

**DRAFT FORM OF
OPERATION AND MAINTENANCE AGREEMENT
NOT TO BE DEEMED AN OFFER**

This **OPERATION AND MAINTENANCE AGREEMENT** dated as of **July 1, 2006**, is by and between _____, a _____ (Operator) and the **CITY OF DOVER, DELAWARE** (“Dover” or "Owner").

RECITALS

WHEREAS, Owner owns four oil and gas fired electric generation units located in Dover, Delaware, consisting of the McKee Run Units 1, 2 and 3, and the Van Sant Generating Station Unit 11, which total 175 megawatts of summer net capacity (each such facility, a “Facility” and together, the “Facilities”),

WHEREAS, Owner and Operator, by itself and through suppliers and subcontractors, desire that Operator continue to provide certain operation and maintenance services for the Facilities;

WHEREAS, Owner and Operator desire to set forth the terms pursuant to which Operator shall provide services for the operation and maintenance of the Facilities.

NOW, THEREFORE, in consideration of the premises and the mutual promises and agreements of the parties herein expressed, the parties, intending to be legally bound, hereby agree to the following:

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**ARTICLE 1
DEFINITIONS**

SECTION 1.01. Certain Defined Terms. As used herein and unless otherwise expressly indicated, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

["**Affiliate**" means any corporation or other entity which, directly or indirectly, controls or is controlled by or under common control with a party or a member of a party to this Agreement. For the purposes of this definition, "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to a party, means the power to direct or cause the direction of the management and policies of such party, directly or indirectly, whether through the ownership of voting securities or by contract or otherwise. Ownership of 50% or more of the voting securities of a corporation, either directly or indirectly, shall constitute control of such corporation, but the foregoing shall not preclude a finding that a party may control another corporation through ownership of less than 50% of such voting securities.]

"**Agreement**" means this Operation and Maintenance Agreement (including all exhibits and schedules attached hereto), as it may be amended and supplemented from time to time.

"**Budget**" means a projection of expenses for an Operation Year, as established pursuant to Section 3.08.

"**Capital Equipment**" means all equipment, apparatus, structures, tools, and other goods integral to the operation of the Facilities, which individually have a purchase price or fair market value in excess of \$10,000 and a useful life in excess of one year.

"**Consumables**" means all items consumed or needing regular periodic replacement during the operation and maintenance of the Facilities, including, but not limited to, water

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treatment chemicals, small tools, lubricants, rags, oils, filter media, additives, anti-corrosion devices, gases (CO₂, O₂, Halon, etc.) and other expendable materials, but not Spare Parts or fuel.

"Delmarva" means Delmarva Power & Light Company, its successors or assigns.

"Delmarva Interconnection Agreement" means the Interconnection Agreement between Delmarva Power and Light Company and the City of Dover, Delaware dated September 12, 2004, as amended from time to time.

"Dependable Capacity" means, for each Operation Year, the Facilities' net electric power generating capability (net of parasitic loads and transformer losses) available for sale or dispatch (measured in megawatts) as determined pursuant to the PJM Agreement and/or PJM established procedures.

"Direct Plant Management and Labor Costs" means all direct and indirect labor costs consisting of and limited to: payroll; FICA; medical, dental, and other customary insurance provided for the benefit of employees; company stock plans; retirement plan contributions, and others as mutually agreed to by the Parties. Operator's aggregate markup (to cover all indirect payroll burden costs) on actual direct salaries and wages paid will be _____(%) commencing fiscal year July 1, 2006. Such markup will be adjusted annually to reflect actual cost as mutually agreed to by Owner and Operator and subsequently reflected in the Budget. In addition, to cover other indirect costs, Owner shall pay Operator \$_____ per month beginning July 1, 2006, adjusted annually based on the prior year's annual average Inflation Index with the first such adjustment on July 1, 2007 and the base of the Inflation Index being the annual average index for the calendar year-2006.==

"Equipment" means, collectively, the Capital Equipment and the Facility Equipment.

"Facility" or "Facilities" has the meaning in the Recitals.

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"Facility Capacity" means the target Dependable Capacity for the Facilities as set forth on Exhibit I.

"Facility Costs" means the target Operating Costs for the Facilities as set forth on Exhibit I.

"Facility Equipment" means, collectively, all equipment, materials, apparatus, structures, and other goods (other than Capital Equipment, Spare Parts, Consumables or Facility Tools) incorporated into, or used for the operation of, the Facilities.

"Facility Heat Rate" means the target Heat Rate for McKee Run Unit 3 as set forth on Exhibit I.

"Facility Outage Rate" means, for each Operation Year, a target Forced Outage rate of 4.5%.

"Facility Tools" means tools required to perform the operation and Routine Maintenance of the Facilities.

"Facility Work Force" means, employees of Operator, its partners, their Affiliates, or Operator's subcontractors who will perform the operation and Routine Maintenance of the Facility. The proposed organizational structure of the Facility Work Force shall be as reflected in Exhibit E.

"Force Majeure" has the meaning specified in Section 12.01.

"Forced Outage" has the meaning in the PJM Agreement, or in any successor agreements (provided that the Operator has approved the meaning in such successor agreements which approval shall not be unreasonably withheld) or, if such agreements are no longer in effect, pursuant to prevailing industry standards. The term "Forced Outage" excludes any Scheduled Outage.

"Forced Outage Rate" means, for each Operation Year, the Equivalent Forced Outage Rate as defined by NERC.

"Fuel" means natural gas and fuel oil.

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"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 Facilities.

"Governmental Requirements" means all authorizations, consents, exemptions, permits, certificates, laws, ordinances, rules, regulations, requirements and approvals of and from any federal, state, county or local governmental entity having jurisdiction with relation to the operation and maintenance of the Facilities, purchase or transportation of Fuel to the Facilities, sale or dispatch of generating capacity and corresponding energy of the Facilities.

"Heat Rate " means, for each Operation Year, the average number of Btus consumed by the Facilities to produce one kilowatt hour.

"Inflation Index" means the Gross National Product Implicit Price Deflator (GNPD) published by Bureau of Economic Analysis (BEA), or if publication of that index ceases, a similar index published by such other organization as Owner and Operator may mutually agree.

"Interconnection Facilities" - means all of the facilities installed by Owner to enable Owner to receive energy from the Facilities at the Interconnection Points, including but not limited to: all metering equipment; transmission and distribution lines and associated equipment; transformers and associated equipment; relay and switching equipment; protective devices and safety equipment; and telemetering equipment, wherever located.

"Interconnection Points" means the Points of Delivery as defined in [the _____] Agreement.

"Miscellaneous Expenses" means (a) the actual cost of attorneys' fees, costs, settlements, and/or judgments incurred in connection with any labor or commercial matters, litigation, claims or disputes (except between Owner and Operator) arising out of or in connection with the performance of this Agreement, except (i) those fines and penalties resulting from Operator's operation of the Facilities or performance of Services in a manner in violation of any environmental permit or other Governmental Requirements not resulting from Operator's compliance with a written instruction or direction from Owner and (ii) fees, costs, settlements,

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and/or judgments that are reimbursed by proceeds of insurance provided pursuant to Section 13.01; and (b) miscellaneous expenses, including, but not limited to, personnel business expenses, custom printed forms, special book bindings, drafting room and office materials and supplies, freight, express, duties, taxes (other than taxes on net income), insurance premiums, insurance deductibles, and any other direct costs incurred in connection with the Services.

"Operating Costs " means all of the costs for operating and maintaining the Facilities under this Agreement for which Operator is entitled to be reimbursed.

"Operation Fee" means payments to be made by Owner to Operator pursuant to Section 5.02 of this Agreement.

"Operation Year" means a 365 period commencing July 1, 2006. If an Operation Year is less than 365 days, any calculation in this Agreement that references the Operation Year shall be adjusted by multiplication of the appropriate figure by a fraction, the numerator of which shall be the number of day in that Operation Year and denominator of which shall be 365.

"Operator" means _____.

"Owner" means the City of Dover, Delaware.

"Owner's Representative" means the person (or entity) that is authorized and designated by the City of Dover to represent its interests with respect to the operation and maintenance of the Dover Generation.

"PJM Agreement" means the Pennsylvania-New Jersey-Maryland Interconnection Association Agreement.

