REGULAR COUNCIL MEETING

The Regular Council Meeting was held on July 27, 2015 at 7:30 p.m. with Council President Slavin presiding. Council members present were Mr. Sudler, Mr. Neil, Mr. Cole, Mr. Hosfelt, Mr. Hare, and Mr. Hutchison. Mr. Anderson and Mr. Lewis were absent.

Council staff members present were Police Chief Bernat, Mrs. Mitchell, Mrs. Townshend, Deputy Fire Chief Carey, Mr. Koenig, City Solicitor Rodriguez, and Mrs. McDowell. Mayor Christiansen was also present (departed at 7:46 p.m.).

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. Altoria Turnage, 1422 McKee Road, informed members that she is the property manager for several properties and they are having an issue with the requirement that their driveway be stone or paved. She felt that the requirement was only being applied to certain properties, noting that there are several Caucasian-owned rental properties on Slaughter Street that do not have stone or paved driveways.

Mrs. Townshend, Director of Planning and Community Development, advised that the zoning ordinance requires that permanent parking areas be a hard, paved, dust-free surface and the Code Enforcement Officers regularly write up people when they are parking on the grass, or when there is no grass because people have been parking and it has become compacted dirt. She noted that there are a number of places around the City where there is stone that was in place before the zoning regulations. In cases where there was concrete or where there is nothing, when a parking area needs to be added it needs to be concrete, asphalt or other type of paved surface.

Ms. Turnage indicated that some other landlords in the area have not received documentation from the City indicating that they are required to have work done on their driveways while approximately eight (8) other rental properties on Slaughter Street have received notices.

Acknowledging receipt of citations and fines for tall grass, Ms. Turnage advised that she took pictures of tall grass on other properties and asked why those properties were not being addressed. Responding, Mrs. Townshend stated that the Code Enforcement Officers spend the bulk of the warm months, from April into October, writing up grass. She noted that new cases may take longer to cut because of the process they have to go through. Mrs. Townshend noted that the City spends approximately $18,000 a year cutting grass on private properties. She advised that the five (5) Code Enforcement Officers write up hundreds of tall grass cases each year, some of which are complaint driven.

Ms. Turnage advised that they had received an email from Mrs. Townshend stating that the grass at 102 South Queen Street was getting tall but right next door the grass is 26 inches tall and has not been cut. Mrs. Townshend assured Ms. Turnage that it would be addressed, if it hadn't been already. She stated that she sent Dr. Burden the email as a courtesy to avoid having to incur the costs.

Mrs. Townshend stated that Dr. Burden has since advised her that he did not wish to receive courtesy emails in the future.

The invocation was given by Mayor Christiansen, 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. Hutchison and carried by a unanimous roll call vote (Anderson and Lewis absent).

ADOPTION OF MINUTES - REGULAR COUNCIL MEETING OF JULY 13, 2015

The Minutes of the Regular Council Meeting of July 13, 2015 were unanimously approved by motion of Mr. Hare, seconded by Mr. Hutchison and bore the written approval of Mayor Christiansen.

REMARKS BY LEVY COURT PRESIDENT P. BROOKS BANTA

Levy Court President P. Brooks Banta stated that it was always an honor to be in City Council Chambers. He advised that the relationship between the County and the City had never been better and he, along with the six (6) other County Commissioners and the County Administrator, are very proud of that. Mr. Banta stated that it is great to work with people like Mrs. Ann Marie Townshend, Director of Planning and Community Development, Mr. Scott Koenig, City Manager, and Mayor Robin Christiansen, noting that he hopes the relationship between the City and County will continue to flourish under the current leadership.

Council President Slavin stated that he attended a recent Levy Court meeting and in his remarks he wanted to say that the partnership runs wide and deep between the City and the County and the City appreciates their work, such as the Reciprocal Borrowing Agreement for library services, the financial support the County provides to the City's Fire Department, the partnership related to wastewater, and a whole series of other things.

President Banta also noted the great services provided by the paramedics to all of Kent County utilizing taxpayer dollars. He noted that this service is often overlooked.

Mr. Hutchison advised members that he and Mrs. Traci McDowell, City Clerk, had the opportunity to attend the Kent County Levy Court Committee meeting recently and he thanked President Banta for the invitation. Mr. Hutchison stated that it was a very impressive meeting.

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

Lutheran Senior Services of Dover, Inc. is exempted from payment of City of Dover property taxes; however, in their desire to be good neighbors they have, since 1989, voluntarily contributed to the City a Payment in Lieu of Taxes (PILOT). Their initial payment in 1989 was $5,000 and it has consistently increased over the years, with this year's contribution being $27,227, for an approximate total contribution to date of $437,529.

Mr. Gary Coy, Executive Director of Lutheran Senior Services, Inc., stated that this is was his 8th opportunity to be able to bring the PILOT to Dover. He noted that Lutheran Senior Services very much appreciates the relationship they have with the City and all the services that are provided. Mr. Coy advised that although they do not pay taxes, they do use City services such as fire protection, ambulance, police, and roadways and they are grateful for all the service that they get.

