MEMORANDUM

Department Public Services – Planning & Inspections
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Dover, Delaware 19903
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Date: September 24, 2007

To: City Council

From: Ann Marie Townshend, AICP

RE: Extension of Rezoning – Lands of Leon & Dorothy Hansen (Z-06-09)

On this evening's Council agenda, you are considering a request from Ronald Lawhon to extend the timeframe on the rezoning of property located on the north side of White Oak Road and northeast of the intersection of White Oak and Halsey Road. On September 11, 2006, City Council rezoned this land from C-PO (Commercial and Professional Office Development District) to IO (Institutional and Office Zone).

According to Article 10, Section 5 of the *Zoning Ordinanc*e, because a year has passed and no construction has commenced, Council is supposed to reconsider the zoning classification through an amendment to rezone the land to its previous classification unless certain conditions are met. In this circumstance, the applicant is providing an explanation of why construction has not commenced. If Council finds this explanation satisfactory, the land may remain in the IO (Institutional and Office Zone) classification. If not, an amendment must be brought forward and public hearings set before Planning Commission and City Council to rezone the land to the C-PO (Commercial and Professional Office Development District).

To refresh your memories on this rezoning application, I've included a copy of the report to Council from last year, as well as a location map of the property. Also, below is the language from Article 10 of the *Zoning Ordinance* that addresses this situation.

As always, if you have any questions, please let me know.

> 5.183*[Rezoning to prior classification.]* In all cases where the city council shall approve an amendment to the zoning map because of a request for new construction of buildings or structures on the rezoned land or where new construction is required to carry out the new use on the rezoned land, the city council shall reconsider the zoning classification by having an amendment to rezone the land to its prior classification be automatically placed on the agenda by the city clerk, unless, within one year from the effective date of the amendment to the zoning map, one of the following conditions is met:
>
> a. New construction is started on the rezoned land according to the request for the amendment and such construction is proceeding in a normal and reasonable manner toward completion; or

b. City council is given a satisfactory explanation for the failure to commence construction and reasonable written assurance that construction will commence soon after passage of the one-year period and will proceed in a normal and reasonable manner toward completion; or

c. The current zoning is in conformance with the current comprehensive plan and its prior zone was not conforming with the current comprehensive plan.

SECOND AMENDMENT

to the

OPERATION AND MAINTENANCE AGREEMENT

for the

DOVER GENERATION FACILITIES

THIS SECOND AMENDMENT to the Operation and Maintenance Agreement ("the Agreement") is entered into this ____ day of July 2007, by and between City of Dover, Delaware (the "Owner"), a Delaware municipality, with offices located at 15 Loockerman St., Dover, Delaware 19901**,** and NORTH AMERICAN ENERGY SERVICES COMPANY (the "Operator"), a Washington corporation, with offices located at 1180 NW Maple Street, Suite 200, Issaquah, WA 98027.

WITNESSETH:

WHEREAS, Owner and Operator desire to amend their Agreement, dated May 4, 2006, and previously amended on July 10, 2006;

NOW, THEREFORE, in consideration of these premises, and of the mutual covenants and promises set forth below, the parties hereby agree to the following amendments to the Agreement:

1. Amendments.

Section B(3)(A) of Appendix B to the Agreement is deleted in its entirety and replaced with the following:

A. Commercial Unavailability (CU) [$80,000 potential]
   a. The CU shall be calculated for each Operating Year collectively for all units (currently McKee Run Units 1-3 and VanSant).
   b. Only those forced outage events recognized and tracked by the PJM will be included in the CU calculation.
   c. The target CU is 2.25%.
   d. If the calculated CU is greater than 2.25% then Operator is not eligible for CU bonus.
   e. If the calculated CU is less than the target CU of 2.25%, then Operator is eligible to earn a CU bonus up to $80,000 for a CU of 0%.
   f. For any CU that falls between 2.25% and 0%, the CU shall be calculated and rounded to the nearest hundredth of a percent, and the bonus interpolated on a straight-line basis.
   g. Commercial Unavailability shall be calculated using the following equation:

$$CU = \{(FO_{U1} + E_{U1})*(17MW) + (FO_{U2} + E_{U2})*(17\ MW) + (FO_{U3} + E_{U3})*(102MW) + (FO_{U11} + E_{U11})*(39MW)\} / (8760HRS^{1})(175MW)$$

[1]Adjusted to 8784 for leap years.

Where:
U1 = Unit 1 of McKee Run U2 = Unit 2 of McKee Run
U3 = Unit 3 of McKee Run U11 = VanSant 11
FO = Forced Outages (in Hours)

E = Equivalent De-rate (in Hours) = (Number of MW that the unit is de-rated multiplied by the duration in hours of de-rating) / Unit normal capacity in MW)

If an outage event of significant duration is extended due to a cause beyond the control or without the fault of Operator, Operator may ask the Dover Management Committee, as established in Article IV of the agreement between Owner and Asset Manager, for a decision as to whether any outage hours may be excluded from the CU calculation.

Notwithstanding the above formula, the parties agree that for the first Operating Year, ending June 30, 2007, Operator shall be entitled to a CU bonus of sixty thousand dollars ($60,000).

2. Effective Date. This Amendment shall be effective July 1, 2007.

3. Other Provisions. All other provisions of the Agreement shall remain in full force and effect. If there is any conflict between those provisions and this Amendment, the provisions of the Agreement shall be read so as to give effect to the intent of the parties as manifest in this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Agreement through their duly authorized officers as of the date set forth in the preamble to this Amendment.