"Payment Request" means the periodic written requests to be submitted by Operator to Owner (in accordance with Article 5 hereof) for payment in consideration of Services, setting forth in reasonable detail the items specified in Section 5.02 hereof, substantially in the form set forth in Exhibit H-

"Plan of Operations" means Owner's instructions to Operator specifying the Owner's operating objectives for the applicable period.

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"Plant Manager" means an individual designated by Operator, and approved by Owner, pursuant to Article 3 hereof, who shall supervise the performance of the Services, act as Operator's liaison with Owner, and who shall be duly authorized to act for and commit Operator in regard to all matters under this Agreement.

["Power Agreement" means the [power supply agreement between _____ and Dover dated the date hereof.]

"Prudent Utility Practices" means those utility and engineering practices and methods, as such may be changed from time to time, which will result in the operation and maintenance of the Facilities as efficiently, safely, economically and reliably as is prudent under prevailing circumstances, in compliance with any applicable Governmental Requirements.

"Routine Maintenance" means maintenance, excluding Scheduled Maintenance, of a regular or minor nature that should be performed periodically to keep the Facilities in working order including, but not limited to, lubrication, repacking of valves, minor leak repair, adjustments, preventive maintenance, calibrations, replacement of Consumables and similar services, outage repairs and general housekeeping during Owner's off-peak hours. Routine Maintenance is to be performed by the Facility Work Force in the course of performance of its operating duties within the capabilities of the workforce identified in Exhibit E.

"Safety Program" means Operator's safety program designed to assure that all Services are performed, and the Facilities are operated and maintained, in a safe manner and in compliance with all Governmental Requirements governing safety.

"Scheduled Maintenance" means the planned periodic overhaul and repair of the mechanical and electrical equipment of the Facilities in accordance with Operator's reasonable

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recommendations, subject to the manufacturers' and Owner's recommendations and requirements.

"Scheduled Outage" means a planned complete or partial interruption in a Facility's generation that (a) has been coordinated in advance with the Owner with a mutually agreed to start time duration and (b) is required for inspection, preventive maintenance or corrective maintenance of the Facility.

"Services" means all work to be done by Operator under this Agreement, and includes all obligations, duties, and responsibilities of Operator pursuant to this Agreement, and as more specifically set forth in Exhibit A.

"Site" means the land located in Kent County, Delaware on which each of the Facilities is located, and includes easements, rights of way and other lands along which railroads, water pipelines, wastewater discharge lines and other utilities have been constructed as described and set forth on Exhibit J, excluding those areas South of the railroad tracks at the McKee Generating Station which Owner uses for laydown and storage of its heavy equipment and part and which is not under Operator's control.

"Site Procedures" means a plan developed by Operator pursuant to Section 3.04, prescribing the manner in which Services will be performed at the Site.

"Spare Parts" means spare parts for the Facilities.

"Subcontractor" means any party with whom Operator enters into a subcontract for the performance of Services or for the supply of Equipment to Operator, including parties at any level with whom any Subcontractor has further subcontracted any part of the work, and the legal or personal representatives, successors, and assigns of such party.

"Training Program" means Operator's training program for its personnel responsible for operation and maintenance of the Facilities.

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"Utilities" means water, sewer, electric and telephone purchases.

SECTION 1.02. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied, except as otherwise stated herein.

SECTION 1.03. General References. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall, unless otherwise specified, refer to this Agreement as a whole and not to any particular provision of this Agreement.

**ARTICLE 2
RELATIONSHIP OF OWNER,
OPERATOR AND SUBCONTRACTORS**

SECTION 2.01. Status of Operator. Operator shall perform and execute its obligations under this Agreement as an independent contractor to Owner and, except as specifically provided in this Agreement, shall not be an agent or employee of Owner. All notices, reports and other communications required to be made by Operator pursuant to Sections 3.20, and 3.21 of this Agreement will be issued as agent for Owner.

SECTION 2.02. Subcontracts and Subcontractors. Subject to Section 3.03, Operator may have any part, but not all, of the Services accomplished by Subcontractors pursuant to written subcontracts between Operator and such Subcontractors.

(a) The creation of any subcontract relationship shall not (i) relieve Operator of any of its obligations under this Agreement, (ii) relieve Operator of its responsibility for the performance of Services rendered by any such Subcontractor, or (iii) create any relationship between Owner and any Subcontractor. Insofar as is reasonably practicable, Owner shall communicate with any Subcontractor only through Operator.

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(b) No Subcontractor is intended to be or shall be deemed a third-party beneficiary of this Agreement. As a condition of any subcontract, Operator shall require any Subcontractor to waive any claim it might have, in law or equity, directly against Owner. Operator shall cause all subcontracts to be assignable to Owner, unilaterally by Operator, without the consent or approval of the Subcontractor.

(c) Operator may have Services (other than those Services to be performed under subcontracts as designated in the Budget) performed by its members, their Affiliates or their employees, in which event Operator shall be responsible for such Services and Owner shall look solely to Operator as if the Services were performed by Operator. Such Services performed by Operator's members, their Affiliates or their employees will not be deemed to be subcontracted and the wage and salary rates and markups for such Services will not exceed the Operator's costs.

SECTION 2.03. Status of Owner. *[If there is a third party dispatcher]*
_____ shall act as Dover's agent for all purposes under this Agreement and, in so acting, may exercise [certain/all] of the rights and shall perform all of the obligations of Dover. Operator shall receive and accept all directions, instructions and communications under this Agreement from _____ and shall send all payments, invoices, communications and requests to _____. Notwithstanding the foregoing Dover shall be entitled to give, and Operator shall accept from Dover, a notice of termination pursuant to Section 8.01, to the extent provided in Section 8.01.

**ARTICLE 3
OPERATOR'S RESPONSIBILITIES**

SECTION 3.01 Operator shall do all things necessary to the proper operation and maintenance of the Facilities in accordance with Prudent Utility Practices.

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SECTION 3.02. Operations and Maintenance. Operator shall manage and perform the operation and maintenance Services, as set forth in Exhibit A, under the reasonable direction and control of Owner.

SECTION 3.03. Subcontractors. Operator shall be solely responsible for the engagement and management of Subcontractors in the performance of the Services. Notwithstanding the foregoing, Operator shall not (a) subcontract any part of the Services with a value in excess of \$100,000 per annum without the prior approval of Owner nor award subcontracts to one or more Subcontractors with an aggregate value in excess of \$250,000 per annum without Owner's prior approval, which approvals shall not be unreasonably withheld, or (b) award any subcontract in excess of \$100,000 to any Subcontractor not approved by Owner. Operator shall maintain a list of approved subcontractors subject to review and approval of Owner, and will select the Subcontractors described above from the Owner approved list by fair, competitive bidding practices unless specifically approved otherwise in advance by Owner and will select all Subcontractors by fair methods resulting in competitive prices. Operator will not award or enter into any Subcontract with any subcontractor that is not on the approved Subcontractors' list, nor will Operator select any Subcontractor without applying the above practices unless Owner approves such selection or award in advance.

SECTION 3.04. Site Procedures. Operator shall perform all Services in accordance with Site Procedures established pursuant to this Agreement, and shall notify Owner as soon as practicable whenever Operator is not in compliance with all material aspects of the Site Procedures. Attached as Exhibit B is a detailed outline of the Site Procedures, which procedures shall be (a) in compliance with all Governmental Requirements; (b) in accordance with Prudent Utility Practices; (c) consistent with all manuals and instructions relating to the Facility and the Equipment provided to Operator by Owner; (d) consistent with those

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requirements relating to the operation and maintenance of the Facilities as shall be set forth in this Agreement; and (e) consistent with customary industry standards. Copies of the Site Procedures shall be available at the Facilities. In the event of any conflict between or among any of the above requirements, the prevailing requirement shall be determined by Owner. Operator shall orally notify Owner of any amendment or modification to the Site Procedures within five days and shall deliver notice of such amendment or modification in writing within 30 days of making such amendment or modification. Within 30 days of receipt of the Site Procedures, or amendments or modifications thereto, Owner shall notify Operator of any objections of Owner thereto, by written notice which shall describe in detail the reasons for such objection. Owner may, from time to time, request Operator to amend or modify the Site Procedures, and, absent a showing that such request is unreasonable, Operator shall comply with Owner's request.

