitee in connection with injury or death to third parties or loss of or damage to property of third parties, to the extent caused by Owner's negligent acts or omissions, willful misconduct, violation of any Applicable Law or breach of any representation, warranty or covenant in this Agreement.

10.3 Violations of Applicable Law. NAES shall be responsible for the cost and payment of all fines and penalties assessed against Owner or the Facilities that result from NAES's operation of the Facilities or performance of Services in violation of any Permits or Applicable Law except (i) for opacity violations under the air Permit not caused by operator error, or inadequate maintenance, (ii) to the extent such fines and penalties levied against Owner or the Facilities result from NAES's compliance with a written instruction or direction from Owner. NAES hereby irrevocably indemnifies, and agrees to defend and hold harmless, Owner, its employees, agents and Affiliates from and against all claims, suits, actions, losses, liabilities and damages, including all fines, costs, expenses, and attorneys' fees arising from or related to any failure of NAES to comply with any Permit or Applicable Law (other than with respect to the exceptions set forth above).

ARTICLE XI - LIABILITIES OF THE PARTIES

11.1 Limitations of Liability. Notwithstanding any provision in this Agreement to the contrary, neither the Parties nor any of their respective members or shareholders, officers, directors, agents, representatives or employees are liable for consequential or indirect loss or damage, including loss of profit, cost of capital, loss of goodwill, increased operating costs or any special or incidental damages. The Parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability and limitations of liability expressed in this Agreement will survive termination or expiration of this Agreement, and apply in all circumstances, whether in contract, equity, tort or otherwise, regardless of the fault, negligence (in whole or in part), strict liability, breach of contract or breach of warranty of the Party indemnified, released or whose liabilities are limited, and shall extend to the partners, principals, directors, officers and employees, agents and Affiliates of such Party, and the partners, principals, directors, officers, and employees of such Affiliates.

11.2 NAES's Total Aggregate Liability. Notwithstanding anything to the contrary in this Agreement, the total aggregate liability of NAES to Owner for all Liabilities arising out of any events occurring or claims made in connection with the performance of the Services under this Agreement in any Operating Year, is Four Hundred Fifty Thousand Dollars ($450,000), provided, however, that this limitation does not apply to any third party indemnity obligation of NAES arising under Section 10.1. This limitation applies to indemnity obligations arising under Section 10.3 provided that the payment of a claim under a policy purchased by NAES pursuant to Section 9.1 shall not be counted toward computing NAES's total aggregate liability for the Operating Year. It is expressly understood and agreed that (i) the aggregate liability limitation expressed in this Section 11.2 is separate from, and is not to be construed as limiting, the limits of insurance and coverage described in Article IX. Any deductible amounts paid in any Operating Year by NAES under Section 9.6, or under the insurance policies NAES is required to maintain in Section 9.1, count toward computing NAES's total aggregate liability for such Operating Year.

11.3 No Warranties or Guarantees. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OR GUARANTEES TO THE OTHER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND BOTH PARTIES DISCLAIM AND WAIVE ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11.4 Exclusive Remedies. The remedies under this Agreement in respect of or in consequence of (i) any breach of contract, (ii) any negligent act or omission, (iii) death or personal injury, or (iv) loss of or damage to any property, are to the exclusion of any other remedy that either Party may have against the other under Applicable Law or otherwise.

ARTICLE XII - CONFIDENTIALITY

12. 1 General. During the Term, and for three (3) years after the termination of this Agreement, each Party will hold in confidence any Confidential Information supplied by the other Party. The term "Confidential Information" means with respect to each Party, all written or oral information of a proprietary, intellectual or similar nature, relating to a Party's business, projects, operations, activities or affairs, whether of a technical or financial nature or otherwise (including environmental assessment reports, financial information, business plans and proposals, ideas, concepts, trade secrets, know-how, processes, pricing of services or products, and other technical or business information, whether concerning this Agreement, each Party's respective businesses or otherwise) that has not been publicly disclosed and that the receiving Party acquires directly or indirectly from the disclosing Party. Each receiving Party further agrees, to the extent requested by the disclosing Party, to require its contractors, vendors, suppliers and employees, agents or prospective purchasers to enter into appropriate nondisclosure agreements relative to any Confidential Information, prior to the receipt thereof; provided, however, that the receiving Party may make necessary disclosures to third parties directly engaged in the operation, ownership or financing of the Facility if such third parties agree to receive and hold such Confidential Information in confidence. The Parties acknowledge that this Agreement is governed

by the Delaware Freedom of Information Act and that Confidential Information is subject to being disclosed, unless specifically exempt from disclosure under such Act.

12.2 Exceptions. The provisions of this Article XII do not apply to information within one or more of the following categories:

12.2.1 Public Domain. Information that was in the public domain prior to the receiving Party's receipt or that subsequently becomes part of the public domain by publication or otherwise, except by the receiving Party's wrongful act, or

12.2.2 Prior Receipt. Information that the receiving Party can demonstrate was in its possession prior to receipt thereof from the disclosing Party, or

12.2.3 Third Party Delivery. Information received from a third party having no obligation of secrecy with respect thereof.

12.3 Required Disclosure. Any receiving Party required by law, rule, regulation, subpoena or order, or in the course of administrative or judicial proceedings, to disclose Confidential Information that is otherwise required to be maintained in confidence pursuant to this Article XII, may make disclosure notwithstanding the provisions of this Article XII; provided, however, that the receiving Party, immediately upon learning of the requirement, notifies the disclosing Party of the requirement and the terms thereof and cooperates to the maximum extent practicable to minimize the disclosure of Confidential Information. Any receiving Party disclosing Confidential Information pursuant to this Section 12.3 must use reasonable efforts, at the disclosing Party's cost, to obtain proprietary or confidential treatment of Confidential Information by the third party to whom the information will be disclosed, and to the extent such remedies are available, must use reasonable efforts to seek protective orders limiting the dissemination and use of Confidential Information. Moreover, this Agreement does not alter the rights of any Party to object to the rule, regulation, order or proceedings requiring the disclosure.

ARTICLE XIII - TITLE, DOCUMENTS AND DATA

13.1 Materials and Equipment. Title to all materials, equipment, supplies, consumables, spare parts and other items purchased or obtained by NAES on an Operating Cost or Reimbursable Cost basis passes directly from the vendor or supplier thereof to, and vests in, Owner. NAES has no title or other claim to such items; provided, however, that transfer of title in no way affects NAES's obligations set forth in this Agreement.

13.2 Documents. All O&M Manuals, operational data, Facility drawings, NAES reports and Operating Account records (including, for all documents, both paper and electronic records) prepared or developed by NAES's Site Personnel in connection with performance of the Services become the property of Owner when prepared. All such documents, together with any materials and documents furnished to NAES by Owner, will remain at the Facility upon expiration or termination of this Agreement; provided, however, that NAES may retain for its records copies of documents prepared by NAES.

13.3 Proprietary Information. Where materials or documents prepared or developed by NAES or its Affiliates, or their respective employees, representatives or contractors, contain proprietary or technical information, systems, techniques or know-how previously developed by them or acquired by them from third parties ("NAES Proprietary Information"), NAES retains the unrestricted and irrevocable right to use or dispose of such NAES Proprietary Information as NAES deems fit; provided, however, that Owner has an irrevocable license to use such NAES Proprietary Information to the extent necessary for Owner's operation or maintenance of the Facility at no additional cost to Owner.

ARTICLE XIV - MISCELLANEOUS PROVISIONS

14.1 Assignment. This Agreement is not assignable by a Party without the prior written consent of the other Party, which consent will not be unreasonably withheld, except that this Agreement may be collaterally assigned by Owner without such consent to Lender in connection with Lender's financing of the Facility, and may be assigned by any Party to such Party's Affiliates; provided, however, that any assignment pursuant to this Section 14.1 will not relieve the assigning Party of any of its obligations under this Agreement that arose prior to the date of such assignment. NAES agrees to negotiate in good faith any consent to assignment and such other reasonable documents in connection with an assignment to Lender as Lender may request, provided, however, that all of NAES's costs in connection therewith shall be Reimbursable Costs hereunder (including the fees and disbursements of NAES's attorneys). This Agreement will be binding upon and will inure to the benefit of the successors and permitted assigns of the Parties.

14.2 [Reserved]

14.3 Access.

14.3.1 Owner's Access. Owner and Lenders and their agents and representatives will have access to the Facility, all Facility operations and any documents, materials and records and accounts relating to the Facility operations for purposes of inspection and review. Upon the reasonable request of Owner, and its agents and representatives, NAES will provide such Persons with access to all operating data and operating logs maintained at the Facility.

14.3.2 Compliance with NAES's Procedures. During any inspection or review of the Facility pursuant to Section 14.3.1, Owner and Lenders and their agents and representatives must comply with all of NAES's safety and security procedures and conduct inspections and reviews in such a manner as to cause minimum interference with NAES's activities. NAES also will cooperate with Owner in allowing other visitors access to the Facility.

14.4 Subcontractors. Subcontracting of the Services will not relieve NAES of its duties, liabilities or obligations to Owner. Owner has the right, in its sole discretion, to approve the retention of any subcontractors.

14.5 Not for Benefit of Third Parties. Except as otherwise expressly provided in Sections 9.3 and 14.4 (with respect to the additional insured status of Persons) and Articles X, XI, XII and XIII, and Section 14.1, this Agreement and each and every provision hereof are for the

exclusive benefit of the Parties that executed this Agreement and not for the benefit of any third party.