Mayor Christiansen thanked Mr. Coy for the continued interest in the City of Dover, generous donations, and the great service Lutheran Senior Services provides by taking care of those who need a place to stay and looking after the senior citizens.

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

On behalf of members of Council, Mayor Christiansen presented Mr. Gerald Street with a Dover Cup in recognition of his service on the Downtown Dover Development Corporation (DDDC) from April 1990 through August 2008 and the Downtown Dover Partnership (DDP) from August 2008 through June 2015.

Mayor Christiansen reminded members that 25 years ago Mayor Jack Richter had a vision of revitalizing downtown Dover and he selected a few people who he knew would carry the ball for him. He stated that he did not think Mayor Richter knew that Gary Patterson, Gerry Street and Joe McDaniel would continue to carry the ball on and on and on until, finally Mr. Street advised him that it was time to go. Mayor Christiansen stated that he was pleased to recognize Mr. Street for his service, not only to the City but to all the citizens and the vision that Mayor Richter and the people who have served on the DDP have had, noting that they will see the fruits of their labors in the future.

On behalf of the DDP Board of Directors, Mr. Gregg Moore, President, thanked Mr. Street for great support and all he has done over the last 25 years for the Downtown Dover Partnership. Mr. Moore noted that Mr. Street had been instrumental in their projects, he had been unwavering, had given hundreds of hours of his time to the partnership, and had been a great ambassador of downtown. Mr. Moore also advised that Mr. Street had given the time and resources of his law firm as their attorney on the board. He recalled that one (1) of the greatest projects Mr. Street was instrumental in was the conversion of the capital scrap yard, investing over $1M of the Department of Natural Resources (DNRC) grant monies to procure the site and make it into a beautiful, vibrant building.

Mr. Street stated that after 25 years a couple of things are abundantly clear -- there are thousands of volunteer hours but there are dozens upon dozens of people. He advised that he just happens to be one (1) volunteer out of many in the last 25 years. Mr. Street stated that they do not get $3M without the State and City working together and the Duncan Center does not occur without many players coming together, as well as the capital scrap project. He stated that he hopes the citizens of Dover understand that it is the paid and unpaid people in this room, and the ones that came before, going back to Mayor Richter and others, that the service they have given is what made the Downtown Dover Partnership successful.

Mr. Street noted that he is not retiring from public duty but is, instead, giving more service to the two (2) nature boards that he serves on.

Mr. Sudler, noting that Mr. Street was his baseball coach when he was younger, stated that he is a noble and respectable man who instilled in him life values and a winning spirit. Mr. Sudler congratulated Mr. Street and thanked him for his public service. Mr. Street responded that it was a pleasure to see Mr. Sudler doing well in life.

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

A public hearing was duly advertised for this time and place to consider a violation of the Dangerous Building Ordinance at 110 Rustic Lane, owned by Taililou, LLC. Mrs. Ann Marie Townshend, Director of Planning and Community Development, explained that the property was 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.

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 110 Rustic Lane: 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; 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.

Mrs. Townshend noted that there have been a number of neighbor complaints about the property.

Council President Slavin declared the public hearing open.

Mr. Tailap Luk of Taililou, LLC, stated that he has an ongoing consultation with Mrs. Townshend regarding this property. He noted that he showed her a very, very preliminary draft about two (2) years ago when they annexed two (2) lots into the City, which is also part of the grand annexation of the whole area. Mr. Luk advised that it is their intention to demolish the house; however, they have been delayed by the inability to obtain sewer service. He noted that he is actively speaking with the property owner in front of this property to determine some way to run sewer service to the property.

Mr. Luk stated that another delay has been deciding whether to preserve the swimming pool or not. He noted that they have received two (2) proposals: one (1) to demolish the structure without touching the swimming pool and one (1) to demolish the structure and the swimming pool. He noted

that he is waiting to hear back from the contractor on some questions he has regarding those proposals. Mr. Luk advised that he had scheduled a meeting with the City Planning Board for Friday to discuss how he should restart this project. He requested that the demolition be delayed for six (6) months in order to finalize his site plan and determine whether or not to preserve the swimming pool.

Responding to Mr. Neil, Mr. Luk stated that he wants to build a mixed-use structure to refresh the whole area; however, developing a concrete site plan is very difficult. He advised that once the site plan is complete, he will need to commit capital to it to develop the engineering, architectural, etc. Mr. Luk stated that he would like to have all of that in place in order to decide if they will need the swimming pool or not so that they will not have to start the process over again.

Noting that Mr. Luk has owned the property for more than two (2) years, Mr. Neil stated that he would have hoped that they would have progressed further before tonight coming to a crisis.

Clarifying that Mr. Luk intends to demolish the house and is trying to decide whether or not to preserve the swimming pool, Mr. Hosfelt asked if he was requesting additional time for all of the structures and the swimming pool. Mrs. Townshend noted that the swimming pool is an accessory structure.

Responding to Mr. Sudler, Mr. Luk stated that the swimming pool is a significant component to the plan because it is for a mixed-use with residential and commercial. The commercial could involve a health center or a daycare center with a swimming pool. He noted that it is a pretty decent-sized swimming pool, so he would like to preserve it if the plan calls for it.