SECTION 3.05. Operation. Operator shall operate the Facilities in accordance with the Site Procedures outlined in Exhibit B and the operating parameters in Exhibit C. Operator shall use all reasonable efforts to ensure that the equivalent availability factor of the Facilities, as defined by NERC, shall be at least 95% (except in the year in which a major overhaul is scheduled by mutual agreement.)

SECTION 3.06. Maintenance. Operator shall provide the Scheduled Maintenance for the Facilities, including planning, outage management, technical supervision, labor, tooling and equipment, and inspection reports and recommendations, all in accordance with Scheduled Maintenance requirements as specified in Exhibit ____, or specifically identified by Owner to Operator. Operator also shall provide unscheduled maintenance and repair services, as may be required from time to time. Operator's Facility Work Force shall perform Routine Maintenance in the course of performance of its operating duties. The provision of

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Scheduled Maintenance, Routine Maintenance and unscheduled maintenance shall be subject to, and modified as necessitated by, the requirements of Owner.

SECTION 3.07. Tools and Materials. Operator shall purchase and maintain an inventory of Equipment, Spare Parts, Facility Tools and Consumables adequate to support continuous and successful operation of the Facilities, which inventory shall be deemed adequate if it meets the requirements set forth in the Site Procedures. To the extent practicable, all Equipment and Spare Parts provided hereunder by Operator shall be new and not previously used. Operator shall not, without the prior approval of Owner, enter into any commitment for the procurement of Equipment, Facility Tools, Spare Parts or Consumables that obligates Operator to make an expenditure in excess of [\$25,000.00] for any one transaction or series of transactions. **SECTION 3.08. Budget.**

(a) No later than 90 days before the commencement of each Operation Year, Operator shall submit to Owner a detailed two year Budget proposal in substantially the same form as Exhibit _____, setting forth by line item entries the proposed total annual Budget for each of the next two years in such detail and form as may be requested by Owner, including, but not limited to, (i) the proposed amount to be spent annually for management costs, labor costs, materials costs and subcontracted Services costs; (ii) the proposed amounts to be spent for the purchase of Capital Equipment, Facility Equipment, Spare Parts, Consumables and Scheduled Maintenance; (iii) a projection of the Facility Work Force to be employed and Services to be performed; (iv) proposed maintenance plan and budget; and (v) proposed inventory plan.

(b) Within 45 days after Owner receives Operator's Budget proposal, Owner shall advise Operator of any proposed changes to the reimbursable costs portion of the Budget and projections reflected therein, as Owner may deem necessary or appropriate. Within 15 days following receipt of any such advice from Owner, Operator either shall confirm to Owner its

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ability to perform the Services during such period in accordance with Owner's proposed changes, or object to such changes, stating in detail the reason for such objection. If Owner and Operator are unable to agree on the Budget prior to the first day of any Operation Year, the sum paid with respect to expenses for the immediately preceding Operation Year, adjusted pursuant to the Inflation Index, shall be deemed applicable for such Operation Year, until such time as Owner and Operator reach agreement on a Budget.

SECTION 3.09. Training Program. Operator maintains a regular training program (the "Training Program"), the scope and content of which shall be approved by Owner prior to implementation. The Training Program may, with the approval of Owner, be amended or modified from time to time by Operator, and shall be maintained at a level adequate to keep Operator's personnel informed and knowledgeable regarding Site Procedures, as such procedures may be amended or modified from time to time. The Training Program shall be maintained throughout the term of this Agreement. All new personnel employed by Operator shall be trained by Operator pursuant to the Training Program. Operator shall from time to time conduct such tests as are necessary to demonstrate that the Training Program is reasonably adequate and that Operator's personnel are competent to operate and maintain the Facilities.

SECTION 3.10. Operator's Personnel.

(a) Operator's organization structure is set forth in Exhibit _____. Operator has designated a Plant Manager, who shall be duly authorized to direct the performance of the Services. The Plant Manager shall not be replaced without Owner's approval, which approval shall not be unreasonably withheld. Owner shall be entitled to rely on the authority of the Plant Manager to act on behalf of and commit Operator in regard to all matters under this Agreement. Any orders, notices, or instructions given to the Plant Manager shall be deemed to have been

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given to Operator. The Plant Manager shall act on behalf of Operator as the principal interface with Owner or Owner's Representative.

(b) Operator may from time to time replace essential personnel other than the Plant Manager without the prior approval of Owner, which approval shall not be unreasonably withheld; provided, however, Operator shall give Owner written notice (and explanation) of such replacement no later than the close of business on the first business day following the replacement.

(c) Operator also shall provide and employ in connection with the performance of Services under this Agreement: (i) professional and technically competent Key Personnel for the execution of the Services; (ii) qualified, skilled and experienced supervising engineers and technical assistants to give direct supervision to the execution of the Services; and (iii) such skilled, semi-skilled and unskilled labor as necessary for the proper and timely execution of the Services.

SECTION 3.11. Reports by Operator.

(a) Operator shall provide daily operation reports to Owner on a daily basis, substantially in the form detailed in Exhibit _____. If Owner so requests Operator shall deliver a report, in form satisfactory to Owner, summarizing in detail the Services performed during any month of operations.

(b) Operator shall verbally advise Owner of any unscheduled outage as soon as possible, in no event later than two hours after its commencement. Any material modification or material repair to the Facility necessitated by such unscheduled outage shall be reported to Owner and shall be subject to the prior approval of Owner. Within 15 days after the conclusion of any unscheduled outage, Operator shall deliver a report to Owner substantially in the form of

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Exhibit G, describing the nature of the unscheduled outage and detailing any remedial measures undertaken to correct such unscheduled outage and to minimize future unscheduled outages.

(c) Operator shall provide such additional information and prepare such additional reports with respect to Operator's performance of Services hereunder as Owner may reasonably request or as required by applicable Governmental Requirements.

SECTION 3.12. Taxes and Employee Costs. Operator shall be responsible for the payment of all income, payroll, unemployment, ERISA and any and all other taxes or costs associated with or relating to the employment of personnel to perform Services under this Agreement, other than with respect to employees of Owner.

SECTION 3.13. Safety. Operator shall implement and maintain a safety program designed so that Services will be performed in a safe manner and in compliance with all applicable Governmental Requirements governing safety (the "Safety Program"). Operator shall make all reasonable efforts to execute the Services and conduct its operations at any Site in compliance with all applicable Governmental Requirements governing safety, and in compliance with the Safety Program. Notwithstanding any provision hereof to the contrary, the provisions of this Agreement shall not be construed as limiting in any manner Operator's obligation to undertake any action necessary to provide safe working conditions at a Site, nor be construed as imposing upon the Owner responsibility to review, or for the adequacy of, the Safety Program. Operator shall designate a qualified safety representative to implement all activities outlined in the Safety Program and direct its personnel to take all precautions necessary to protect against and prevent injury or damage to personnel and property.

SECTION 3.14. Emergencies. In the event of any emergency that involves any Facility and endangers personnel or property, Operator shall take such action as necessary to prevent, avoid, or mitigate injury, damage or loss and shall, as soon as practicable, (a) report any

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such incidents, including Operator's response thereto, to Owner, (b) contact Owner, in no event later than 30 minutes after the incident if further action is required, and (c) provide a written report of the incident and Operator's response to Owner within 48 hours. Whenever, in the opinion of Owner, Operator has not taken sufficient precautions for the safety of the public or the protection of the Facility or the structures or property on or adjacent to the Site, creating in the opinion of Owner an emergency requiring immediate action, then Owner may direct Operator to take such corrective action as Owner deems appropriate, and Operator shall promptly execute corrective measures as directed by Owner.

SECTION 3.15. Laws and Regulations. Operator shall make all reasonable efforts to be cognizant of all applicable Government Requirements, and to perform and complete all Services so that they are in accordance with all applicable Government Requirements. Operator shall promptly notify Owner of any known non-compliance or potential non-compliance with Governmental Requirements. Operator shall assist Owner in securing or maintaining any Governmental Requirements and inspections for the Facility.