14.6 Force Majeure.

14.6.1 Events Constituting Force Majeure. A "Force Majeure Event" is any event that (a) restricts or prevents performance under this Agreement, (b) is not reasonably within the control of the Party affected or caused by the default or negligence of the affected Party and (c) cannot be overcome or avoided by the exercise of due care. Force Majeure Events include failure of a Party to perform due to drought, flood, earthquake, storm, fire, lightning, epidemic, war, terrorism, acts of Governmental Authorities, civil disturbances, sabotage, work stoppages (i.e., strikes), accident or curtailment of supply, unavailability of construction materials or replacement equipment beyond the affected Party's control, inability to obtain and maintain Permits from any Governmental Authority for the Facility, restraint by court order, and changes in Applicable Law that affect performance under this Agreement. Except for the obligation of each Party to make payments of amounts owed to the other Party, each Party is excused from performance and will not be considered to be in default in respect to any obligation if performance cannot occur due to a Force Majeure Event. Neither Party will be relieved of its obligations under this Agreement solely because of increased costs or other adverse economic consequences that may be incurred through the performance of such obligations.

14.6.2 Notice. If a Party's ability to perform its obligations under this Agreement is affected by a Force Majeure Event, the Party claiming such inability must (i) promptly notify the other Party of the Force Majeure Event and its cause and confirm the same in writing within five (5) Business Days of its discovery, (ii) promptly supply such available information about the Force Majeure Event and its cause as may be reasonably requested by the other Party and (iii) initiate efforts to remove the cause of the Force Majeure Event or to lessen its effect. Strikes and lockouts are Force Majeure Events and settlement thereof is wholly within the discretion of the Party whose employees are on strike or locked out.

14.6.3 Scope. The suspension of performance arising from a Force Majeure Event will be of no greater scope and no longer duration than that which is necessary. The excused Party will use its reasonable efforts to remedy its inability to perform.

14.7 Dispute Resolution.

14.7.1 Any dispute concerning interpretation or clarification of this Agreement, or the acceptable performance thereof by NAES ("Dispute"), shall be immediately submitted in writing to Owner for resolution. All determinations, instructions, and clarifications of Owner shall be final and conclusive, unless NAES files with Owner within 14 days after Owner notifies Operator of any such determination, instruction, or clarification, a written protest, stating clearly and in detail the basis thereof. Owner shall respond to such protest within 30 days of its receipt.

14.7.2 In the event that use of the procedures set forth in Section 14.7.1 does not lead to satisfactory resolution of the Dispute, either Party may send a Notice of Dispute to the other Party and request a conference for resolution of such dispute. Within three days after delivery of such notice, each Party shall nominate a senior officer of its management to meet at the Facilities, or at any other mutually agreed location, to resolve the dispute, which conference shall be convened

within ten days after exchange of such nominations unless the parties mutually agree to another date. In the event the parties are unable to resolve the dispute through the procedures set forth in this Section 14.7.2, either Party shall have the right to pursue the remedies in accordance with the procedures set forth in Section 14.7.3.

14.7.3 Any controversy or claim arising out of or relating to this Agreement or the breach thereof, which cannot be resolved amicably, shall be settled by arbitration. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award of the arbitrators shall be final, and a judgment may be entered upon it by any court having jurisdiction. A Party desiring to invoke this arbitration provision shall serve written notice upon the other of its intention to do so. Within 15 days of the date of such notice, each Party shall serve upon the other the name of one individual, knowledgeable in matters pertaining to the performance of this Agreement and to the subject matter of the dispute to serve as an arbitrator. If either Party fails to select an arbitrator and notify the other Party of that selection within such 15 day period the other Party may request the American Arbitration Association to select the arbitrator. The two arbitrators so selected shall select a third arbitrator within 15 days after the selection of the two arbitrators or, if the two arbitrators cannot agree upon a third arbitrator, the American Arbitration Association shall select the third arbitrator. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then prevailing, and shall be conducted in Dover, Delaware, unless the Parties agree otherwise. Discovery shall be made available in accordance with the procedures set forth in the Federal Rules of Civil Procedure, but to a degree limited by the arbitrators as they deem appropriate to render the proceedings economical, efficient, expeditious and fair. Interest at the Late Payment Rate shall be added to any monetary award for sums found to have been due under this Agreement. Except as otherwise specified by the arbitrators each Party shall bear its own costs of the arbitration.

14.7.4 During the pendency of any Dispute, the Parties will continue to perform the obligations imposed upon them under this Agreement to the fullest extent possible, without prejudice to their respective positions in dispute

14.8 Amendments. No amendments or modifications of this Agreement are valid unless in writing and signed by duly authorized representatives of the Parties.

14.9 Survival. Notwithstanding any provisions to the contrary, the obligations set forth in Articles VII (with respect to payments), X and XII, Sections 8.2 and 8.3 (with respect to the obligation to pay the Termination Payment), Sections 14.7 and the limitations on liabilities set forth in Article XI will survive, in full force, the expiration or termination of this Agreement.

14.10 No Waiver. No delay, waiver or omission by Owner or NAES to exercise any right or power arising from any breach or default by Owner or NAES with respect to any of the terms, provisions or covenants of this Agreement will be construed to be a waiver by Owner or NAES of any subsequent breach or default of the same or other terms, provisions or covenants on the part of Owner or NAES.

14.11 Notices. Any written notice required or permitted under this Agreement will be deemed to have been duly given on the date of receipt, and will be either delivered personally to the Party to whom notice is given, or mailed to the Party to whom notice is to be given, by email,

facsimile, courier service or first class registered or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the address provided in Appendix D, or at the most recent address specified by written notice given to the other Parties in the manner provided in this Section 14.11.

14.12 Representations and Warranties. Each Party represents and warrants to the other Party that, as of the date hereof:

14.12.1 Existence. It is duly organized and validly existing under the laws of the state of its organization and has all requisite power and authority to own its property and assets and conduct its business as presently conducted or proposed to be conducted under this Agreement.

14.12.2 Authority. It has the power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

14.12.3 Validity. It has taken all necessary action to authorize its execution, delivery and performance of this Agreement, and this Agreement constitutes the valid, legal and binding obligation of such Party enforceable against it in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or similar laws affecting the rights of creditors or by general equitable principles (whether considered in a proceeding in equity or at law).

14.12.4 No Conflict. None of the execution or delivery of this Agreement, the performance by such Party of its obligations in connection with the transactions contemplated hereby, or the fulfillment of the terms and conditions hereof, conflicts with or violates any provision of its constituting documents.

14.12.5 No Consent. No consent or approval (including any Permit that such warranting Party is required to obtain) is required from any third party (including any Governmental Authority) for either the valid execution and delivery of this Agreement, or the performance by such Party of its obligations under this Agreement, except such as have been duly obtained or will be obtained in the ordinary course of business.

14.12.6 No Breach. None of the execution or delivery of this Agreement, the performance by such Party of its obligations in connection with the transactions contemplated hereby, or the fulfillment of the terms and conditions hereof either conflicts with, violates or results in a breach of, any Applicable Law currently in effect, or conflicts with, violates or results in a breach of, or constitutes a default under or results in the imposition or creation of, any lien or encumbrance under any agreement or instrument to which it is a party or by which it or any of its properties or assets are bound.

14.12.7 No Material Claims. It is not a party to any legal, administrative, arbitral or other proceeding, investigation or controversy pending or threatened that would adversely affect such Party's ability to perform its obligations under this Agreement.

14.13 Additional Representation and Warranty by NAES. NAES further represents and warrants to Owner, as of the date hereof, that it has substantial expertise and experience in the

operation and maintenance of power generation facilities and it is fully qualified to operate and maintain the Facility in accordance with the terms of this Agreement.

14.14 Counterparts. The Parties may execute this Agreement in counterparts that, when signed by each of the Parties, constitute one and the same instrument; and, thereafter, each counterpart will be deemed an original instrument as against any Party who has signed it.

14.15 Governing Law. This Agreement is governed by and to be construed in accordance with the laws of the State of Delaware, exclusive of the conflicts of laws provisions thereof.

14.16 Captions, Exhibits and Appendices. Titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof. All exhibits and appendices attached hereto are considered a part hereof as though fully set forth herein.

14.17 Severability. If any provision of this Agreement, or the application of any such provision to any Person or circumstance, is held invalid by any court or other forum of competent jurisdiction, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner materially adverse to a Party. Upon any such determination of invalidity, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that this Agreement is consummated as originally contemplated to the greatest extent possible.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

CITY OF DOVER, DELAWARE, Owner

By: _____
Name: Scott D. Koenig
Title: City Manager

NAES CORPORATION

By: _____
Name: Robert E. Fishman
Title: President & CEO

APPENDIX A – SCOPE OF SERVICES

The Services include all activities reasonably necessary to accomplish the following tasks.

I. SITE PERSONNEL: OPERATIONAL PERIOD SERVICES

A. Routine Services
   1. Consistent with Owner-approved Budget and Plan, provide Facility Services to optimize electrical power generation and facility preservation.
   2. Assign work to either Site Personnel or vendors as cost-effective and appropriate based on guidance from Owner. Normally, Site Personnel conduct preventive maintenance and actions requiring a high degree of Facility knowledge and vendors perform tasks needing equipment or expertise that are not cost-effective to maintain at the Facility (e.g., code welding, safety valve testing, specialized calibrations, stack testing). Vendors also perform tasks that make sense to minimize outage time and costs.

B. Program Implementation
   1. Implement NAES programs, policies, and procedures developed and issued as part of the Transition Period Services.
   2. Implement Facility's existing operations and maintenance procedures, chemistry procedures, and environmental compliance processes, unless otherwise directed by Owner.
   3. In conjunction with Project Manager, implement NAES's assessment program.