Responding to Mr. Hare regarding the appearance of the property, Mr. Luk stated that they would mow the grass, clean up the trash, and trim the shrubs to make the property more presentable.

Mr. Luk reiterated his request for more time, noting the he intends to demolish the house and possibly the swimming pool. He advised that the house is secure and not dangerous in any sense.

There being no one else present wishing to speak, the public hearing was closed.

Mr. Hare moved to: 1) declare this building and all accessory structures on this property dangerous; 2) order the property, excluding the swimming pool, repaired or demolished by August 27, 2015 by the owner or equity owner at their own risk; 3) grant the property owner a 90-day extension to decide whether to demolish or preserve the swimming pool; 4) order the Building Inspector to cause the repair or demolition of the structures if not completed by the owner within 10 days of the dates established by City Council; and 5) 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. The motion was seconded by Mr. Sudler and carried by a unanimous roll call vote (Anderson and Lewis absent).

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

The Parks, Recreation, and Community Enhancement Committee met on July 13, 2015 with Chairman Anderson presiding.

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.

The Committee recommended approval of the revised Active Recreation Area Plan for Eden Hill Farm Traditional Neighborhood Design - Residential District, as recommended by staff.

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

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.

The Committee recommended continued discussion of the Recreation Needs Assessment and Restoring Central Dover Strategic Plan at the next Parks, Recreation, and Community Enhancement Committee meeting.

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

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.

By consent agenda, Mr. Hare moved for acceptance of the Parks, Recreation, and Community Enhancement Committee Report, seconded by Mr. Hutchison and carried by a unanimous roll call vote (Anderson and Lewis absent).

UTILITY COMMITTEE REPORT - JULY 13, 2015

The Utility Committee met on July 13, 2015 with Chairman Hutchison presiding.

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. 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.

The Committee recommended approval of the contract.

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

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.

The Committee recommended acceptance of the report as presented.

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

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.

The Committee recommended acceptance of the TEA/NAES Report for May 2015.

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

Updates

The Committee deferred discussion of these items.

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

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

The Legislative, Finance, and Administration Committee met on July 13, 2015 with Chairman Hare presiding.

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.

The Committee recommended approval of the grant project, as requested.

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

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.

The 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.

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

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. 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 Committee recommended that staff provide a preliminary FY17 budget between March 15 and March 31, 2016.

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

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 Committee deferred this matter, as well as Item #5 - Proposed Amendments to the City of Dover Charter, and recommended scheduling a special meeting, without a time limit, to allow for further discussion.

During the Council meeting, Council President Slavin advised members that the Committee deferred consideration of this item and recommended scheduling a special meeting, without a time limit, to allow for further discussion. Additionally, because Charter and Code amendments are not required to move the Economic Development Office under the City Manager, the motion of March 23, 2015 effectively moved the department. Staff would like the action regarding the Economic Development Office affirmed to clarify the reporting structure for the office.

Mr. Hare, Chair of the Legislative, Finance, and Administration Committee, stated that it was his understanding that the Economic Development Office did not require a Charter change and was moved under the City Manager.

Mrs. Traci McDowell, City Clerk, stated that the intent of this discussion, because the Committee deferred further action on the Charter and Code amendments, was to get clarification on the action of March 23, 2015 related to the Economic Development Office. She noted that it was technically moved under the City Manager; however, because the other amendments have been deferred, she thought that both the City Manager and the Mayor would like clarification that Council still intends for the Office to be moved under the City Manager. Responding, Mr. Hare stated that he believes that is the intent.

Mr. Hosfelt stated that he thought they needed to sit down and hammer this issue out and make a decision one way or the other. He did not see the sense in singling out the Economic Development Office when no other decisions had been made. Mr. Hosfelt stated that they should make the time to decide, whether it is by holding special meetings, a referendum, or going out to their constituents to find out what they want.

Mr. Neil moved to schedule a special meeting, without a time limit, to allow for further discussion of the reorganization of the City. The motion was seconded by Mr. Hosfelt.

Mr. Hare requested that the meeting be scheduled when the full Council can attend and suggested some time in September. Mr. Hosfelt stated that he would like some time before the meeting to contact their constituents for their ideas and opinions.

Mr. Sudler requested that all of the Legislative, Finance, and Administration Committee minutes related to this issue be submitted to all of the new Council members. He suggested that they be provided back to the meeting when Mr. Holden and the rest of the community first came to them saying that they wanted a new organization for the government for the City of Dover.

The motion to schedule a special meeting, without a time limit, to allow for further discussion of the reorganization of the City was unanimously carried.

Council President Slavin, noting that the remaining issue was the reporting structure for the Economic Development Office, reiterated that the March 23, 2015 action by Council effectively reorganized that office by taking it from underneath the Mayor and placing it under the City Manager, and Staff was requesting affirmation of that action.

Mr. Sudler moved to have further discussion of this issue, along with discussion regarding the City reorganization, at the special meeting being scheduled in September. The motion was seconded by Mr. Neil.