SECTION 3.16. Permits. Operator shall assist Owner in acquiring and maintaining in effect all permits, licenses, approvals and certifications necessary for operation of the Facilities. Operator shall be responsible for all fines, penalties and damages (other than damages excluded under Section 14.12) resulting from noncompliance with such permits, licenses, approvals and certifications to the extent that such noncompliance resulted from the acts or omissions of Operator and were not caused by the Owner or by the Operator following the direction of the Owner.

SECTION 3.17. Owner's Access. Operator shall provide Owner or its representatives with unrestricted access to the Facilities and each Site and Operator's records there and elsewhere concerning the Facilities or this Agreement, subject to Owner's observance

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of safety measures deemed by Operator to be necessary or appropriate. Operator shall also afford access to the Facilities and each Site to others as may be necessary or appropriate to the servicing, maintaining, modifying or upgrading of the land or facilities located thereon.

SECTION 3.18. Records. Operator shall maintain in good order all records that are material to the operation of the Facilities or applicable laws and governmental approvals, and retain such records for a minimum period of five years and otherwise as required by applicable laws and Governmental Requirements; provided that Operator shall not dispose of or destroy any such records even after said five years without first providing Owner 90 days written notice. Where Owner is required by applicable laws or Governmental Requirements to retain records for a longer period of time, or where records relate to disputes, appeals, arbitration, litigation or the settlement of claims arising out of the performance of this Agreement, such records shall be maintained until the resolution of the matter giving rise to the longer retention requirement.

SECTION 3.19. Insurance. Operator shall provide and maintain the worker's compensation insurance coverage and limits described in Section 13.01(a) of this Agreement.

SECTION 3.20. Interface with Delmarva and PJM. Operator shall use all reasonable efforts to assist Owner in complying with the obligations of Owner under the Delmarva Interconnection Agreement and the PJM Agreement. Without limiting the generality of the foregoing, Operator shall, on behalf of Owner, from time to time prepare and submit such notices, reports and other communications to Delmarva or PJM as Owner may request, and shall submit advance copies of such reports to Owner at least five days before the notices, reports and other communications are due to be submitted to Delmarva or PJM. Operator shall comply with Owner's instructions concerning the dispatch of the Facilities and shall advise Owner prior to

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submitting information, reports or recommendations, or otherwise taking specific actions concerning Utilities or PJM.

SECTION 3.21. Compliance with Fuel Acquisition Agreements. Operator shall use all reasonable efforts to assist Owner in complying with the obligations of Owner under the Fuel Acquisition Agreements. Without limiting the generality of the foregoing, Operator shall, on behalf of Owner, from time to time prepare and submit such notices, reports and other communications to parties to the Fuel Acquisition Agreements, as Owner may request.

SECTION 3.22. Environmental Responsibility.

(a) (i) Subject to the limitation of liability contained in Section 14.15, 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 Operator. "Pollution and contamination" is any ground or air pollution caused by Operator in violation of Governmental Requirements or any hazardous or toxic substance present at the Site or Sites concerned which was brought there by Operator. "Pre-existing pollution and contamination" is ground or air pollution caused by Owner in violation of Governmental Requirements or any hazardous or toxic substances present at the Site or Sites concerned which was not brought there by Operator. Operator hereby releases and agrees to defend, indemnify and hold Owner harmless from and against any and all costs, losses, damages, expenses (including attorney's fees), fines, penalties, claims and causes of action which arise out of or result in any way from such pollution or contamination, except to the extent that the same result from Owner's gross negligence or willful misconduct.

(ii) Operator shall, at Operator'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 shall include without limitation arranging for handling, storage, transportation, treatment and disposal of all pollution or contamination, Operator shall be solely responsible for obtaining a disposal site for such pollution or contamination. Operator shall look

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to the disposal facility and/or transporter for any responsibility or liability arising from improper disposal or transportation of such pollution or contamination, Owner shall not have or exert any control over Operator in Operator's obligations or responsibilities in the storage, transportation, treatment or disposal of any pollution or contamination. Operator shall complete and execute any governmentally required forms relating to regulated activities including, but not limited to generation, storage, handling, treatment, transportation, or disposal of pollution or contamination. In the event that Owner executes or completes any governmentally required forms relating to regulated activities including but not limited to storage, generation, treatment, transportation, handling or disposal of pollution or contamination, Owner shall be and be deemed to have acted as Operator's agent.

(b) Operator shall not dispose of or permanently store any toxic or hazardous wastes on any Site, nor shall it bring any wastes or hazardous wastes from offsite for treatment, storage, or disposal on any Site. Operator shall be responsible for discharging waste or effluent from any Site that may contaminate streams or other bodies of water or otherwise become a public nuisance or be in violation of any permit or license.

(c) Operator shall not cut any trees, conduct any mining operations, remove sand, gravel or similar substances from the ground, commit waste of any kind, nor in any manner substantially change the contour or condition of any Site except for normal right of way and Facility maintenance and operation as contemplated herein.

(d) In the event Operator discovers any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity at any Site, Operator shall immediately notify Owner before proceeding with any construction.

(e) Operator shall disclose fully to Owner any operating changes, spills, releases, contamination or other environmental condition that may lead to degradation of any Site or violate any permit, law or regulation then in effect, citations or warnings for violations, amendments to operating procedures, or any other act or omission that may lead to liability under such permits, laws and regulations, and notify Owner within 24 hours of the occurrence of

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any of the foregoing of what steps Operator has undertaken and what other responses it proposes should be taken to prevent future incidents.

**ARTICLE 4
OWNER'S RESPONSIBILITIES**

SECTION 4.01. Direction and Control. Owner shall be responsible for making such business and strategy decisions as may be required from time to time in connection with the operation and maintenance of the Facilities. To this end, Owner shall formulate the plan of operations, from time to time specifying Owner's instructions to Operator as to the desired production schedule and other operating objectives within the capability of the Facility.

SECTION 4.02. RESERVED.

SECTION 4.03. Payment. Owner shall make timely payments of sums due and payable to Operator pursuant to Article 5 of this Agreement.

SECTION 4.04. Procurement of Fuel. Owner [or its representative] shall determine the type of Fuel to be utilized for the generation of power and shall procure such Fuel at the times and in the volumes that Owner determines in its sole discretion to be appropriate, subject to the terms of the Fuel Acquisition Agreements.

SECTION 4.05. Availability of Information. Owner shall make available to Operator such operation and maintenance manuals, as-built drawings, specifications, warranties, diagrams, test results and all other documents and information as are available to Owner and relate to the operation and maintenance of the Facilities.

SECTION 4.06. Governmental Permits, Licenses, and Approvals.

[Operator on behalf of Owner or Owner] shall secure and maintain, or utilize all

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reasonable efforts to cause others to secure and maintain, any and all governmental permits, licenses and approvals as are necessary for the continuous operation of the Facilities, other than those referred to in Section 11.03 of this Agreement, which shall be the obligation of the Operator.

SECTION 4.07. Taxes. Owner shall pay any duty or tax as may arise out of or relate to the operation of the Facilities, other than duties or taxes for which Operator is responsible under Section 3.12 as may arise out of or relate to Operator's performance of the Services. If Owner is exempt from the payment of any applicable sales and/or use taxes or has a direct payment permit with respect to such taxes, Owner shall provide Operator with a copy of the certificate or permit, duly executed and issued by the appropriate governmental authority.

SECTION 4.08. Review of Documents. Any rights by Owner to make any inspections or review any documents shall not create any obligation for Owner to conduct such inspections or reviews or to detect any errors, inaccuracies, ambiguities or other potential problems.

**ARTICLE 5
PAYMENTS BY OWNER TO OPERATOR**

SECTION-5.01. Payments.