C. Routine, Preventive and Predictive Maintenance
   1. Perform routine and preventive maintenance actions on all Facility systems and equipment in accordance with vendor instructions and the Plan.
   2. Service Checks. Conduct frequent visual equipment inspections and log significant parameters such as pressures, temperatures, and flow rates. Trend and analyze this information as appropriate.
   3. Routine and Fixed Interval Maintenance. Using the CMMS database, identify all preventive maintenance requirements. Schedule and assign routine maintenance during Facility operation, planned outages, and forced or unscheduled outages
   4. Perform predictive maintenance to identify potential equipment failures or oversee performance by third parties, as appropriate in light of Owner-approved staffing levels and capabilities of Site Personnel.

D. Major Maintenance and Repairs
   1. In coordination with and support of the Facility Agreements and generation plan, arrange for scheduled inspections and overhauls on major equipment.
   2. Retain vendors on behalf of Owner for unscheduled major repairs as required; manage and oversee all repairs and modifications.

E. Facility Outages

   1. Develop and implement a five year outage schedule. Within the CMMS, identify all

maintenance that requires a Facility outage or equipment to be taken out of service.

2. To the extent consistent with Facility Agreements and Owner direction, manage all Facility outages (planned, unscheduled, forced) to minimize outage duration, impact on production and cost.
3. Develop and implement a detailed schedule to track all outage work and testing, including corrective maintenance actions, vendor work and scheduled preventive maintenance. Obtain Owner approval of the schedule. Conduct preparations to support this plan, including ordering and receiving all required spare parts.

F. Facility Administration

1. Budgeting. Prepare annual Budgets and Plan and submit them for Owner approval. Manage operations to comply with each Budget and Plan. Generate budget variance reports, as required.
2. Payroll. Collect and review timesheets for accuracy. Enter timesheets into payroll system and submit them to NAES Home Office Personnel for processing.
3. Procurement. Implement the procurement procedure to maintain an effective and efficient purchasing system. Procure, as agent for Owner, all materials, equipment, chemicals, supplies, services, parts, and other miscellaneous items required for the provision of the Services. Contract using terms and conditions approved by Owner in advance. Utilize the CMMS and H T E system, as appropriate, in all stages of procurement.
4. Accounts Payable. Ensure all vendor invoices and Site Personnel expense reimbursement forms have supporting documents and enter them into accounting system. Make timely payments for all invoices that are not directly paid by Owner.
5. Inventory Control. Implement a cost-effective inventory control system designed to ensure that spare parts, materials, and supplies are properly stored and accounted for and that adequate supplies are available at all times to support the provision of the Services.
6. Personnel Matters.
    i. In coordination with Home Office Personnel and in compliance with NAES human resources policies and procedures, execute required human resources processes and address employee matters as they arise.
    ii. In coordination with the Home Office Personnel, acquire and retain qualified Site Personnel to maintain the staffing levels and skill mix required for successful long-term provision of the Services.
7. Arrange for janitorial, garbage pickup, landscape services, snow removal (if needed), extermination services, and maintain all access roads, office buildings, and other structures in good repair at all times.
8. Reports. Prepare and submit to Owner operation and maintenance service reports as requested relative to performance, maintenance and repair status, Facility operating data, and any other information reasonably requested by Owner.
9. Environmental Data and Reporting. Collect Facility environmental data, including required air and water/waste water monitoring data and permit compliance information, and prepare draft environmental reports for Owner review. Submit reports to appropriate Governmental Authority. Obtain professional environmental support for environmental reports that are new, complex, non-routine (such as state or federal requests or event-triggered reports), or beyond the capabilities of current

Site Personnel, as necessary to satisfy permit and regulatory reporting requirements.

10. Environmental Plans. Implement permit or regulatory required environmental plans, such as spill prevention plans, Stormwater Pollution Prevention Plans, CEMS QA/QC plans, Greenhouse Gas Monitoring Plans or Accidental Release Prevention/Risk Management Plans, as applicable. Obtain professional environmental support for environmental plan development, modification, renewal or implementation as necessary to satisfy permit and regulatory requirements.
11. Waste and Hazardous Materials. Manage hazardous materials and wastes on site in accordance with applicable regulations. Coordinate waste disposal in accordance with Agreement.
12. General Environmental Management. Review information, materials, programs and tools provided by Home Office Personnel environmental group for applicability to the site and implement, as applicable and required, requesting assistance as needed to supplement Site Personnel experience and resources.
13. Security. Implement or arrange for implementation of security measures in accordance with the Owner-approved Facility security plan.
14. Drawings/Manuals Maintenance. Maintain the Facility library and update Facility manuals and vendor service manuals. Update (or arrange for updating) Facility drawings to reflect changes to the as-built configuration. In addition to document management, maintain physical Facility configuration control.
15. Community Relations. In coordination with the Owner, conduct a community relations program to establish the Facility and its Site Personnel as "good citizens" in the local community.

G. Training. Implement a continuing program of training designed to orient new Site Personnel, refresh/cross-train existing Site Personnel, qualify/re-qualify Site Personnel, and keep all Site Personnel aware of Owner-approved Facility safety requirements and emergency procedures.

H. Assistance to Owner. Provide assistance to Owner, as reasonably requested with the execution of Owner's duties relative to operation of the Facility. This task includes such activities as the preparation and coordination of warranty claims and Permit renewals, interacting with Owner's management and personnel, and interfacing with the local community and authorities.

II. HOME OFFICE OPERATIONAL PERIOD SERVICES INCLUDED IN FEE

A. Monitoring of Regulatory Compliance
   1. Safety
      i. Monitoring regulatory developments in safety, and provision of periodic updates to Site Personnel.
      ii. Maintenance of safety statistics and communication of lessons learned.
      iii. At least one annual NAES-initiated visit to the Facility to perform safety assessment.
      iv. Develop and make available to the Site Personnel standard tools, templates and general safety guidance materials, such as training templates, guidance on implementing programs and updated safety procedures.
   2. Environmental
      i. Develop and make available to the Site Personnel standard tools, templates and general O&M guidance materials, such as management checklists for

federal programs, training templates for federal programs, and guidance on implementing federal programs.

ii. Monitor regulatory developments in federal environmental law as it pertains to power plant operations and compliance, and provide periodic updates to Site Personnel.

iii. Conduct one annual NAES-initiated visit to the Facility to perform an environmental program assessment, the scope of which is established by NAES.

3. Reliability Compliance

i. Monitoring regulatory developments in reliability compliance, and provision of periodic program updates and communications regarding these compliance matters to Site Personnel.

B. Monitoring of Site Personnel and Facility Performance

1. Oversee Site Personnel training and qualification activities, by updating training program as appropriate, overseeing its implementation, and coordinating for web-based and other training mechanisms.
2. Quality assessment and management of Site Personnel performance and their implementation of Facility programs.
3. Oversee program implementation by Site Personnel by implementing the assessment manual in conjunction with the Plant Manager and by making NAES-initiated Site visits.
4. Review reports prepared by Site Personnel.
5. Outage plan review and guidance.
6. Tracking of performance indicators and evaluating Facility performance against the NAES fleet.

C. Human Resource Functions in Support of Site Personnel

1. Assist Site Personnel in employee management activities by performing the following activities:

i. Recruiting candidates for employment and arranging interviews

ii. Preparing and extending offers of employment

iii. Administering of the pre-employment screening and relocation process

iv. Conducting Site Personnel employee orientation and benefits enrollment

v. Administering of pay and benefits policies and programs.

vi. Consulting regarding employee performance management, disciplinary action and termination

vii. Participating in the Site Personnel complaint and problem resolution process

viii. Provision of responses to Site Personnel questions regarding human resources

2. Developing, maintaining, and communicating human resource policies and procedures.
3. Monitoring changes to employment regulations

D. Accounting, Procurement, and Insurance

1. Participate in annual Budget and Plan development process.
2. Perform payroll processing services, other than that performed by Site Personnel; assistance to Site Personnel in usage of payroll software and responses to Site Personnel payroll questions.
3. Site Personnel expense report processing
4. Review of NAES invoices for accuracy and validity

5. Facility participation in preferred vendor pricing initiative managed by Home Office Personnel.
6. Provision of responses to Site Personnel questions regarding accounting (including payroll and MAS support, if applicable), legal, CMMS, and procurement.
7. Administer worker's compensation program; handle worker's compensation claims.
8. Maintain and renew blanket NAES insurance policies as required under Section 9.1.

E. NAES Fleet Integration
1. Coordinate transmission of know-how/lessons learned among NAES facilities, via email, webinars and regular conference calls among plant managers.
2. Development and coordination of O&M conferences, conference calls, and webinars;
3. Maintenance of web-based NAES portal and incident and injury reporting program.

III. HOME OFFICE PERSONNEL SERVICES PERFORMED ON HOURLY RATE PLUS EXPENSES BASIS

A. Advisable changes, updates or additions to Facility operation and maintenance manuals, system descriptions, or drawings, including the following:
1. Safety consulting or audits of safety practices.
2. On-site outage support
3. On-site assistance for regulatory visits
4. Assistance with regulatory programs, such as VPP or STAR
5. On-site project safety support, requested by Owner

B. Input of Facility data into Facility information systems, including, but not limited to, population and manipulation of CMMS data.