Mrs. McDowell stated that the Economic Development Office is different from the other offices being considered for reorganization because, in March, the motion was made to move those departments under the City Manager and there is nothing in the Code or Charter that needs to be changed to move the Economic Development Office. She noted that right now the Economic Development Office is under the City Manager; however, because everything else had been deferred for further discussion, she did not believe that the City Manager was comfortable assuming that role without this Council saying they do or do not want to proceed that way. Mrs. McDowell stated that oversight of the Economic Development Office is currently in limbo.

Mr. Hare stated that the move in March was made because it did not need Charter changes and it was Council's feeling that the Economic Development Office should report to the City Manager and he thought that was the way it needed to be to provide some accountability. Mr. Hare noted that the new Assistant City Manager has experience in economic development and it is a natural fit to have the Economic Development Office reporting to the City Manager and the Assistant City Manager.

Mr. Slavin advised that an email was received from Ms. Joan Denny on July 27, 2015 regarding this issue and noted that copies were provided to each Council member.

Mr. Hare moved to acknowledge receipt of the email, waive its reading, and place it into the record *(Exhibit #2)*. The motion was seconded by Mr. Hosfelt and unanimously carried.

Mr. Hare stated that they are reaffirming for Mr. Koenig the decision that was made in March that he is responsible for the Economic Development Office. He noted that they still need to discuss the Charter changes but the change to the Economic Development Office was already made and Mr. Koenig just wants reaffirmation of the decision.

Mr. Sudler requested clarification on the Mayor's duties, noting that he thought the Mayor was supposed to be head of economic development or to play a significant role in economic development according to the Charter. Responding, Mrs. McDowell stated that economic development is a part of the Mayor's job description in the Dover Code. She noted that the job description was written before the creation of the economic development office and, once created, the economic development office was under the direction of several different departments. She advised that the motion that was adopted in March does not put the office under the Mayor, it puts it under the City Manager and it would be good for everybody if it was clarified.

Mr. Sudler stated that he felt this issue needed more discussion because, as a new Council member, it is his understanding from his research that the Mayor is supposed to play a significant role in that component with the City. Responding, Mrs. McDowell stated that she believed the intent when the job description was written was for the Mayor to go out into the community and to find businesses to bring to Dover.

Mr. Koenig stated that when the Economic Development Office was created, it was originally in the Planning Office, then it was under Public Services. When he became City Manager, there was concern about moving it back into the Planning Office because one (1) of the Councilmen at the time believed there was a conflict of interest for the Planning Office to be the overseer of the Economic Development Office. Mr. Koenig stated that in 2012 the Council, not through public input or requests from citizens, added it under the purview of the Mayor's Office. The issue for Staff really is that this is a relatively small office and several people in the office are part of the bargaining unit, and Council affirmed in the March meetings that this office should fall under the purview of the City Manager's Office. Mr. Koenig stated that it does not take the Mayor out of being involved with economic development. There are a number of people that come in and have an initial meeting with the Mayor's Office regarding development projects and then those duties to promote economic development get divided up amongst the Economic Development Office, sometimes the Planning Office, and sometimes the City Manager's Office, but the first contact for economic development quite often is the Mayor's Office or the Planning Office. Then it reverts into the Economic Development Office. Mr. Koenig stated that he really just wants to clarify this going forward and not to tie up the discussion of economic development with the issue of Charter changes because the Charter, as far as the office management, is silent.

Mr. Slavin stated that, as a compromise, they could provide the clarification that Mr. Koenig needs to move forward with City business with the understanding that it be revisited during the special meeting being scheduled in September as part of that larger context of reforms.

Mr. Neil asked if the FY 2016 economic development budget was under the City Manager or the Mayor. Responding, Mr. Koenig advised that it has its own budget.

Responding to Mr. Hosfelt, City Solicitor Rodriguez confirmed Mr. Koenig's interpretation that a Charter amendment was not necessary with regard to the Economic Development Office.

Mr. Sudler withdrew his motion to have further discussion of this issue, along with discussion regarding the City reorganization, at the special meeting being scheduled in September.

Mr. Sudler moved to affirm City Council's decision of March 23, 2015 to move the Economic Development Office under the City Manager, with the understanding that this matter will be revisited in September, which could lead to a different action. The motion was seconded by Mr. Cole and unanimously carried (Anderson and Lewis absent). (*City Clerk's Office Note: Subsequent to the meeting, official notification was received of Mayor Christiansen's veto of this motion.*)

Mr. Hare clarified that the decision they made on March 23, 2015 would be affirmed and the Economic Development Office will report to the City Manager. He stated that he did not see the need in the future, in other issues, to reaffirm their decisions three (3) or four (4) months later. Mr. Hare felt that Mr. Koenig should have been able to take that on and if there was an issue then it would come up. Responding, Mr. Slavin stated that they do not reaffirm every decision; however, they reaffirm major decisions that were made when a majority of Council left office and a new majority came in.

Proposed Amendments to the City of Dover Charter

This item was deferred during consideration of the previous item.

Mr. Sudler moved for acceptance of the Legislative, Finance, and Administration Committee Report, seconded by Mr. Hosfelt and unanimously carried (Anderson and Lewis absent).

UTILITY COMMITTEE REPORT - JULY 27, 2015

The Utility Committee met on July 27, 2015 with Chairman Hutchison presiding.