(a) [to be proposed]

SECTION 5.02. Payment Procedure. Within 10 days following any calendar month for which payments are due under this Agreement, or as soon thereafter as practicable, Operator shall submit a Payment Request to Owner which shall be accompanied by an itemization of the expenditures for which reimbursement is requested under Section 5.01 covered by the request and the dollar amount of each item. Operator's Payment Request shall be substantially in the form set forth in Exhibit _____. If Owner so requests Operator shall provide to

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Owner copies of daily time records for all hours worked in performing Services and, for reimbursable costs of equipment, tools and supplies purchased by Operator, copies of vendor invoices, purchase requisitions, purchase orders and receiving reports. Operator's disbursements to vendors, contractors and others concerning Services or a Facility will be reimbursed at actual cost, without markup or service charge. Within 30 days of receipt of any Payment Request, Owner shall make payment to Operator in an amount equal to the sum specified in such Payment Request, less any portion (or all) of such amount as Owner in good faith disputes to be due. In the event that Owner disputes a portion or all of any Payment Request, Owner shall within 30 days of receipt of the Payment Request provide to Operator a written statement explaining in reasonable detail the basis for Owner's objection. Operator shall review and submit invoices to Owner for expenditures as identified in Section 5.01. Operator shall submit such invoices to Owner for its direct payment within 10 days of receipt by Operator but in no instance later than 15 days prior to the date Operator requests funds from or payment by Owner.

SECTION 5.03. Adjustments to Operation Fee [invited to present incentive components of compensation to improve plant performance or reward for low forced outage rate]

SECTION 5.04. Reserved.

SECTION 5.05. Interest on Late Payments. Any amounts (a) disputed and subsequently found to have been correctly invoiced or owed, or (b) not timely paid in accordance with this Agreement shall accrue interest at the lesser of (i) the then effective prime rate of Citibank, N.A. plus ____% or (ii) the highest rate permitted by applicable law, from the first day following the day on which such amounts become due and owing to the day on which such amounts and the interest thereon are paid. Owner and Operator intend that this Agreement will at all times comply with applicable law now or hereafter in effect governing interest payable hereunder. If the applicable law is ever revised, repealed, or judicially interpreted so as to render

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unreasonable any amount called for under this Agreement, then all excess amounts theretofore collected will be credited to the then applicable principal balance hereunder or be refunded, and this Agreement shall immediately be deemed to have been reformed and the amounts thereafter collected hereunder reduced, without the necessity of the execution of any new document, so as to comply with the then applicable law, but to permit the recovery of the fullest amount otherwise called for hereunder.

SECTION 5.06. Audit. During customary business hours and for up to three years after the end of the Operation Year in which Services are performed Owner may inspect, copy and audit all of Operator's books, records, accounts, ledgers, time cards, estimates, schedules, correspondence and other documents that are relevant to Operator's performance of its obligations hereunder for which Operator's payroll costs and other expenses are reimbursable; provided, however, that Operator shall not be required to keep cost records or provide access to those of its costs covered by fixed rates or of costs which are expressed in terms of percentages of other costs. Owner shall reimburse actual and reasonable costs Operator incurs for such audits to the extent such audit assistance is not provided by Operator's Facility Workforce. Owner's acceptance, approval and payment of Operator's invoiced charges and expenses will not affect Owner's audit rights.

**ARTICLE 6
ENVIRONMENTAL RESPONSIBILITY**

SECTION 6.01. Environmental Responsibilities of Owner.

(a) Except as provided in Section 6.02(a), title to, ownership of, and legal responsibility and liability for any and all Pre-Existing Pollution and Contamination shall at all times remain with Owner. "Pre-Existing Pollution and Contamination" shall mean (1) any ground or air pollution caused by Owner in violation of Governmental Requirements or (2) any

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hazardous or toxic substance present at any of the Sites which was not brought there by Operator (including any hazardous or toxic substance that has migrated to the Site from other property of or used by Dover.)

(b) Owner shall, at Owner's sole expense and risk, take such actions as may be required to mitigate and correct the occurrence and effects of any Pre-Existing Pollution and Contamination. Such actions shall include without limitation arranging for handling, storage, transportation, treatment and disposal of all Pre-Existing Pollution or Contamination. Owner shall be solely responsible for obtaining a disposal site for such Pre-Existing Pollution or Contamination. Owner shall look to the disposal facility and/or transporter for any responsibility or liability arising from improper disposal or transportation of such Pre-Existing Pollution or Contamination. Operator shall not have or exert any control over Owner in Owner's obligations or responsibilities in the storage, transportation, treatment or disposal of any Pre-Existing Pollution or Contamination. Owner shall complete and execute any governmentally required forms relating to regulated activities including, but not limited to generation, storage, handling, treatment, transportation, or disposal of Pre-Existing Pollution or Contamination. In the event that Operator is required to execute or complete any governmentally required forms relating to the disposal of Pre-Existing Pollution or Contamination, Operator agrees to do so, solely as the agent of Owner.

(c) Owner hereby releases and agrees to defend, indemnify and hold Operator harmless from and against any and all costs, losses, damages, expenses (including attorney's fees), fines, penalties, claims and causes of action which arise out of or result in any way from such Pre-Existing Pollution or Contamination, except to the extent that the same result from Operator's gross negligence or willful misconduct.

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(d) Owner shall be responsible for the cost of certification of continuous emissions and opacity monitors.

(e) The McKee Run Station has implemented modifications to reduce nitrous oxides emissions. Owner shall be responsible for demonstrating these modifications to the State of Delaware. In addition, because the Facilities are located in the Northeast Ozone Transport Region, Owner may be required to take additional measures to reduce nitrous oxides emissions in the future, including purchasing air emissions credits, and any such additional measures Owner is required to take in order to comply will be at Owner's expense.

(f) Owner shall be responsible for the cost of (i) compliance with all environmental permits and Governmental Requirements (for purposes of this Section 6.01(f) Governmental Requirements shall mean those in effect or enacted in the future), including specifically any costs related to the modification and upgrade of the Facilities to cause such compliance, (ii) any permit modifications that are either required by Governmental Requirements or are necessary in order for the Operator to operate and maintain the Facilities in accordance with Governmental Requirements, including the purchase of air emissions credits, (iii) the costs related to any changes in law after the date of this Agreement, and (iv) any actual costs required to facilitate the foregoing, including but not limited to, the cost of any necessary studies, outside consultants and attorneys.

(g) Owner shall disclose fully to Operator any operating changes, spills, releases, contamination or other environmental condition that may lead to degradation of any Site or violate any permit, law or regulation then in effect, citations or warnings for violations, amendments to operating procedures, or any other act or omission that may lead to liability under such permits, laws and regulations, and notify Operator within 24 hours of the occurrence

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of any of the foregoing of what steps Owner has undertaken and what other responses it proposes should be taken to prevent future incidents.

SECTION 6.02. Environmental Responsibility of Operator.

(a) Title to, ownership of, and legal responsibility and liability for any and all pollution and contamination arising during the term this Agreement shall at all times remain with Operator.

(b) From and after the date of this Agreement, subject to the limitation of liability contained in Section 14.15 hereof, title to, liability for, ownership of, and legal responsibility for (1) any ground or air pollution caused by Operator in violation of Governmental Requirements that is within the control of Operator, or (2) any hazardous or toxic substance present at the Site or Sites concerned which was brought there by Operator shall remain with Operator ((1) and (2) shall be referred to herein as “Operator Environmental Matters”).

(c) Operator hereby releases and agrees to defend, indemnify and hold Owner harmless from and against any and all costs, losses, damages, expenses (including attorney's fees), fines, penalties, claims and causes of action which arise out of or result in any way from any matters related to 6.02 (a) and any Operator Environmental Matters, except to the extent that the same result from Owner's gross negligence or willful misconduct.

(d) Operator shall, at Operator's sole expense and risk, take such action as may be required to mitigate and correct the occurrence and effects of Operator Environmental Matters. Such actions shall include without limitation arranging for handling, storage, transportation, treatment and disposal of all pollution or contamination that is an Operator Environmental Matter, Operator shall be solely responsible for obtaining a disposal site for such pollution or contamination. Operator shall look to the disposal facility and/or transporter for any responsibility or liability arising from improper disposal or transportation of such pollution or

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contamination. Owner shall not have or exert any control over Operator in Operator's obligations or responsibilities in the storage, transportation, treatment or disposal of any pollution or contamination that is an Operator Environmental Matter. Operator shall complete and execute any governmentally required forms relating to regulated activities including, but not limited to generation, storage, handling, treatment, transportation, or disposal of such pollution or contamination. In the event that Owner is required to execute and/or complete any governmentally required forms relating to regulated activities Owner agrees to do so, but only as Owner of the Facilities and not as a party responsible for any Operator Environmental Matter.