C. CMMS training

D. Non-routine human resources Home Office Personnel Services, including the following:
a. Negotiation and assumption of union labor contracts
b. Development and implementation of special benefit plans or arrangements, including coordination with outside professional services
c. Labor arbitration case management
d. Union election activities and campaigns
e. Labor union consulting, bargaining and grievance procedures
f. Attendance at owner-requested Site Personnel transition meetings, development and implementation of employee retention and severance plans, performance of Owner-requested Site Personnel evaluations

E. Temporary fill-in for Site Personnel by Home Office Personnel

F. Obtain, maintain and renew insurance policies specific to the Facility or Site and required of NAES under Section 9.1.

G. On-site Outage support

H. On-site Project Management support, as requested by Owner

I. Site Physical Inventory Support by Home Office Personnel

J. Legal Support to Facility operations necessitated by occurrences outside NAES's control, including, but not limited to, claims made against Owner in which NAES is not a party.

K. Environmental support for compiling and reviewing environmental reports and plans under Appendix A, I (F)(9) and (10); customization and population of NAES standard tools and

templates; monitoring state environmental law and state regulatory tracking, analysis and guidance; review, guidance and direct support on environmental projects and issues related to operations; and general day-to-day compliance support.

L. Customized research and analysis

IV. NAES SERVICES PERFORMED AT NEGOTIATED RATES

A. Environmental consulting, auditing, permitting, developing customized training material or delivering training, environmental plan development or modification (such as Spill Prevention Control and Countermeasure Plans, Stormwater Pollution Prevention Plans or Risk Management Plans), specialized Continuous Emissions Monitoring consulting, legacy or pre-existing issues support or Owner business support such as due diligence, asset sale, or strategic regulatory or permitting analysis.
B. NERC consulting, NERC program licensing, audit preparation, audit support, or functional registration with NERC on behalf of the Facility.
C. Engineering or other support for plant emergencies, operational events, capital projects or other Facility improvement initiatives.
D. Direct placement and temporary staffing services performed by NAES's staffing services division.
E. Debit Card Account management services
F. Maintenance services performed by NAES subsidiaries or turbine services division.
G. CMMS consulting, including development or modification of processes and products outside of the CMMS features available before the Effective Date, including customization of the user interface or program functionality; development of customized reporting or customized integration solutions.

City of Dover

Matrix for Calculating Section 7.7 Performance Adjustments

Factor	Weight	Measure	No Adjustment	Full Adjustment	Adjustment Methodology
Commercial Unavailabiity	**35.00%**	**Commercial Unavailability (CU)**	less than 2%	10%	
					CU Calculation: CU={(FO_{U1}+ E_{U1})*(17MW) + (FO_{U2}+E_{U2})*(17MW) + FO_{U3}+E_{U3})*(102MW) + (FO_{U11}+E_{U11})*(39MW)} / 8760 hours * (175MW)
Capacity	**25.00%**	**Demonstrated PJM Dependable Capacity**	All tests passed	No tests passed	The adjustment is weighted by size of the unit subject to the test.
					"Passed" means Plant Capabilities for all Dover units, Appendix C
Safety Performance	**15.00%**	**Required Safety Training Complete**	98%	90%	
			98%	90%	Equal weights
		Required NAES Housekeeping Inspections	98%	90%	
			0	4	
		Required NAES Safety Observations			
Communications	**5.00%**	**Plant Manager meets with City Representative monthly and keeps Representative informed of CIP budget changes**			
			Subjective	Subjective	Operator keeps Owner Rep informed monthly of plant issues
					Operator provides monthly updates in CIP budget changes
	100.00%				

Results that fall between No Adjustment and Full Adjustment will be calculated on a straight-line interpolation.

APPENDIX C - FACILITY DESCRIPTION AND SPECIFICATIONS

Thermal Energy Customer:	NA
Public Utility:	City of Dover Electric Utility
Gas Supplier:	Chesapeake Utilities
Fuel Oil Supplier:	TBD
Equipment:	McKee Run Station Units 1 and 2 are Westinghouse turbines/generators nameplate rated at 16 MW each supplied by B&W boilers at 850 psi, 900 degree Fahrenheit boiler (1962), scheduled for retirement on May 31, 2017; McKee Run Station Unit 3 is a GE steam sealed D-1 configuration reheat unit with a 106.9 MW turbine generator supplied from a 1,800 psi, 1000 degree Fahrenheit boiler (1975). All McKee Run units operate on #2 oil or natural gas.
Plant Capabilities:	McKee Run Units 1 and 2: 17 MW (summer & winter) (to be retired by May 31, 2017; McKee Run Unit 3: 102 MW (summer & winter); VanSant Unit 11: 46 MW (summer and winter) in 2015 (to be corrected upon completion testing and commissioning).
Points of Interconnection:	Substation 1, 12.5 kV Bus number 1 (this is the 12.5 generator bus for McKee Run Units 1 and 2); the 69 kV bushing terminals of the generator step-up transformers for McKee Run Unit 3 and VanSant Unit 11; the source side of 230 kV motor operated disconnect switches AT1-H1 and AT2-H1.

APPENDIX D - NOTICES

To the Owner:

City Manager
15 Loockerman Plaza
Dover DE 19903
Fax: 302-736-7002
Telephone: 302-736-7005

With a copy to:

Director of Electric Utility
860 Buttner Place
Dover, DE 19904
Fax No.: 302-736-7081
Telephone: 302-736-7070

To NAES:

NAES Corporation
1180 NW Maple Street, Suite 200
Issaquah, Washington 98027
Attention: General Counsel
Fax No.: 425-270-6398
Telephone No: 425-961-4700

APPENDIX F – HOME OFFICE PERSONNEL RATES

The following hourly billing rates apply to Home Office Personnel time for Extra Work set forth in Appendix A, Part III. These rates are valid through December 31, 2015. Rates for subsequent years will be disclosed to Owner prior to becoming effective.

POSITION	Extra Work Rate for Home Office Personnel under Section 7.2(x)
OPERATIONS	
Sr. Vice President	$ 341
Division Director	$ 218
Director, Safety	$ 187
Senior Proj. Mgr.	$ 166
Project Mgr. II	$ 149
Project Mgr. – Safety	$ 149
Project Mgr. I	$ 134
Project Engr.	$ 122
TECHNICAL SERVICES	
General Manager	$ 228
Director, Environmental Services	$ 187
Sr. Environmental Mgr.	$ 166
Sr. Environmental Specialist	$ 149
Environmental Specialist	$ 134
Director, Engineering	$ 187
Chief Engineer	$ 180
Senior Engineer	$ 163
Engineer II	$ 149
Engineer I	$ 134
CMMS Analyst	$ 113
Sr. Operations Analyst	$ 108
Operations Analyst	$ 96
QA/QC	
VP, QA	$ 245
QA/QC Manager	$ 146
QA/QC Consultant	$ 160

ACCOUNTING	
Sr. Finance Manager	$ 166
Senior Accountant/Int'l Accountant	$ 110
Accountant	$ 91
HUMAN RESOURCES	
VP, HR	$ 262
Sr, Manager/Global HR	$ 187
HR Employee Relations Mgr.	$ 166
HR Mgr.	$ 149
HR Specialist	$ 91
HR Representative	$ 79
MISC. SUPPORT	
Senior Business Development Manager	$ 192
Marketing/Proposal Manager	$ 134
Sr. Marketing Engineer	$ 113
IS Mgr/Business Application Mgr	$ 149
Sr. IS Support	$ 113
IS Support	$ 79
Mktg Engineer/Support Specialist	$ 96
Technical Support Specialist	$ 96
Administrative Assistant	$ 72

CITY OF DOVER
FISCAL YEAR JULY 1, 2014 TO JUNE 30, 2015
QUARTERLY REVENUE REPORT
As of May 2015

	GENERAL FUND	FY15 BUDGET	FY15 REVISED BUDGET	YTD REVENUES	91.7% % BUDGET RECEIVED	FY16 Budget	COMMENTS	FY14 REVENUES	FY13 REVENUES
1	Property Taxes	$ 10,782,200	$ 10,819,300	$ 10,816,300	100.0%	$ 12,495,500	April - last qtrly billing for 2015	$ 10,777,800	$ 10,768,800
2	Payment In Lieu of Taxes	317,000	317,000	330,500	104.3%	398,700		316,700	357,600
3	Transfer from Electric Fund	10,000,000	10,000,000	8,920,000	89.2%	10,000,000		8,000,000	8,000,000
4	Intrafund Service Receipts Electric	3,508,100	3,588,200	3,151,600	87.8%	3,738,500		3,427,300	3,195,800
5	Transfer from Transfer Tax Fund	1,250,000	1,525,200	1,564,600	102.6%	1,340,000	Includes transfer tax thru April 2015	1,544,100	1,108,000
6	Business Licenses	1,460,000	1,460,000	1,399,700	95.9%	1,425,000		1,494,300	1,462,500
7	Intrafund Service Receipts Water/Wastewater	1,354,900	1,371,100	1,211,800	88.4%	1,492,700		1,218,900	1,046,500
8	Sanitation Fees	2,595,600	2,580,000	2,363,700	91.6%	2,580,000		2,595,600	2,624,900
9	Permits & Other Licenses	1,354,200	1,354,200	1,445,500	106.7%	1,436,300	Grass cutting/vacant bldng accounting chg.	1,597,300	1,162,800
10	Transfer from Municipal Street Aid Fund	663,900	664,200	664,500	100.0%	564,200		664,900	531,100
11	Fines & Police Revenue	629,300	629,300	618,200	98.2%	702,300	Charter School Resource Officer added	653,600	612,200
12	Police Extra Duty Fees	659,500	659,500	230,900	35.0%	533,000		562,900	703,600
13	Transfer from Police Grant Funds	124,000	124,000	88,800	71.6%	74,400		80,200	170,300
14	Court of Chancery Fees	1,023,000	1,074,400	925,400	86.1%	1,065,100	Includes fees thru April 2015	1,034,500	917,700
15	Transfer from Water/Wastewater Fund	500,000	500,000	500,000	100.0%	850,000		500,000	500,000
16	Transfer from Contingency	-	50,000	50,000	0.0%	-	Offset by increase in Public Safety Exp.	250,000	-
17	Transfer from Civil Traffic Penalties Fund	500,000	450,000	389,600	86.6%	450,000	Includes receipts thru April 2015	357,500	299,800
18	Library Revenues & County Reciprocal Pymt	521,600	561,600	474,600	84.5%	522,000		498,600	471,100
19	Franchise Fees	636,000	656,400	512,100	78.0%	672,300		648,300	618,300
20	General Fund Grant Receipts	623,500	623,500	530,400	85.1%	673,500	Offset by transfer to Police Pension Trust	571,000	671,600
21	Recreation Revenue	148,800	148,800	126,000	84.7%	149,000		151,900	144,500
22	Other Miscellaneous Receipts	159,300	123,900	152,400	123.0%	129,600		175,500	278,700
23	Interest Income	40,000	40,000	24,200	60.5%	35,000		29,000	93,200
24	2014 Bond Proceeds (Refinance 2003 Bonds)	-	475,000	475,000	0.0%	-	Offset by debt service payments;	-	-
	TOTALS	$ 38,850,900	$ 39,795,600	$ 36,965,800	95.1%	$ 41,327,100		$ 37,149,900	$ 35,739,000
	Final Budget							**$ 37,127,200**	**$ 35,569,000**