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

During the committee meeting held earlier this evening, Mr. Scott Koenig, City Manager, informed members that the City's power supply attorney, Mr. Kirk Betts, Betts & Holt, LLP; Mr. Harry Maloney, Electric Director; and Mrs. Donna Mitchell, Controller/Treasurer, worked to negotiate an agreement with North American Energy Services (NAES) on behalf of the City of Dover to ensure that the City is getting the most out of the existing power plant with a third-party vendor operating it.

Members reviewed the Amended and Restated Operation and Maintenance Agreement dated July 1, 2015 between the City of Dover and North American Energy Services (NAES). Mr. Betts provided members with a revised Page B-1, Appendix B - Performance Adjustment Provisions, explaining that the Environmental factor was previously omitted. He advised that this revision did not affect the weight of the other factors in the performance adjustment section.

Mr. Betts stated that the section for environmental protection was a major issue for plant performance and this correction clarifies that NAES is penalized for each violation that occurs. He explained that, essentially, 25% of the 20% would be taken away each time there is a violation until four (4) violations occur, and they would be completely wiped out at 20%, which is about $100,000 on average over the five (5) year term of the contract.

Mr. Betts informed members that changes were occurring in the PJM environment and the entire energy market. He advised that PJM had changed the way power plants are treated for capacity purposes. Mr. Betts explained that, beginning in 2018/19, every plant will have to be a capacity performance resource, which means that each plant has to be available anytime a maximum emergency is declared. He reminded members that during the polar vortex there were several plants that were unable to dispatch when ordered, either because they had interruptible gas contracts and there was no gas available because of the temperatures, or they were unable to crank up the oil. Mr. Betts stated that, during this maximum emergency, PJM still had enough capacity but the margin was very narrow and, as a result, PJM went through a process, then went to the Federal Energy Regulatory Commission (FERC) with a recommendation that plants be called capacity performance resources and receive a premium. He explained that the premium is supposed to be a way to guarantee performance and would reimburse the entity for having both oil and natural gas back-up fuel or a firm contract, noting that it costs more to have a firm gas contract than an interruptible contract.

Mr. Betts advised that the premium is still unknown at this time but would be presented in the auction beginning on August 10, 2015, for the 2018/2019 market period. He stated that the expectation is that the price for capacity will be much higher than the current price, in order to ensure that plants will operate on maximum emergency days. Mr. Betts noted that the current market price for capacity is $118 per MW day and it is expected to increase to more than $180 per MW day, with some predictions indicating that it could be between $200 and $220 per MW day at this first auction.

Mr. Betts explained that the other side of the issue is that the penalties are outrageous if there is a failure of performance. He stated that the interim rules are still subject to rehearing at the FERC; however, since the penalties are significant, The Energy Authority (TEA) and the City of Dover have begun discussing whether the performance adjustments in the proposed NAES contract align with where the City currently is with PJM.

Referring to revised Page B-1, Appendix B - Performance Adjustment Provisions, Mr. Betts noted that under Commercial Unavailability and Capacity, if the plant does not perform, there is a reduction in NAES' compensation. He stated that Commercial Unavailability is 35% of more than $500,000, which is a significant reduction and more than what the City had in prior contracts; however, it would not

come close to the penalties for failure to perform. Mr. Betts reminded members that while a primary objective of the proposed contract was to ensure that the plant performs, there is a mismatch between the value of the contract and the penalties and, as a result, staff had discussed the possibility of adjusting the weights for Commercial Unavailability and Capacity in the coming year. Mr. Betts advised that in terms of the capacity performance requirement, the City is okay for this year but there will be a transitional capacity performance requirement and then the full requirement will begin in 2018/2019.

Mr. Betts stated that staff recommended 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), as presented with the inclusion of revised Page B-1, Appendix B - Performance Adjustment Provisions.

Mr. Blakeman questioned if it would take six (6) months to terminate the agreement if there was a catastrophic failure, especially after 2017 when the City is down to one (1) generating unit. Responding, Mr. Betts stated that the six (6) month termination notification would still apply; however, he indicated that something could always be worked out. He expressed his hope that the City would not have a catastrophic failure that would wipe out Unit 3 and the VanSant plant. Mr. Betts noted that the expectation is, with the improvements that are being made at VanSant, that the City would continue to bid that unit in, and he would recommend a modification of the contract rather than a complete termination.

Mr. Blakeman noted that the City would be losing Units 1 and 2, which would drop the City below the installed capacity to cover the peak load. He asked if there were still requirements to have enough capacity to cover the load and what the impact would be if the City only had the VanSant plant. In response to Mr. Blakeman, Mr. Betts stated that there was still a requirement to have enough capacity to cover the load and explained that the purchase power agreement with Calpine Energy Services, L.P. for 40 MW would be considered by City Council during their meeting scheduled for later in the evening. He explained that 40 MW would cover the loss of Units 1 and 2 as well as the additional increment the City needs. Mr. Betts informed members that the City would also go out in the periodic markets to pick up any other difference the City may have to cover.

The Committee recommended 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), as presented with the inclusion of revised Page B-1, Appendix B - Performance Adjustment Provisions, as recommended by Staff.