(d) Operator shall not dispose of or permanently store any toxic or hazardous wastes on any Site, nor shall it bring any wastes or hazardous wastes from offsite for treatment, storage, or disposal on any Site. Operator shall be responsible for discharging waste or effluent in accordance with Governmental Requirements.

(e) Operator shall not cut any trees, conduct any mining operations, remove sand, gravel or similar substances from the ground, commit waste of any kind, nor in any manner substantially change the contour or condition of any Site except for normal rights of way and Facility maintenance and operation as contemplated herein.

(f) In the event Operator discovers any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity at any Site, Operator shall immediately notify Owner before proceeding with any construction.

(g) Operator shall disclose fully to Owner any operating changes, spills, releases, contamination or other environmental condition that may lead to degradation of any Site or violate any permit, law or regulation then in effect, citations or warnings for violations, amendments to operating procedures, or any other act or omission that may lead to liability under such permits, laws and regulations, and notify Owner within 24 hours of the occurrence of

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any of the foregoing of what steps Operator has undertaken and what other responses it proposes should be taken to prevent future incidents. In addition to the foregoing, Operator shall have the right, in its discretion, to take such actions as it deems necessary, including ceasing generation of electricity from a unit or Facility, at any time, if operating the unit or Facility would cause the Facility to be in continuing and actionable violation of existing environmental laws or Governmental Requirements. Operator shall use best efforts to notify Owner prior to acting pursuant to the preceding sentence, but in any event will notify Owner within 30 minutes of such action. Operator shall have no liability to Owner with respect to its decision not to operate the Facility, except arising out of Operator's gross negligence or willful misconduct.

ARTICLE 7 TERM OF AGREEMENT; TERMINATION

SECTION 7.01. Initial Term Of Agreement This Agreement shall become effective upon execution. The initial term of the Agreement shall begin on the first day of **July 1, 2006** and extend for a period of five years after the Transfer Date.

SECTION 7.02. Operator's Insolvency. If Operator sells or transfers all or substantially all of its assets, or makes a general assignment for the benefit of its creditors, or institutes a proceeding in bankruptcy, or if a receiver, trustee, custodian or assignee is appointed on account of its insolvency, Owner may request that Operator or its successor in interest provide Owner with financial or other assurance satisfactory to Owner as to the future performance of Operator's duties and obligations under this Agreement. If Operator fails to provide such assurance within 30 days of a request therefor, Owner may, without prejudice to any right or remedy available to it, and after giving Operator seven days' notice thereof, terminate this Agreement.

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SECTION 7.03. Failure to Observe Prudent Utility Practices. Owner may terminate this Agreement if, at any time, Operator materially fails to perform the Services in accordance with Prudent Utility Practices, requirements of any permits or licenses for the Facilities, or the terms of the Power Agreement and the Fuel Acquisition Agreements as specified in Exhibit A, or this Agreement.

SECTION 7.04. Other Material Default. If Operator refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if Operator fails to make prompt payment for those costs listed in Section 5.02, or fails to comply with applicable laws or otherwise violates a material provision of this Agreement and, if Operator shall fail to cure a default within 30 days of receipt of notice thereof from Owner, then Owner may, without prejudice to any right or remedy available to it under this Agreement, terminate this Agreement upon five days' prior notice.

SECTION 7.05. Owner's Rights. In the event that Owner elects to terminate this Agreement pursuant to this Article 7, Owner shall have the right to take possession of all of the Equipment, Facility Tools, Consumables, Fuel, and other supplies located at each Site for the purpose of performing the Services and may employ any other person to perform the Services by whatever method Owner may deem expedient. Operator shall have no further rights under this Agreement and shall not be entitled to receive any further payments under this Agreement, except for payments for the Services performed prior to such termination and any reasonable costs actually incurred by Operator in connection with contracts not assumed by Owner. Notwithstanding termination of this Agreement by Owner pursuant to either Articles 6, 7 or 8, or anything else in this Agreement, Operator shall continue to be bound by such provisions of this Agreement that expressly survive the date of termination, which shall include all provisions expressly applicable after termination as well as provisions relating to Operator's confidentiality

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and indemnity obligations. If Owner takes possession of Equipment, Facility Tools, or other supplies owned by Operator, its Subcontractors, or their employees, Owner will reimburse Operator at fair market value for such Equipment, Facility Tools, or other supplies unless Operator and the rightful owner of any such item retained by Owner agree otherwise.

SECTION 7.06. Operator's Post Termination Obligations. If Owner elects to terminate this Agreement pursuant to this Article 7, Operator shall, at Owner's request and expense, perform the following services relative to the Services so affected: (a) assist Owner in preparing an inventory of all Equipment, Facility Tools, Consumables, fuel and other supplies in use or in storage at each Site; (b) assign to Owner all subcontracts and other contractual agreements as may be designated by Owner; (c) assist Owner in training Operator's successor; (d) to the extent specified and requested by Owner, remove from each Site all such Equipment, Facility Tools, Consumables, supplies, and rubbish; and (e) cooperate with Owner and take such actions as may be reasonably necessary to transfer to Owner the Facility Work Force.

ARTICLE 8 OTHER TERMINATION RIGHTS

SECTION 8.01. Rights of Owner. Owner may terminate this Agreement with or without cause, in whole or in part, on 60 days written notice to Operator. Upon receipt of any such notice, Operator shall, unless the notice directs otherwise: (i) immediately discontinue the Services on the date and to the extent specified in such notice; (ii) place no further orders or subcontracts for Equipment or Services except as may be necessary for completion of such Services as are not discontinued; (iii) promptly make every reasonable effort to procure cancellations upon terms satisfactory to Owner of all orders, subcontracts and rental agreements to the extent they relate to the performance of Services that are discontinued; and (iv) thereafter

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perform only those Services as may be necessary to preserve and protect Equipment at the Site or in transit thereto.

SECTION 8.02. Reimbursement for Services. (a) If Owner elects to terminate this Agreement pursuant to Section 8.01, Operator shall, at Owner's request and expense, perform the following services relative to the Services so affected: (i) assist Owner in preparing an inventory of all Equipment, Facility Tools, Consumables, fuel and other supplies in use or in storage at each Site; (ii) assign to Owner all subcontracts and other contractual agreements as may be designated by Owner; (iii) assist Owner in training Operator's successor; (iv) to the extent specified and requested by Owner, remove from each Site all such Equipment, Facility Tools, Consumables, supplies, and rubbish; and (v) cooperate with Owner and take such actions as may reasonably be necessary to transfer to Owner the Facility Work Force.

(b) Operator waives any claims for damages, including loss of anticipated profits for uncompleted Services due to a termination pursuant to this Article, but shall be entitled to the following: Upon termination pursuant to Section 8.01 of this Agreement, Operator shall be entitled to a payment equal to the sum of (i) the reasonable and actual unreimbursed costs for all Services properly completed by Operator prior to the effective date of termination; minus (ii) payments under Article 5 actually made by Owner to Operator for the above costs, and (iv) sums then owing by Operator to Owner. Operator's claim shall be submitted within three months of the effective date of termination under this Article 8.

**ARTICLE 9
INDEMNITY**

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SECTION 9.01. General Indemnity. Operator shall make every reasonable effort to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence or happening of any accidental injuries or damages during its performance of the Services. Subject to the limitations of liability contained in Section 14.15, Operator agrees to be responsible for, and hereby irrevocably indemnifies, and agrees to defend and hold harmless Owner and Owner's employees (all such indemnified parties are herein collectively referred to as the "Indemnified Parties") from and against third party claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature (including those arising out of injury to or death of employees of Operator, its agents, or Affiliates) whether the injury or damage manifests itself before or after completion of the Services hereunder, to the extent directly or indirectly resulting from, arising out of or incidental to negligent acts or omissions or willful misconduct of Operator or of anyone acting under Operator's direction or control or in Operator's behalf (including Subcontractors) in connection with or incident to the performance of this Agreement, whether or not caused in part by any of the Indemnified Parties' concurring negligence, but excluding claims based solely upon the negligence or willful misconduct of any Indemnified Party. These indemnity and hold harmless obligations shall survive termination of this Agreement.