CITY OF DOVER
FISCAL YEAR JULY 1, 2014 TO JUNE 30, 2015
QUARTERLY REVENUE REPORT
As of May 2015

	WATER/WASTEWATER FUND	FY15 BUDGET	FY15 REVISED BUDGET	YTD REVENUES	91.7% % BUDGET RECEIVED	FY16 Budget	COMMENTS	FY14 REVENUES	FY13 REVENUES
1	Water Fees	$ 4,616,400	$ 4,616,400	$ 4,358,200	94.4%	$ 6,200,000		$ 4,459,800	$ 4,551,800
2	Wastewater Fees	3,706,800	3,706,800	3,392,300	91.5%	3,728,000		3,562,400	3,564,600
3	Wastewater Adjustment Fees - County Trtmt	2,902,600	2,902,600	2,681,000	92.4%	3,026,500		2,930,300	2,926,600
4	Groundwater Inflow Adjustment	1,862,500	1,862,500	1,657,700	89.0%	1,864,300		1,316,200	1,314,000
5	Water Impact Fees	472,700	462,400	293,000	63.4%	250,000		252,200	220,400
6	Wastewater Impact Fees	427,900	416,700	261,500	62.8%	250,000		230,200	386,000
7	Water Tank Space Leasing	331,900	331,900	306,700	92.4%	341,900		360,300	300,100
8	Interest Income	23,000	23,000	1,900	8.3%	3,000		-	13,500
9	Other Miscellaneous Revenues	156,600	64,000	57,500	89.8%	64,000		61,300	73,300
10	Grant Receipts	-	-	-	0.0%	-		-	50,900
	TOTALS	$ 14,500,400	$ 14,386,300	$ 13,009,800	89.7%	$ 15,727,700		$ 13,172,700	$ 13,401,200
	Final Budget							**$ 13,023,500**	**$ 13,822,200**

	ELECTRIC REVENUE FUND	FY15 BUDGET	FY15 REVISED BUDGET	YTD REVENUES	91.7% % BUDGET RECEIVED	FY16 Budget	COMMENTS	FY14 REVENUES	FY13 REVENUES
1	Sales to Customers	$ 78,043,000	$ 76,543,700	$ 70,325,600	91.9%	$ 78,279,200	Residential load -5%; $1M budget error;	$ 76,928,300	$ 86,887,400
3	Utility Tax	1,296,900	1,258,300	1,154,200	91.7%	1,281,100		1,259,000	1,443,900
4	Transfer from Rate Stabilization Reserve	2,000,000	3,000,000	2,000,000	66.7%	3,000,000		7,000,000	5,400,000
5	Miscellaneous Revenue	954,600	952,000	1,238,300	130.1%	927,800		906,400	2,026,100
6	Interest Income	12,000	12,000	12,300	102.5%	47,900		213,200	137,700
7	Intrafund Service Fees - Water/Wastewater	-	-	-	0.0%	-		130,800	136,400
	TOTALS	$ 82,306,500	$ 81,766,000	$ 74,730,400	90.8%	$ 83,536,000		$ 86,437,700	$ 96,031,500
	Final Budget							**$ 88,283,600**	**$ 95,971,700**

ACTION FORM

PROCEEDING: City Council
DEPARTMENT OF ORIGIN: Electric **DATE SUBMITTED**: 7/22/2015
PREPARED BY: Scott D. Koenig, P.E, City Manager, Donna Mitchell, CPA, Controller & Harry A. Maloney, III, Electric Director
SUBJECT: Purchase Power Agreement (Capacity) – Calpine Energy Services, L.P.
REFERENCE:
RELATED PROJECT:
REVIEWED BY: Scott D. Koenig, P.E., City Manager; Donna S. Mitchell, CPA, Controller
EXHIBITS: Exhibit A – Master Power Purchase and Sale Agreement Cover Sheet (13 pages); Exhibit B – Confirmation Letter (Power – 6 pages)
EXPENDITURE REQUIRED: $ 177.50 / MWd **AMOUNT BUDGETED**: $ 185.00 / MWd (Estimated) Using a 40 MW purchase, the projected annual cost is $2,591,500 and budget amount for the purchase was estimated at $2,701,000. **FUNDING SOURCE (Dept./Page in CIP & Budget)**: Power Supply pager starting in FY 19
TIMETABLE: Execute document immediately after Council authorization.
RECOMMENDED ACTION: Authorize the City Manager to execute the Master Power Purchase and Sale Agreement as well as other documents required to complete the purchase of 40 MW of Unforced Capacity over the proposed term.

BACKGROUND AND ANALYSIS

The City's power management team along with The Energy Authority (TEA) and Mr. Kirk Betts, Betts & Holt LLP, recommends the purchase of 40 MW of Unforced Capacity for a five (5) year term starting on June 1, 2018 and running to May 31, 2023 at the DLP South capacity point (I.E. - Cartanza Substation for Dover). The proposed 40 MW purchase will cover the City of Dover's retirement of Units # 1 & 2 plus another 6 MW of capacity to cover the City of Dover's projected load requirements. The five (5) year term gives the City of Dover time for planning, engineering, power contracting and/or construction to meet our future capacity obligations to serve our load within the PJM footprint. As Mr. Betts stated in the July 13, 2015 Utility Committee meeting, "We live in an exciting time of changes and new developments in the energy markets". The City will be facing increasing demands regarding solar (Delaware State RPS requirement) obligations, Clean Power Plant/EPA requirements, energy efficiency standards as well as "behind the meter retail generation" in the form of Solar, Wind, Battery and Combined Heat and Power (CHP) systems. The City of Dover must continue to meet its obligations to service all customers at lowest possible energy cost.

MASTER POWER PURCHASE AND SALE AGREEMENT
COVER SHEET

This *Master Power Purchase and Sale Agreement* ("*Master Agreement*") is made as of the following date: June 1, 2015 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Calpine Energy Services, L.P. ("Calpine" or "Party A")

All Notices:

Street: 717 Texas Avenue, Suite 1000

City: Houston, TX Zip: 77002

Attn: Contract Administration
Facsimile: (713) 830-8751
CommodityContracts@calpine.com
Duns: 16-966-8212
Federal Tax ID Number: 77-0212977

Invoices:
Attn: Power Accounting
Phone: (713) 830-2000
Facsimile: (713) 830-8749

Confirmations:
Attn: Confirmations Department
Phone: (713) 830-8783
Facsimile: (713) 830-8868

Scheduling:
Attn: Scheduling
Phone: (713) 830-8353
Facsimile: (713) 830-8749

Payments:
Attn: Power Accounting
Phone: (713) 830-2000
Facsimile: (713) 830-8749

Wire Transfer:
BNK: MUFG Union Bank, N.A.
ABA: 122000496
ACCT: 187-0031951

Credit and Collections:
Attn: Corporate Credit Manager
Phone: (713) 332-5257
Facsimile: (713) 570-4764

City of Dover, Delaware ("Dover" or "Party B")

All Notices:

Street: c/o The Energy Authority, Inc., 301 West Bay Street, Suite 2600

City: Jacksonville, FL Zip: 32202

Attn: Dover Power Operations
Phone: 703.818.9100
Facsimile: 703.222.6431
Duns:
Federal Tax ID Number:

Invoices:
Attn: Dover Power Accounting
Phone: 703.818.9100
Facsimile: 703.222.6431

Confirmations:
Attn: Risk Control
Phone: (904) 360-1459
Facsimile: (904) 634-0425

Scheduling:
Attn: Dover Power Operations
Phone: 703.818.9100
Facsimile: 703.222.6431

Payments:
Attn: Donna Mitchell, Controller/Treasurer
Phone: 302-736-7018
Facsimile: 302-760-4930

Wire Transfer:
BNK: WSFS Bank
ABA: 0311-0010-2
ACCT: 208910442 (Electric)

Credit and Collections:
Attn: Donna Mitchell, Controller/Treasurer
Phone: 302-736-7018
Facsimile: 302-760-4930

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With additional Notices of an Event of Default or Potential Event of Default to:
Attn: Risk Management Counsel
Facsimile: (713) 830-8751

with copy to:

Attn: Chief Legal Officer
Facsimile: (832) 325-1508

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: Scott Koenig, City Manager
Phone: 302-736-7005
Facsimile: 302-736-7002

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The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff	Tariff: Rate Schedule #1	Dated: Sept. 21, 2000	Docket Number: ER-00-3562-000
Party B Tariff	Tariff: Not Applicable	Dated: Not Applicable	Docket Number: Not Applicable

Article Two

Transaction Terms and Conditions

☑ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive

☑ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

☑ Cross Default for Party A:

☐ Party A: Cross Default Amount: _____

☑ Other Entity: Calpine Corporation Cross Default Amount: [redacted]

☑ Cross Default for Party B:

☑ Party B: Cross Default Amount: [redacted]

☐ Other Entity: Cross Default Amount:

5.6 Closeout Setoff

☑ Option A (Applicable if no other selection is made.)

☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:_____

☐ Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

☑ Option A
☐ Option B Specify:
☐ Option C Specify:

(b) Credit Assurances:

☑ Not Applicable
☐ Applicable

(c) Collateral Threshold:

☐ Not Applicable

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☑ Applicable

If applicable, the provisions of Section 8.1 (c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto.

(d) Downgrade Event:

☑ Not Applicable
☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party B if Party B's Guarantor's Credit Rating falls below BBB- from S&P and Baa3 from Moody's or if Party B's Guarantor is not rated by either S&P or Moody's

☐ Other:
Specify:

(e) Guarantor(s) for Party B: Not Applicable

Guarantee Amount: Not Applicable

8.2 Party B Credit Protection:

(a) Financial Information:

☐ Option A
☑ Option B Specify: Calpine Corporation
☐ Option C Specify:

(b) Credit Assurances:

☑ Not Applicable
☐ Applicable

(c) Collateral Threshold:

☐ Not Applicable
☑ Applicable

If applicable, the provisions of Section 8.2 (c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto.

(d) Downgrade Event:

☑ Not Applicable
☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below ____ from S&P and ____ from Moody's or if Party A's Guarantor is not rated by either S&P or Moody's

☐ Other:

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Specify:

(e) Guarantor for Party A: [redacted]

Guarantee Amount: N/A

Article 10

Confidentiality ☑ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System
☑ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.4. If not checked, inapplicable

A. For purposes of Schedule M, item A, "Act" means Laws of Delaware, 77 Del. Laws c. 130, §1, et. seq.

G. The specified law shall be DELAWARE in Schedule M, item B.

Other Changes: Specify, if Any: See "Other Changes" Attached Hereto

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"OTHER CHANGES" TO EEI STANDARDIZED MASTER POWER PURCHASE AND SALE AGREEMENT

ARTICLE ONE: GENERAL DEFINITIONS

Section 1.12 is amended by deleting the word "issues" and replacing it with the word "issuer".

Section 1.27 is amended by adding at the end of the first sentence "; provided that a Party may only transfer the Letter of Credit to any person or entity succeeding to all or substantially all of the assets of such Party."

Section 1.50 definition of "Recording" is amended by deleting "Section 2.4" and replacing it with "Section 2.5".

Section 1.51 is amended by (i) adding the phrase "for delivery" immediately before the phrase "at the Delivery Point" in the second line and (ii) deleting the phrase "at Buyer's option" from the fifth line and replacing it with the phrase "absent a purchase".

Section 1.53 is amended by (i) deleting the phrase "at the Delivery Point" from the second line, and (ii) deleting the phrase "at Seller's option" from the fifth line and replacing it with the phrase "absent a sale".

ARTICLE TWO: TRANSACTIONS TERMS AND CONDITIONS

Section 2.4 is amended by deleting the words "either orally or" from such Section.

Section 2.5 is modified by adding the following to the end of such Section: "In the event terms and conditions set forth in any Confirmation are inconsistent with the terms of a Recording and cannot reasonably be reconciled with the terms of the Recording, the terms of the Recording shall control only with respect to the product, pricing and delivery terms normally covered in a Confirmation and not with respect to items contained within this Master Agreement. Except with respect to attempts to prove oral amendments to items contained within this Master Agreement, each party waives any objections to the introduction of the Recordings or instant messages (a service provided by AOL Instant Messenger, Yahoo!Messenger and others) into evidence to prove a Transaction whether based on the Statute of Frauds, the Parol Evidence Rule, the Best Evidence Rule or any similar evidentiary rules. Each party waives any objection or defense to its authority or the authority of its employee provided that such employee can be identified on the relevant employing party's recording. Each Party shall make available to the other Party a copy of any Recording made by it in the event of a dispute with respect to the commercial terms set forth in the relevant Confirmation promptly upon discovery of an inconsistency."

The following shall be added as Section 2.6:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

(a) Market Disruption. If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a "Disrupted Day"), then:

The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.

If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price, taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point

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or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials.

If the Price Source retrospectively issues a Floating Price in respect of a Disrupted Day (a "Delayed Floating Price") before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Disrupted Day. If a Delayed Price is issued by the Price Source in respect of a Disrupted Day after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment unless the Parties expressly agree otherwise.

If the Parties cannot agree on a substitute Floating Price and the Price Source does not retrospectively publish or announce a Floating Price, in each case, on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party and mutually agreed upon by the Parties ("Specified Dealers"), without regard to the quotations with the highest and lowest values, subject to the following qualifications:

1) If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest values.
2) If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained.
3) If the Parties cannot agree upon four Specified Dealers, then each of the Parties will, acting in good faith and in a commercially reasonable manner, select up to two Specified Dealers separately, and those selected dealers shall be the Specified Dealers.

Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent publication or announcement of a Delayed Floating Price by the relevant Price Source or any quotations obtained from Specified Dealers.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.

"Floating Price" means a Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events:

(a) the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day; (b) the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.

"Price Source" means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.

"RTO" means any regional transmission operator or independent system operator.

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"RTO Transaction" means a Transaction in which the Price Source is an RTO.

"Trading Day" means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.

(b) Corrections to Published Prices. If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within 30 days of the original publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO's procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.

(c) Rounding. When calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

Sections 4.1 and 4.2 are amended by adding the words "and the origin of the values used in said calculation, which must be derived from a commercially reasonable source" at the end of the last sentence immediately after "calculation of such amount".

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

Section 5.1 (a) is amended by adding the following immediately before the ";": "provided, however, that an Event of Default shall not occur if the failure to pay is caused solely due to a technical or administrative error (so long as sufficient funds are available to the relevant party on the relevant date) which has been remedied within three Business Days after notice of such failure is given to the party"..

Section 5.1 (g) is amended by (i) adding "after the Effective Date of this Agreement" after the words "occurrence and continuation" and (ii) deleting the phrase ", or becoming capable at such time of being declared," after the word "becoming" and before the word "immediately" in the eighth and ninth lines.

Section 5.2 is amended to reverse the placement of "(i)" and "to" in the first sentence.

Section 5.2 is amended to delete the following phrase from the last two lines: "under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable)." The following shall be added to the end of Section 5.2: "under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable), and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below. The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non- Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or

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other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information."

Section 5.4 is amended by adding the following to the end thereof: "Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date (including for these purposes amounts payable pursuant to Excluded Transactions) have been fully and finally performed."

In Section 5.7, delete "(a)" and the phrase "or (b) a Potential Event of Default" in the second line.

ARTICLE SEVEN: LIMITATIONS

Section 7.1 shall be amended by: (a) deleting "Except as set forth herein" from the first sentence and "Unless expressly herein provided" from the fifth sentence, (b) adding "Notwithstanding anything in this Agreement to the contrary" to the beginning of the fifth sentence, (c) adding "set forth in this Agreement' after "indemnity provision" and before "or otherwise", also in the fifth sentence and (d) adding "and are not penalties" at the end of the last sentence.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

Section 8.2(a) is amended by adding the phrase ", provided however, for the purposes of this (i) and (ii), if Calpine Corporation's financial statements are publicly available electronically, then Party A shall be deemed to have met this requirement" after the phrase "quarter for the party(s) specified on the Cover Sheet".

ARTICLE TEN: MISCELLANEOUS

In clause (iii) of Section 10.2, add the phrase ", and evidence of such authorizations are available to the other party upon request" after the words "applicable to it".

Section 10.4 is amended to add the phrase "unless a Claim is due to such Party's gross negligence or willful misconduct" at the end of the first sentence of Section 10.4.

In Section 10.5, in clause (ii) thereof replace the words "affiliate" and "affiliate's" with, respectively, "Affiliate" and "Affiliate's", and in clause (iii) thereof immediately after the words "substantially all of the assets" insert the words "of such Party and".

In Section 10.5, delete the phrase "which consent may be withheld in the exercise of its sole discretion" in the first line and replace it with "which consent shall not be unreasonably withheld."

Section 10.6 is amended by inserting the following immediately after "WITHOUT REGARD TO" in line 4: "the dollar amount limitation in Section 5-1401 of the New York General Obligations Law OR ANY OTHER".