During the Council meeting, Mr. Koenig advised that City Staff, as well as the power supply attorney, Mr. Kirk Betts, have been negotiating this agreement on behalf of the City of Dover for a number of months. He noted that Mr. Betts has been at both of the last two (2) Utility Committee meetings to lay out the parameters of this agreement, which Mr. Koenig believed will put the City in a good position moving forward to efficiently manage power production.

Mr. Kirk Betts, Betts & Holt, LLP, advised that the agreement with North America Energy Services (NAES) has been subject to negotiations for quite some time and was finalized several weeks ago. He stated that the agreement is a five (5) year contract with a six-month termination agreement in the event that things change dramatically.

Mr. Betts stated that NAES has operated the plant on behalf of the City of Dover since 2007. With eight (8) years of significant experience, part of the position of the City's negotiating committee is that they have got a lot more ability to manage the risks that they did not have when they first took over this project eight (8) years ago. In light of that, the amount of funds that are at risk under the contract were increased while fixing the amount that they get as compensation for their management agreement. Mr. Betts advised that the City will see an immediate reduction of about $70,000, increasing over the next year and a half to two (2) years to close to $200,000 and, with changes in staffing, they expect that total to be about $500,000 annually during the term of this contract, which is a significant change. He stated that at the end of this contract in five (5) years the City would actually be paying less than it is paying today for the same services.

Mr. Betts advised members of the following contract items: the contract has a fixed fee and a fixed amount in the outreach section; NAES will continue to operate under the City's administrative procedures for procurement; there is now a special role for the City's Utility Director giving him a direct, regular contact with the plant; the services are well defined in Exhibit A of the contract; and services that are off-site have been incorporated into the base contract price.

Mr. Betts advised that there was a typographical correction to Exhibit B, which contains the performance amounts. He noted that the environmental component, which is 20% of the performance agreement, was omitted.

Mr. Hutchison moved to 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), as presented with the inclusion of revised Page B-1, Appendix B - Performance Adjustment Provisions *(Exhibit #3)*, as recommended by Staff. The motion was seconded by Mr. Neil and carried by a unanimous roll call vote (Anderson and Lewis absent).

Mr. Hutchison moved for acceptance of the Utility Committee Report, seconded by Mr. Hare and carried by a unanimous roll call vote (Anderson and Lewis absent).

QUARTERLY REVENUE REPORT

Members were provided the Quarterly Revenue Report as of May 2015.

By consent agenda, Mr. Hare moved for acceptance of the Quarterly Revenue Report as of May 2015, seconded by Mr. Hutchison and carried by a unanimous roll call vote (Anderson and Lewis absent).

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

Council President Slavin requested the following appointments to the Health Insurance Cost Research Ad Hoc Committee:

Councilman Scott W. Cole
Councilman William F. Hare
Mayor Robin R. Christiansen
Scott Koenig, City Manager
Donna Mitchell, Controller/Treasurer
Kim Hawkins, Human Resources Director

By consent agenda, Mr. Hare moved for approval of the appointments to the Health Insurance Cost Research Ad Hoc Committee, as recommended by Council President Slavin, seconded by Mr. Hutchison and carried by a unanimous roll call vote (Anderson and Lewis absent).

APPOINTMENTS/REAPPOINTMENTS - RECOMMENDED BY MAYOR CHRISTIANSEN

Mayor Christiansen requested the following appointments/reappointments:

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)

Ethics Commission - Gary Coy - Five (5) Year Term to Expire July 31, 2020

Public Advisory Committee of the Dover-Kent County MPO - Jonathan Contant - Two (2) Year Term to Expire July 2017

By consent agenda, Mr. Hare moved for approval of the appointments/reappointments, as recommended by Mayor Christiansen. The motion was seconded by Mr. Hutchison and carried by a unanimous roll call vote (Anderson and Lewis absent).

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

The City's power management team, along with The Energy Authority (TEA) and Mr. Kirk Betts, Betts & Holt LLP, recommended the purchase of 40 megawatts (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 and 2 plus another 6 MW of capacity to cover the City's projected load requirements. The five (5) year term gives the City time for planning, engineering, power contracting and/or construction to meet 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 must continue to meet its obligations to service all customers at lowest possible energy cost.

Mr. Kirk Betts, Betts & Holt LLP, advised that the Purchase Power Agreement consists of several parts. The first part is the Master Power Purchase and Sale Agreement (EEI) which allows the City to transact business from time to time with Calpine First Energy and Capacity Services. The second part is the actual transaction confirmation for 40 MW of capacity out of the new Garrison Energy Center, a plant located in Dover.

Mr. Betts reminded members that City Council made the decision to retire Units 1 and 2 by the 2018 energy year. He advised that the retirement will cause the City to be 34 MW, plus some other MWs of capacity, short. The purpose of this agreement is, in part, to conceptually replace that capacity. Mr. Betts stated that it will also create a hedge in the marketplace to protect the City against the volatility in the market for capacity.