SECTION 9.02. Laws and Regulations. Operator shall be responsible for the cost and payment of all fines and penalties assessed against Owner or the Facilities and resulting from Operator's operation of the Facilities or performance of Services in a manner in violation of any Facility permits or Governmental Requirements except (i) for environmental matters which are specifically provided in Article 6 hereof, and (ii) to the extent such fines and penalties levied against Owner or the Facilities result from Operator's compliance with a written instruction or direction from Owner. To the extent Operator is responsible pursuant to the previous sentence,

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Operator 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 Operator to comply with any Governmental Requirements (including all safety, environmental and security requirements). These indemnity and hold harmless obligations shall survive termination of this Agreement.

SECTION 9.03. Owner's Property. Owner assumes responsibility for and waives its rights of recovery against Operator with respect to all loss of or damage to the Facilities and other property of Owner, however such loss of or damage shall occur, and in the event that Owner maintains insurance with respect to the property referred to above, Owner shall cause Owner's insurance underwriters to waive their rights of subrogation against Operator under any insurance which Owner may carry. Operator shall be liable to Owner for loss of or damage to the Facilities or other property of Owner to the extent that such loss or damage results from gross negligence of Operator or the willful misconduct of anyone in the Facility Work Force acting in the course and scope of their employment.

SECTION 9.04 Limitations. Operator shall have no obligation to Owner with respect to any damage to or loss of property caused by the perils of war, insurrection, revolution, nuclear reaction or other like perils as may be customarily excluded under the scope and limits of the standard liability insurance coverage required by Section 13.01.

**ARTICLE 10
WARRANTY**

SECTION 10.01. Operator's Warranty.

Operator warrants that the Services shall be performed by competent personnel, in accordance with the requirements set forth in this Agreement, any procedures or schedules

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issued pursuant to this Agreement, Prudent Utility Practices, and customary industry standards of care and diligence normally practiced by recognized operations and maintenance firms in performing like services. If any Services fail to comply with this warranty, subject to the limit of liability contained in Section 14.15, Operator shall reperform such Services at its expense. The foregoing warranty applies to any defect that appears within one year from the date the Services giving rise to the claim were performed.

SECTION 10.02. Assignment of Warranties. Operator shall, for the protection of Owner, obtain from all vendors and suppliers from which Operator procures Equipment guarantees with respect to such Equipment, which shall be made available to Owner to the full extent of the terms thereof. Operator's liability with respect to such Equipment shall be limited to procuring warranties from such vendors and suppliers and rendering all reasonable assistance to Owner to enforce them.

SECTION 10.03. Warranties Limited. All warranties made by Operator in connection with the Services are limited to those set forth in this Article. Operator makes no other warranties or guarantees, express or implied, other than those expressly set forth herein.

IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED.

**ARTICLE 11
REPRESENTATIONS**

Operator represents and warrants to Owner as follows:

SECTION 11.01. Standing. Operator is, and during the term of this Agreement will remain a company duly organized, validly existing and in good standing under the laws of the State of _____, that Operator has the power and authority to execute and deliver this Agreement and perform its obligations hereunder, and that Operator or such other entity

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through which Operator conducts its business, is qualified, and during the term of this Agreement will continue to be qualified, to do business in the State of Delaware. The execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action of Operator and will not violate any provision of any laws, Operator's charter or by-laws or any indenture, agreement or instrument to which Operator is a party, or by which Operator or its property may be bound or affected.

SECTION 11.02. No Violation of Law. Operator is not in violation of any applicable laws or any judgment entered by any federal, state or local governmental authority, which violations or judgments, individually or in the aggregate, would affect Operator's ability to perform its obligations under this Agreement.

SECTION 11.03. Licenses. Operator, or such other entity through which Operator conducts its business, is, and will remain during the term of this Agreement, the holder of all federal, state, local and other governmental consents, licenses, permits or other authorizations required to conduct its business and all such consents, licenses, permits, and other authorizations required to permit Operator to operate or conduct its business now and as contemplated by this Agreement.

SECTION 11.04. Litigation. Operator is not a party to or, to the best of Operator's knowledge, threatened with any legal, administrative, arbitral, investigatorial, or other proceeding or controversy that would materially and adversely affect Operator's ability to perform its obligations under this Agreement.

SECTION 11.05. Qualifications. Operator (a) has examined this Agreement thoroughly and become familiar with its terms; (b) has full experience and proper qualifications to perform the Services; (c) has reviewed and examined all applicable Governmental Requirements (including all safety, environmental, and security requirements); and (d) has

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carefully reviewed all documents, plans, drawings, and other information that it deems necessary regarding the Facilities and its performance of the Services.

**ARTICLE 12
FORCE MAJEURE**

SECTION 12.01. Force Majeure. Neither party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of their respective obligations hereunder (other than the obligation to pay money) due solely to circumstances beyond the reasonable control of the party experiencing such delay or failure, including, but not limited to, acts of God; unusually severe weather conditions; strikes or other labor difficulties; war; riots, requirements, actions or failures to act on the part of governmental authorities preventing performance; inability despite due diligence to obtain and maintain required licenses, permits or fuel required to operate the Facilities; accident; fire; damage to or breakdown of necessary facilities (including, without limitation, the inability of Operator to obtain necessary parts and equipment); or transportation delays or accidents (such causes hereinafter called "Force Majeure"); provided that: (a) the non-performing party gives the other party reasonably prompt written notice describing the particulars of the occurrence; (b) the suspension of performance is of no greater scope and of no longer duration that is required by the Force Majeure; (c) the non-performing party uses its best efforts to remedy its inability to perform; (d) when the non-performing party is able to resume performance of its obligations under this Agreement, that party shall give the other party written notice to that effect; and (e) the Force Majeure was not caused by or connected with any negligent or intentional acts, errors, or omissions, or failure to comply with any law, rule, regulation, order or ordinance or for any breach or default of this Agreement.

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SECTION 12.02. Termination Due to Force Majeure. Except as otherwise provided, in no event will any condition of Force Majeure extend the term of this Agreement. If any condition of Force Majeure delays a party's performance for a time period greater than 180 days, the party not delayed by such Force Majeure may terminate this Agreement, without further obligation; provided that the party not delayed may at its sole discretion extend such period if the party delayed by such Force Majeure is exercising due diligence in its efforts to cure the condition of Force Majeure.

SECTION 12.03 Removal of Force Majeure. The affected party shall use all reasonable efforts to remedy any inability to perform due to Force Majeure. If within a reasonable time after a Force Majeure occurrence that has caused Operator to suspend or delay performance of the Services, Operator has failed to take such action as Operator could lawfully and reasonably initiate to remove or relieve either the Force Majeure occurrence or its direct or indirect effects, Owner may, in its sole discretion and after written notice to Operator, but at Operator's expense, initiate such reasonable measures as will be designed to remove or relieve such Force Majeure occurrence or its direct or indirect effects and thereafter require Operator to resume full or partial performance of the Services.

**ARTICLE 13
INSURANCE**

SECTION 13.01. Insurance Coverages and Limits

(a) Operator shall provide worker's compensation insurance which complies with the laws of the State of Delaware and employers' liability insurance with limits of \$2,000,000 per occurrence with insurance carriers and in form reasonably satisfactory to Owner, and shall maintain such insurance in full force and effect until termination of this Agreement:

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(b) The following insurances shall be provided and maintained in full force and effect until termination of this Agreement:

(i) commercial general liability insurance with bodily injury and property damage combined single limits of \$5,000,000 per occurrence, with coverage including broad form property damage liability, personal injury liability, explosion and collapse hazard coverage, products and completed operations liability, and, where applicable, watercraft protection and indemnity liability;

(ii) automobile liability insurance with bodily injury and property damage combined single limits of \$5,000,000 per occurrence covering owned, hired and non-owned vehicles; and

(iii) excess umbrella liability insurance with a single limit of \$20,000,000 per occurrence in excess of the limits of insurance provided in subparagraphs (i) and (ii) above.

(iv) on site pollution cleanup and pollution liability insurance covering sudden and accidental occurrences with a single limit of \$5,000,000 per occurrence.

SECTION 13.02. Evidence of Insurance. Evidence of the insurance required hereunder including evidence of the waiver required in Section 13.01 in the form of insurance certificates, shall be provided. All such insurance certificates shall provide that the policies may not be canceled or changed without 30 days' prior written notice, given by certified mail, return receipt requested.