Section 10.10 is replaced in its entirety as follows:

"10.10 Forward Contracts. The Parties acknowledge, agree, and intend for purposes of "safe harbor" under the United States Bankruptcy Code (the "Bankruptcy Code") that, without limitation, as applicable: (i) all Transactions constitute a "forward contract" within the meaning of the Bankruptcy Code or a "swap agreement" within the meaning of the Bankruptcy Code; (ii) all payments made or to be made and all transfers of Performance Assurance by one Party to the other Party under this Agreement with respect to forward contracts constitute "settlement payments" and/or "margin payments" within the meaning of the Bankruptcy Code; (iii) without limitation, each Party's rights under Sections 5.2, 5.3, 5.6, 5.7 and 8.3 of this

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Agreement constitute a contractual rights "to liquidate, terminate, or accelerate" the Transactions within the meaning of the Bankruptcy Code; and (iv) this Agreement constitutes a "master netting agreement" and each Party is a "master netting agreement participant" within the meaning of the Bankruptcy Code."

The Parties agree to replace the entire Section 10.11 with the following:

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement, some of which are considered by Party A either trade secrets or commercial or financial information of a confidential nature, to a third party (other than the Party's employees, lenders, counsel, accountants, auditors or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties recognize that Party B is a Public Body subject to 29 Delaware Code Chapter 100, Sections 10001-10006, which requires disclosure of Public Records, as therein defined. If Party B receives a request pursuant to applicable law requiring disclosure for disclosure of information that Party A considers confidential, it shall use reasonable efforts to notify the other Party of such request. To the extent that Party A seeks to prevent public disclosure, it shall be responsible for and shall bear the costs of all legal or administrative proceedings seeking to prevent the public release of such information. Party B shall not be required to bear any costs of litigation to prevent public release of the information. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

New Sections 10.12 through 10.16 are added as follows:

10.12 Imaged Agreement. Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence.

10.13 Reliability. The Parties agree to adhere to the applicable operating procedures, market rules, tariffs, and product definitions of the NYISO, ISO-NE, ERCOT, PJM, MISO, SPP, and other ISO's or RTO's as promulgated from time to time by such organizations or their successors.

10.14 FERC Standard of Review; Mobile-Sierra Waiver.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. (2010) (commonly known as the "Mobile-Sierra" doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint,

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investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).

10.15 Dodd Frank Provisions - "ADDITIONAL PROVISIONS CONCERNING COMMODITY EXCHANGE ACT (AS AMENDED, "**CEA**") AND RULES OF THE COMMODITY FUTURES TRADING COMMISSION ("**CFTC**") (referred to as these "**Dodd Frank Provisions**")

(a) **Certain Definitions**. The following definitions shall apply to these Dodd Frank Provisions. Any reference to a particular section or part of the CEA or the CFTC Regulations in these Dodd Frank Provisions shall include revisions and supplements thereof as enacted or implemented from time to time.

"CFTC Regulations" means the rules and regulations promulgated by the CFTC, in effect from time to time. Any reference to a specific section of the CFTC Regulations shall be read to include any successor relevant provision.

"Commodity" means any tangible or intangible commodity, good, or article of any type or description, and all services relating to, and rights and interests in, such commodity, good or article, whether presently or in the future transacted in (including, without limitation, natural gas).

"Commodity Trade Option" means a "commodity option" as defined in CFTC Regulation 1.3(hh) entered into pursuant to CFTC Regulation 32.3(a).

"Covered Agreement" means any agreement between the parties (written, electronic or oral) with respect to Commodity Trade Option transactions or Other Transactions governed by this Contract and its collateral or ancillary documents.

"Other Transactions" means Commodity Transactions that are not Commodity Trade Option transactions.

(b) **Commodity Trade Options**. With respect to each transaction that is, or is intended to be, a Commodity Trade Option, as of the trade date of the transaction: (i) the party that is the offeree represents that it is: (1) a producer, processor, commercial user of, or a merchant handling, the commodity that is the subject of the Commodity Trade Option, or the products or by-products thereof; and (2) entering into the Commodity Trade Option solely for purposes related to its business as such; and (ii) each party represents to the other that the Commodity Trade Option, if exercised, contains a binding obligation that results in the sale of an "Exempt Commodity" (meaning an "exempt commodity" as defined in Section 1a(20) of the CEA) for immediate or deferred shipment or delivery.

(c) **Other Transactions**. Each party represents to the other party with respect to each Other Transaction continually throughout the duration of such Other Transaction that (i) it is a commercial user of, or a merchant handling, the Commodity that is the subject of the Other Transaction or the products or byproducts thereof and is entering into such Other Transaction solely for purposes related to its business as such and (ii) it intends to make or take physical delivery of the Commodity and (iii) any optionality under the Other Transaction is merely incidental to the predominant purpose of effecting delivery.

(d) **Further Assurances**. Each party agrees promptly to provide the other party, in accordance with the procedure specified in any Covered Agreement regarding the delivery of notices or information to a party and such other means as may be agreed in writing between the parties from time to time, any information

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reasonably requested by such other party to enable such other party to comply with Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and CFTC Regulations in connection with any proposed or existing Commodity Trade Option transaction or Other Transaction between the parties under the Covered Agreement.

(e) **Limitation to Covered Agreement Default**. Each party agrees that an event of default, termination event, or other similar event shall not occur under any Covered Agreement solely on the basis of (i) a representation provided solely in these Dodd Frank Provisions being incorrect or misleading in any material respect, or (ii) a breach of any covenant or agreement set forth solely in these Dodd Frank Provisions; provided, nothing in this sub-paragraph (e) shall prejudice any other right or remedy of a party at law or under any Covered Agreement in respect of any such misrepresentation or breach. For the avoidance of doubt, this sub-paragraph (e) shall not alter a party's termination rights or remedies, if any, applicable to a breach of any representation, warranty, covenant, or agreement that is not provided or set forth solely in these Dodd Frank Provisions, including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above.

(f) **Eligible Commercial Entity/Eligible Contract Participant.** Each party represents that it and any guarantor of it constitutes an "eligible commercial entity" as such term is defined in the CEA (7 U.S.C.A. Section 1a(17) and an "eligible contract participant" as such term is defined in the CEA (7 U.S.C.A. Section 1a(18)."

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Calpine Energy Services, L.P.	City of Dover, Delaware
By:	By:
Name: Jeffrey Goodman	Name: Scott Koenig
Title: Vice President	Title: City Manager
Date: 7/15/15	Date:

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

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CALPINE

Calpine Energy Services, L.P.
717 Texas Avenue, Suite 1000
Houston, Texas 77002
(713) 830-8333
Fax: (713) 830-8868

CONFIRMATION LETTER
(POWER)

"CONFIDENTIALITY NOTICE: The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents."

Date:	July 29, 2015
To:	City of Dover ("**Party B**" or "**Dover**" or "**Counterparty**")
Attention:	Confirmation Department
Fax No.:	
From:	Calpine Energy Services, L.P. ("**Party A**" or "**Calpine**")
Re:	Calpine Deal Number: [ ] Calpine Agreement Number: CESLP-2.3.3-51629

The purpose of this Confirmation Letter (this "**Confirmation**") is to confirm the terms and conditions of the transaction (the "**Transaction**") agreed upon by Calpine and Dover as of the Trade Date specified below. This Confirmation evidences a complete and binding agreement between the Parties as to the terms of the Transaction to which this Confirmation relates and is subject to, made a part of, and governed by that certain Master Power Purchase and Sale Agreement, version 2.1 (modified 04/25/00) between Dover and Calpine dated June 1, 2015 (the "**Master Agreement**").

Notwithstanding any contrary provisions in the Master Agreement, any conflict between this Confirmation and the Master Agreement shall be resolved in favor of this Confirmation. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

We confirm the following terms of our Transaction:

The terms and conditions of the Transaction are as follows:

Trade Date:	July 29, 2015
Buyer:	Dover
Seller:	Calpine
Product:	Unforced Capacity from a Capacity Resource that (i) has cleared in the Base Residual Auction for the DPL South zone for the applicable Delivery Year associated with the applicable portion of the Delivery Period and (ii)

qualifies as a Capacity Performance Resource. For purposes of this Confirmation, "**Capacity Performance Resource**" means a "Capacity Performance Resource", as such term is defined in the PJM Tariff.

Contract Quantity: [redacted]

Total Quantity: [redacted]

Delivery Period: [redacted]

Contract Price: [redacted]

Payment Terms: For each month included in the Delivery Period, Buyer shall pay to Seller an amount equal to the sum for all days during such month of (x) the Contract Quantity for such day multiplied by (y) the Contract Price. The amount payable shall be adjusted in accordance with the Responsibility for PJM Capacity Obligations and Rights to Performance Credits provisions below. Buyer shall include in connection with each payment remittance a statement showing each adjustment in reasonable detail and upon request from Seller, shall provide to Seller source documentation concerning each adjustment for any PJM Charge and any PJM Credit.

Without limiting any other right of setoff that may be available to Buyer under the Master Agreement or otherwise, Buyer has the right, but is not required, to setoff against the amount payable by Buyer to Seller in respect of a month any amount then due and payable by Seller to Buyer under this Transaction, whether pursuant to the "Responsibility for PJM Capacity Obligations and Rights to Performance Credits" provisions below or otherwise and without regard to whether or not Buyer has made a demand for payment of such amount.

Without limiting any other right of setoff that may be available to Seller under the Master Agreement or otherwise, Seller has the right, but is not required, to setoff against the amount payable by Seller to Buyer in respect of a month any amount then due and payable by Buyer to Seller under this Transaction, whether pursuant to the "Responsibility for PJM Capacity Obligations and Rights to Performance Credits" provisions below or otherwise and without regard to whether or not Seller has made a demand for payment of such amount.

Delivery Point: At the location of the Capacity Resource associated with the Product delivered from Seller to Buyer.

As of the Trade Date, Seller anticipates that Product for the Delivery Period will be delivered from the Garrison Energy Center (the "**Facility**"), which is located in the DPL South Locational Deliverability Area ("**LDA**").