Mr. Betts advised that the Federal Energy Regulatory Commission (FERC), acting in response to PJM, has now instituted a new way of looking at capacity, or capacity performance resource. The capacity performance resource means that this entity absolutely must perform during peak periods of maximum emergency in PJM. If that unit fails to perform, there is a tremendous penalty. Mr. Betts advised that Calpine is state-of-the-art, has a very low heat rate, is brand new, and has a very low probability of failing. Calpine assigns that capacity to the City of Dover and it is technically the City's most extraordinary unit for 40 MW and, if that unit fails, the City is not responsible for the penalty.

Mr. Betts noted that the third area of benefit is that the price, while originally proposed at $177.50, has been reduced by $1.50 due to the work of Mrs. Donna Mitchell, Controller/Treasurer, and the pressure from the City's utility group. He noted that this reduction will save approximately $110,000 over this five (5) year period. Mr. Betts advised that, although this is a significant commitment, it protects the City against volatility in the energy and capacity markets. He advised that they have been hearing prices in the $200 range and, with this contract, the price will be $176 per megawatt-day.

Responding to Mr. Sudler, Mr. Betts stated that he did not believe the price will be any lower in the auction and they were able to obtain a current premium with the contract. He advised that Calpine is also benefitting from a guaranteed stream of revenue from the City. He was confident that for the first year, which is 2018/19, the City will do better than what the market provides, noting that, like all options, there is volatility in the beginning and it sometimes drifts off. Mr. Betts stated that, considering planned and proposed retirements, capacity requirements, pressure for new, more expensive capacity, and volatility, this was the right step to take and the five (5) year term was appropriate.

Responding to Mr. Hosfelt, Mrs. Mitchell stated that this item is not budgeted in the current year and that the City is three (3) years out from budgeting it in FY2019. She noted that it has been included in the Financial Model.

Noting that the polar vortex was very costly to the City, Mr. Neil asked how the contract would protect the City against a future polar vortex. Responding, Mr. Betts stated that with this contract, the City would have 40 MW at Calpine, which has a firm gas contract and an oil backup, so there is an expectation that the plant will absolutely perform. Mr. Betts advised that the City of Dover plants have the same obligation to perform and they are considering many different options going forward to add value to the City without the risk of non-performance.

Mr. Hutchison moved to 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. The motion was seconded by Mr. Cole and carried by a unanimous roll call vote (Anderson and Lewis absent).

Council President Slavin, on behalf of all Council members, thanked the Staff members who worked on this issue with due diligence. He also thanked Mr. Betts for his efforts.

OVERVIEW OF STORM WATER SURVEY

Mr. Scott D. Koenig, City Manager, advised that the Department of Public Works is about to undertake a public opinion survey which will begin in early August and run through the end of September. He noted that this survey will provide multiple benefits to the City of Dover. First is to help ascertain information from the public on their feelings about the state of flooding and surface water quality within the City of Dover. The information gathered will provide useful data to continue with the City's storm water utility study that began last year under the direction of the Public Works engineers, in partnership with a grant from the State of Delaware.

Mr. Koenig stated that the second benefit is that the survey will be part of the City's required public outreach and education on issues facing storm water for the Municipal Storm Sewer System (MS4) permit. He noted that Staff is planning on having hard copies of this survey located at City Hall, the Dover Public Library, the Pitts Center, and 5 East Reed Street. Mr. Koenig stated that they would also utilize the City's website and Facebook page to promote the survey by linking to an internet-based survey collection system to tabulate the results.

Mr. Koenig noted that Staff is trying to get as many responses as possible to determine how people feel about flooding within the community, if it is really a problem or a perception, and how willing residents are to help resolve the issue. He reminded members that the City is behind on compliance with the MS4 permit and now that the environmental scientist is on board, Public Works staff has been working diligently to comply with the permit.

Mr. Koenig stated that although work on the permit has been transferred to the Department of Public Works, the Planning Office continues to provide a number of support functions in regard to the MS4 permit.

Mr. Sudler suggested that the survey be disseminated with the utility bills to increase participation.

COUNCIL MEMBERS' ANNOUNCEMENTS

Mr. Sudler announced that he and Mr. Anderson would be hosting a celebration and unity day in the Fourth District on Saturday, August 1, 2015 from 1:00 p.m. to 8:00 p.m. at Mishoe Park, 320 Raymond Street. The purpose will be to celebrate Mr. Sudler's 2015 election to the City Council and to strengthen the morale of the Fourth District through fellowship, unity, and family. Mr. Sudler stated that entertainment would be by Faces of Motown.

Mr. Hosfelt moved for adjournment into the Special Council meeting, seconded by Mr. Cole and unanimously carried.

Meeting adjourned at 8:49 p.m.