OWNER:	OPERATOR:
CITY OF DOVER	NORTH AMERICAN ENERGY SERVICES COMPANY
By: _____	By: _____
Name:	Name: Tom DeNova
Title:	Title: President & CEO

LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE
SCHEDULE FOR REVIEW OF
2005 CHARTER REVIEW COMMITTEE RECOMMENDATIONS

10/08/2007 **ARTICLE I. GENERAL PROVISIONS**

Sec. 1. - Municipal corporation continued; boundaries.

Sec. 1A. - Procedure to extend boundaries.

Sec. 2. - Status, general corporate powers, specific provisions for condemnation of property.

Sec. 3. - Enumeration of power not exclusive; manner of exercise of powers; employee pension, benefit and retirement systems authorized.

10/22/2007 Explanation of NAACP Consent Decree by City Solicitor

11/12/2007 **ARTICLE II. MAYOR AND COUNCIL**

Sec. 4. - Government vested in mayor and city council.

Sec. 5. - Council to be legislative body; size; districts; terms of mayor and councilmen; qualifications.

Sec. 6. - Municipal election dates.

Sec. 7. - Nomination petitions for candidates for council and mayor.

Sec. 8. - Time and place of elections; election board; counting of votes; determination of winners; tie votes; persons eligible to vote; voter registration; official ballots and voting machines; absentee ballots.

Sec. 9. - Meetings of mayor and council--Generally.

Sec. 10. - Meetings of mayor and council--Procedure.

Sec. 11. - Council to be judge of election results and qualification of members; power to fix procedure.

Sec. 12. - Compensation and expenses--Mayor and council and other elected or appointed officials.

Sec. 13. - Filling vacancies for council or mayor.

Sec. 14. - Duties of mayor.

Sec. 15. - Council president/vice-mayor, duties of.

11/26/2007 **ARTICLE II. MAYOR AND COUNCIL** (Continued)

Sec. 16. - Clerk of council.

Sec. 17. - City treasurer.

Sec. 18. - Ordinances authorized; maximum penalty for violation.

Sec. 19. - Power of council to define and abate nuisances.

Sec. 20. - Power of council to provide for fire protection measures.

Sec. 21. - Power of council to adopt zoning ordinances.

Sec. 22. - Power of council to regulate construction of buildings and require permits; building inspector authorized.

Sec. 23. - Power of council to create city planning commission; members generally.

Sec. 24. - Power of council to franchise or license public utilities and common carriers.

Sec. 25. - Power of council to operate light, power or water plant.

Sec. 26. - Power of council with reference to sewers.

Sec. 27. - Power of council to layout, locate, abandon, etc., streets, sidewalks, etc.

Sec. 28. - Power of council to pave streets, sidewalks, etc. and levy assessment for public improvements; municipal lien docket.

A. Sidewalks

B. Streets

C. Special Assessments

D. Municipal Lien Docket

Sec. 29. - Streets, sidewalks, etc. to be under control of council; power of council to prescribe grades thereon and regulate.

Sec. 30. - Power of council to provide for disposal of garbage and sewage.

Sec. 31. - Power of council to regulate parking and provide parking lots.

Sec. 32. - Council to determine salaries of city appointees and employees.

12/10/2007 **ARTICLE III. CITY MANAGER**

Sec. 33. - The city manager generally.

Sec. 34. - Responsibility of manager; powers of appointment and removal.

Sec. 35. - Removal of employees by manager.

Sec. 36. - Council not to interfere with appointments or removals of manager; giving orders to subordinates of manager prohibited; penalty for same.

Sec. 37. - Duties of the manager.

Sec. 38. - Right of manager to sit in council meetings.

Sec. 39. - Investigations by council.

Sec. 40. - Other functions of city manager.

Sec. 41 - This section left intentionally blank

01/14/2008 **ARTICLE IV - FINANCIAL AFFAIRS**

Sec. 42 - Signing of warrants

Sec. 43 - Fiscal year

Sec. 44 - Annual budget

Sec. 45 - Payment of claims; issuance of warrants after approval of city manager; reports by manager thereon to council.

Sec. 46 - Annual audit

Sec. 47 - General assessment and levy on utility property

Sec. 48 - Maximum budget

Sec. 49 - Payment and collection of taxes; errors and delinquents in assessments

Sec. 49A - Assessment, payment, and collection of taxes for new construction

Sec. 50 - Debt limit

01/28/2008 **ARTICLE V. MISCELLANEOUS PROVISIONS**

Sec. 51. - Trees.

Sec. 52. - This section left intentionally blank

Sec. 53. - Police; mayor to be conservator of peace.

Sec. 54. - City solicitor.

Sec. 55. - Powers of Town of Dover or town council conferred on city or city council.

Sec. 56. - Ordinances passed by town council continued in effect.

Sec. 57. - Officers of town to be initial city officers; prior actions of town council ratified.

Sec. 58. - Debts due to town to be due to city; impairment of bonds.

Sec. 59. - Printed copies of ordinances and resolutions to be proper evidence.

Sec. 60. - Repeal of prior acts.

Sec. 61. - Severability.

Dates to be Determined at Conclusion of Review:

Public Hearing - 1st District
Public Hearing - 2nd District
Public Hearing - 3rd District
Public Hearing - 4th District

LF&A Meeting to Revise Recommendation Based on Public Comment
LF&A Meeting to Review and Finalize Recommendations
Recommendations to City Council