Scheduling: Product shall be transferred to Buyer in a manner consistent with PJM requirements to document that transfer, together with such additional information, documentation and other instruments as may be required by PJM to represent that Seller has and continues to make available the

Contract Quantity in the required PJM markets. Seller and Buyer shall accomplish delivery and receipt of the Product for each Delivery Year during the Delivery Period by entering and confirming appropriate unit specific "Section 4.6(a) Bilateral" (as such term is defined in the PJM Tariff and identified as a "Unit-Specific Bilateral Transaction" for cleared capacity in Section 4.6 of PJM Manual 18) transactions in PJM's eRPM system, or any successor system, as applicable (the "**System**") in accordance with Table 1 below. Seller and Buyer shall use commercially reasonable efforts to cooperate with each other to ensure that such entry and confirmation in the System is completed in a timely manner as per RPM rules for Unit-Specific Bilateral Transactions for cleared capacity and any future PJM requirements for product from a Capacity Performance Resource. The quantity of Product Scheduled from the Facility for a Delivery Year must be the same for each day during the Delivery Year. For purposes of this Transaction, such entry and confirmation by Seller and Buyer into the System constitute a "Schedule" or "Scheduling" as such terms are defined in the Master Agreement.

Seller and Buyer each acknowledge that pursuant to each Section 4.6(a) Bilateral Transaction, the PJM Agreements condition the Scheduling of the Transaction to the prior consent of PJM based upon the sufficiency of the credit of Buyer as determined by PJM. Any withholding of consent to the reporting of this Transaction by PJM based upon Buyer's insufficient credit, shall be deemed a Buyer failure to schedule or receive under the terms of Section 4.2 of the Master Agreement.

Seller shall have the right to change the Facility as Scheduled upon written notice to Buyer delivered at least thirty calendar days prior to the commencement of the relevant Delivery Year (whether one or more, a "**Substitution**"). In such event the Parties shall take such actions reasonably necessary to effect the Substitution within the System in accordance with applicable PJM Agreements. A Capacity Performance Resource provided in connection with a Substitution must otherwise satisfy the requirements of this Transaction.

Table 1

Planning Year ("PY")	**Delivery of Product**
PY 2018/2019	On or before September 15, 2015
PY 2019/2020	On or before January 1, 2019
PY 2020/2021	On or before January 1, 2020
PY 2021/2022	On or before January 1, 2021
PY 2022/2023	On or before January 1, 2022

Credit: [redacted]

Definitions: Capitalized terms that are used, but not defined herein or in the Master Agreement have the meanings ascribed to them in the PJM Agreements.

For purposes of this Confirmation:

"PJM" means PJM Interconnection, L.L.C.; PJM Settlement, Inc.; or PJM Interconnection, L.L.C. and PJM Settlement, Inc., as applicable.

"PJM Agreements" means the PJM Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreement, and each other applicable PJM manual(s) or document(s), or any successor, superseding, or amended versions that may take effect from time to time.

"PJM Tariff" means the PJM Open Access Transmission Tariff, or any successor, superseding, or amended version that may take effect from time to time.

Responsibility for PJM Capacity Obligations and Rights to Performance Credits: Seller is solely responsible for ensuring that the Capacity Performance Resource associated with delivered Product satisfies all obligations under the PJM Agreements applicable to Capacity Performance Resources that have cleared in the applicable Base Residual Auction, including all must-offer and other availability obligations, requirements and standards and, pending the outcome of the FERC proceeding in Docket No. ER15-623-000, all obligations applicable to Capacity Performance Resources (collectively, "**PJM Capacity Obligations**"). Seller shall bear all contractual and financial obligations associated with PJM rules and requirements and penalties applicable to the Product Scheduled, the PJM Capacity Obligations associated with the Product Scheduled, and the performance of the Capacity Performance Resource as defined and measured by PJM throughout the Delivery Period as if Seller is a party to a transaction with PJM as Counterparty for the cleared capacity associated with the Scheduled Product.

All penalties and charges that may be assessed by PJM on account of the failure of the Capacity Performance Resource to satisfy any PJM Capacity Obligations associated with the Scheduled Product ("**PJM Charges**") are the responsibility of Seller. All payments and other credits for performance that may be earned by the Capacity Performance Resource ("**PJM Credits**") are for the benefit of Seller and, to the extent received by Buyer, shall be held by Buyer in trust for Seller and are payable by Buyer to Seller pursuant hereto.

In the event that Buyer is required to pay any PJM Charges, Seller shall promptly upon demand indemnify Buyer for the amount of such PJM Charges. If during a billing month Buyer receives from PJM any PJM Credits, Buyer shall pay the amount of such PJM Credits to Seller during the following month in accordance with the applicable timeliness of payment provisions specified in the Master Agreement.

The provisions of this "Responsibility for PJM Capacity Obligations and Rights to Performance Credits" section survive the termination of this Transaction and are specifically made subject to the Assignment Matters and Indemnity provisions below.

Change in Law: For purposes of this Confirmation, "**Change in Law**" means the (x) adoption, imposition, amendment, repeal, promulgation, change in interpretation or modification by a governmental authority of any law, or regulation, or the issuance of a final and non-appealable order, judgment, award or decree of a governmental authority having the effect of the foregoing, or (y) adoption, imposition, amendment, repeal, promulgation, change in interpretation or modification by PJM of any new rule or change to an existing rule that is applicable to the provision of the Product under this Transaction that, in either case, makes it illegal or impossible for a Party to perform any absolute or contingent obligation in respect of this Transaction.

Change-in-Law does not include changes that result in (i) the Facility to be within an LDA other than the LDA associated with the Facility as of the Trade Date or as of the date that Product from the Facility is Scheduled, as applicable, (ii) the modification of the boundaries of or economics associated with the LDA associated with the Facility, (iii) the Unforced Capacity of the Facility clearing in any particular Base Residual Auction at a price equal to, less than or greater than the Contract Price or (iv) Seller's ability to sell the Product at a price greater than the Contract Price or Buyer's ability to purchase the Product at a price less than the Contract Price.

If a Change in Law occurs during the Delivery Period, either Party may declare, pursuant to Article 5.2 of that certain Master Power Purchase and Sale Agreement, version 2.1 (modified 04/25/00) between Party A and Party B, dated June 1, 2015, an Early Termination Date for this Transaction by delivery of written notice of a claim of Change-in-Law to the other Party and designation of an Early Termination Date to terminate this Transaction with no liability of either Party for any payments or obligations due to be paid or performed after the date of such termination other than those that are due to be paid or performed after the Early Termination date but that have accrued or accrue with respect to any period or performance rendered prior to the Early Termination Date.

Early Termination: If an Early Termination Date occurs under the Master Agreement, each Party shall timely take all commercially reasonable actions requested by the other Party in order to mitigate any penalties and charges that may otherwise be assessed by PJM due to early termination of this Transaction.

Assignment: Notwithstanding any provisions to the contrary in the Master Agreement, no assignment or sale of this Transaction or the Scheduled Product shall be made by Buyer without the prior written consent of Seller, which at the discretion of Seller, may include, without limitation, certain requirements in connection with the disposition of PJM Charges and PJM Credits.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have caused this Confirmation to be duly executed as of the date first above written, which execution may be by facsimile and in multiple counterparts to be read as one.

Calpine Energy Services, L.P.	**City of Dover**
By: _____	By: _____
Name: Jennings Goodman	Name: _____
Title: Vice President	Title: _____

City of Dover, Delaware
Capital of the First State

City of Dover Citizen Stormwater Survey

Summer 2015

Stormwater is runoff generated when rain and snowmelt events flow over land, structures or other impervious surfaces and does not filter into the ground. Stormwater can have flooding and water quality impacts to both private and public property.

The City of Dover wants to know more about your stormwater concerns. All citizens are invited to participate in this short survey. The feedback from this survey will help us to better evaluate and address stormwater issues in the city.

Please complete the survey and return it to Jason Lyon, Department of Public Works via mail, e-mail or fax:
P.O. Box 475
Dover, DE 19903
E: jlyon@dover.de.us
F: (302) 736-4217

1. What is your Zip Code? _____

2. How would you characterize stormwater on your property as a concern? *Check just one*
   ☐ It is a **non-issue** ☐ A **small concern** ☐ A **moderate concern** ☐ A **serious concern**

3. How would you characterize your concern with stormwater? *Check all that apply*
   ☐ Stormwater **flooding** ☐ Stormwater **quality** ☐ It is a **non-issue**

4. Do you have any stormwater controls on your property? *Check all the apply*
   ☐ Sump Pump ☐ Rain Barrel ☐ Rain Garden ☐ Roof Drain

5. Does stormwater on certain Dover roads have an impact on you?
   ☐No ☐Yes

6. If yes to Question #5, please list which specific roads are impacted by stormwater:
   _____

7. Is there another public area that is impacted by stormwater? *Check all that apply*
   ☐ Sidewalks ☐ Parking lots ☐ Parks ☐ Lake/River ☐ Other

   List Other:_____

   _____

8. How would you characterize stormwater issues in Dover as a whole? *Check just one*
   ☐ A **non-issue** ☐ A **small concern** ☐ A **moderate concern** ☐ A **serious concern**

9. Do you have any concerns with stormwater drains, ditches, or outfalls being properly maintained in your area?
   ☐ No ☐ Yes If yes, please describe concern below:

   _____

   _____

10. Do you have any further stormwater concerns or suggestions?

    _____

    _____

    _____

Optional Information:

Name: _____

Email: _____

Home and/or Business Address: _____

Years at this address:_____

Telephone:_____