TRACI A. McDOWELL
CITY CLERK

All ordinances, resolutions, motions, and orders adopted by City Council during their Regular Meeting of July 27, 2015, are hereby approved *(with the exception of the following motion: To affirm City Council's decision of March 23, 2015 to move the Economic Development Office under the City Manager, with the understanding that this matter will be revisited in September, which could lead to a different action).*

ROBIN R. CHRISTIANSEN
MAYOR

/TM
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Exhibits
Exhibit #1 - Presentation - Violation of Dangerous Building Ordinance - 110 Rustic Lane
Exhibit #2 - E-mail Dated July 27, 2015 From Joan Denny
Exhibit #3 - Amended and Restated Operation and Maintenance Agreement dated July 1, 2015 between the City of Dover and North American Energy Services (NAES) with Revised Page B-1, Appendix B - Performance Adjustment Provisions

Violation of Dangerous Building Ordinance 110 Rustic Lane

Planning & Inspections Department

Dover, Delaware

July 27, 2015

EXHIBIT #1
Regular Council Meeting of 07/27/2015

110 Rustic Lane
Case History

- 5 code enforcement cases since 2013
  - Exterior code violations – Junk/debris in yard
  - Broken windows – Damaged fascia/soffit
  - Tall grass and weeds.
- The utilities were terminated on October 19, 2011
- Registered as vacant by the city on April 15, 2014
- On February 19, 2015, City Staff condemned the structure as unfit for human habitation and ordered the building to be secured.
- Outstanding Charges
  - $500.00 in unpaid vacant building registration fees
  - $25.00 grass citation

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

(5) *Unfit for habitation.*

(9) *General welfare.*

(10) *Code violations.*

(12) *Unoccupied buildings.*




B

























Recommended Council Action

- Declare this building and all accessory structures on this property dangerous.
- Order the property repaired or demolished by **August 27, 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.

Stein, Jody

From: Joan <jed1492@aol.com>
Sent: Monday, July 27, 2015 12:33 PM
To: City Clerks Office
Subject: Correspondence to be read into the record of tonights meeting

TO BE READ IN IT'S ENTIRETY AT CITY COUNCIL MEETING JULY 27, 2015

As I was unable to attend the Legislative Finance Administration Committee meeting on Monday July 13, 2015, I sent an email requesting that my comments concerning proposed changes to the City Charter be read into the record. I am now aware that my comments were not read into the record at that meeting.

As I am trying to be fair, I will assume that the Mayor's remarks on the subject at the July 13 meeting may have led someone to believe that reading my email was no longer necessary.

However, my intention was not to have the email read only if the subject of Charter change came up, but to enter into the record my statement to the Council of the significance of the proposed Charter changes, and the gravity of Council's actions.

I understand that not every Council person may be aware of the importance of making changes to our Charter. Not every elected official has a degree in Public Management. I hope the reading of this correspondence will serve as a reminder that there is a need to slow down the process. Those directly involved in this issue-- especially newly elected officials-- need to pause and take a deep breath. We all need to fully understand where we have been before moving forward with these proposed changes.

We elect a Mayor and Council and, in that process, we give those officials the power to represent us. Diluting the power of the Mayor and Council by passing decision making on to the City Manager and City Clerk is essentially changing our form of government. This matter must not be taken lightly.

The following is my original email of July 13, 2015:

.....

Honorable Council members:

The City Charter is the foundation document behind the government. The Charter outlines the scope of what the government does as a whole, including its rules and responsibilities to the citizens. It also lists the powers, checks, and

balances that guide and define the Council. In all these ways, the charter represents the needs of the city as a whole.

As I read these proposed changes, I feel they are primarily giving power to an unelected official, namely the city manager, and diluting the power of the elected Mayor and elected Council. These proposed changes, as now written, redirect power to the city manager, and take away the responsibilities of elected officials.

These proposed changes must be accompanied by multiple ordinance changes, as well as changes to job descriptions. Details can be discussed at length, but this in itself is a complex process which clearly requires more study and discussion.

I know you all have good intentions and some recent events may be the driving force for some of these proposed actions. Please use great caution as you consider appointing a "king maker".

I also want to point out that I became aware of this important meeting only by chance, and I wonder just how many taxpayers are unaware as well. I feel strongly that in fairness to the constituents these types of discussions should not be held in the summer, when many are vacationing. And notice to the public must be made in the most visible ways.

While I am certain there was no intent of a clandestine meeting to make changes behind the back of the taxpayers, I am sure you would agree that the appearance sometimes outweighs the intent.

Joan Denney

.

Final

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.

APPENDIX B - PERFORMANCE ADJUSTMENT PROVISIONS

City of Dover

Matrix for Calculating Section 7.7 Performance Adjustments

Factor	Weight	Measure	No Adjustment	Full Adjustment	Adjustment Methodology
Commercial Unavailability	35.00%	Commercial Unavailability (CU)	less than 2% of dispatched hours	10% of dispatched hours	CU Calculation: $CU=\{(FO_{U1}+E_{U1})*(17MW) + (FO_{U2}+E_{U2})*(17MW) + (FO_{U3}+E_{U3})*(102MW) + (FO_{U11}+E_{U11})*(39MW)\} / 8760 \text{ hours}*(175MW)$
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.
Safety Performance	15.00%	Required Safety Training Complete	98%	90%	
		Required NAES Housekeeping Inspections	98%	90%	Equal weights
		Required NAES Safety Observations	98%	90%	
Environmental	20.00%	Number of Notice of Violations in budget year	0	4	
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.
Available hours = total hours per year when units are available for dispatch, excluding scheduled and unscheduled outage hours.

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 E

SITE MAPS

(Site maps for McKee and VanSant showing maintenance responsibility)

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