SECTION 13.03. Subcontractors' Insurance. Before permitting any Subcontractor to perform any Services at any Site, Operator shall obtain a certificate of insurance for such Subcontractor evidencing that such Subcontractor has obtained insurance in such amounts and against such risks as is customarily carried by persons engaged in similar type

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and size businesses in the same geographic area. All such insurance shall include a waiver of any rights of subrogation of the insurer as against Owner, Operator, and their respective Affiliates.

**ARTICLE 14
MISCELLANEOUS**

SECTION 14.01. Entire Agreement. This Agreement together with the Exhibits attached hereto constitutes the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements and commitments with respect thereto. There are no oral understandings, terms or conditions and neither party has relied upon any representation, expressed or implied, not contained in this Agreement.

SECTION 14.02. Amendments. No change, amendment, or modification of this Agreement shall be valid or binding upon the parties hereto unless such change, amendment, or modification shall be in writing and duly executed by the parties hereto.

SECTION 14.03. Captions. The captions and subheadings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.

SECTION 14.04 Notices.

(a) Any notice, demand, offer, or other instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the party giving such notice, demand, offer, or other instrument and shall be hand delivered or sent by registered letter, overnight courier, telephone facsimile copy or telex to the other party at the address set forth below:

Owner:

City of Dover
P.O. Box 745

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Dover, Delaware 19901
Attention: City Manager
Telephone: 302/736-7005
Fax 302/736-7002

- and -

City of Dover
860 Buttner Place
Dover, DE 19901
Attention: Steve Sax
Telephone: 302/736-7070
Fax: 302/736-7081

Operator:

(b) Each party shall have the right to change the place to which notice, demand, offer, or other instrument shall be sent or delivered by similar notice sent in like manner to the other party. The effective date of any notice, demand, offer, or other instrument issued pursuant to this Agreement shall be the date when delivered, if hand delivered, when sent if by overnight courier, telephone facsimile copy or telex, or three days after being deposited in U.S. mail if sent by registered mail.

SECTION 14.05. Severability. The invalidity of one or more of the provisions, Sections or Articles contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. In the event that any portion or all of this Agreement is held to be void or unenforceable, the parties agree to negotiate in good faith to reach an equitable agreement on such portion that is void or unenforceable which shall affect the intent of the parties as set forth

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in this Agreement. In the event the parties do not mutually agree on what changes to make, if any, within 60 days after such portion or all of the Agreement is held to be void or unenforceable, either party can request a conference or elect to enter into arbitration as allowed under Sections 15.02 and 15.03 of this Agreement. If any indemnity and hold harmless obligation (or portions thereof) in this Agreement are for any reason held to be invalid or unenforceable in any respect, and if the parties fail to agree on a replacement provision, then such obligation shall be construed to apply to the fullest extent permitted by law but in no event beyond the scope and limits of those original indemnity and hold harmless obligations determined to be invalid or unenforceable.

SECTION 14.06. Assignment. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assigns of the parties hereto, except that no assignment, pledge, or other transfer of this Agreement by either party shall be made without the other party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), nor shall it operate to release the assignor, pledgor, or transferor from any of its obligations under this Agreement unless (a) consent to the release is given in writing by the other party or (b) such transfer is incident to a merger or consolidation with, or transfer of all or substantially all of the assets of the transferor to another person which shall, as part of such succession, assume all the obligations of the transferor under this Agreement.

SECTION 14.07. No Waiver. Any failure of either party to enforce any of the provisions of this Agreement or to require compliance with any of its provisions at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or

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any part hereof, and shall not be deemed a waiver of the right of either party thereafter to enforce any and each such provision.

SECTION 14.08. Applicable Law. This Agreement shall be governed by the laws of the State of Delaware applicable to contracts made and to be performed in the State of Delaware, excluding conflicts of laws principles. Each party submits to the nonexclusive jurisdiction of and agrees that any action to enforce this Agreement may be determined by the courts in and for the State of Delaware, including, without limitation, United States courts having jurisdiction.

SECTION 14.09. Exhibits. This Agreement consists of this contract document and the following attached exhibits:

- Exhibit A Scope of Services
- Exhibit B Outline of Site Procedures
- Exhibit C Operating Parameters
- Exhibit D Budget Format
- Exhibit E Organizational Structure of Facility Work Force
- Exhibit F Form of Daily Report
- Exhibit G Form of Outage Report
- Exhibit H Form of Payment Request
- Exhibit I Adjustments to Operation Fee
- Exhibit J Site Map
- Exhibit K Monthly Budget Variance Report

All exhibits referenced in this Agreement shall be incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement. In the event of a conflict or inconsistency between the exhibits and this Agreement (exclusive of the exhibits), the

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provisions of this Agreement (exclusive of the exhibits) shall prevail. In the event of any conflict among the exhibits, the exhibit of the latest date shall control.

SECTION 14.10. No Partnership Created. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Owner and Operator.

SECTION 14.11 Non-Discrimination. Operator shall not discriminate against any person or groups of persons on the grounds of race, creed, color, national origin, ancestry, age, sex or marital status, in any manner prohibited by the laws of the United States or the State of Delaware, as applicable to Operator or Owner.

SECTION 14.12 Consequential Damages. Neither Party shall in any event be responsible or liable to the other party for consequential damages, including, without limitation, liability for loss of use of any Facility or existing property, loss of profits, loss of product or business interruption, however caused. The Operation Fee adjustments in Article 5 that may result in Operator having liability to Owner are not consequential damages.

SECTION 14.13 Limitations Application.

(a) Neither party makes any representations, covenants, warranties or guarantees, express or implied, other than those expressly set forth herein. The parties' rights, liabilities, responsibilities and remedies with respect to the Services, whether in contract or otherwise, shall be exclusively those expressly set forth in this Agreement.

(b) Indemnities against, releases from, assumptions of, and limitations on liability expressed in this Agreement, as well as waivers of subrogation rights, shall apply even in the event of the fault, negligence or strict liability of the party indemnified or released or whose liability is limited or assumed or against whom rights of subrogation are waived and shall extend to the partners of each party, their Affiliates, and their respective officers, directors, employees, and agents. This Section shall survive termination of this Agreement.

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SECTION 14.14 Full Recourse. Each party agrees to look solely to the other party and its general partners with respect to performance of and liability for inadequate performance of obligations under this Agreement. In no event shall either party have any rights with respect to the general partners of the other party in excess of rights with respect to said other party under this Agreement.

SECTION 14.15 Limitation of Liability. Owner acknowledges and agrees that Operator's aggregate liability to Owner, its employees, agents, members and their Affiliates resulting from, arising out of, or in connection with Operator's obligations, duties and responsibilities under this Agreement shall be limited to the sum of the amounts recovered from the insurance required under Section 13.01 plus \$1,000,000 except that in no event shall Operator's liability be limited under this Agreement if Operator's liability results from, arises of, or in connection with, Operator's gross negligence or willful misconduct.

**ARTICLE 15
DISPUTE RESOLUTION**

SECTION 15.01. Contract Interpretation. All questions concerning interpretation or clarification of this Agreement, or the acceptable performance thereof by Operator, shall be immediately submitted in writing to Owner for resolution. All determinations, instructions, and clarifications of Owner shall be final and conclusive, unless the Operator 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, within 30 days of receipt of any protest, provide a written response. This Agreement has been negotiated by both parties represented by counsel, and the rule that an ambiguity is construed against the drafter shall not apply to this Agreement.

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SECTION 15.02. Conference. In the event that use of the procedures set forth in Section 15.01 does not lead to satisfactory resolution of any dispute, either party may send a notice of dispute 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 those 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 15.02, either party shall have the right to pursue the remedies in accordance with the procedures set forth in Section 15.03 hereof.

SECTION 15.03. Arbitration. 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,

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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 rate specified in Article 5 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.

SECTION 15.04. Performance During Dispute. During the pendency of any dispute, the parties shall continue to perform the obligations imposed upon them under this Agreement to the fullest extent possible, consistent with their positions in dispute.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their representatives thereunto duly authorized as of the day and year first above written.

THE CITY OF DOVER, DELAWARE

By: _____
Name: _____
Title: _____

OPERATOR

By: _____
Name: _____
Title: _____