

COUNCIL COMMITTEE OF THE WHOLE AGENDA



JULY 24, 2018 - 6:00 P.M.

**CITY HALL COUNCIL CHAMBERS
15 LOOCKERMAN PLAZA, DOVER, DELAWARE**

PUBLIC COMMENTS ARE WELCOMED ON ANY ITEM AND WILL BE PERMITTED AT APPROPRIATE TIMES. WHEN POSSIBLE, PLEASE NOTIFY THE CITY CLERK (736-7008 OR E-MAIL AT CITYCLERK@DOVER.DE.US) SHOULD YOU WISH TO BE RECOGNIZED.

UTILITY COMMITTEE

AGENDA ADDITIONS/DELETIONS

- 1. DEDICATION OF RIGHTS-OF-WAY AND PUBLIC INFRASTRUCTURE - SENATORS LAKE**
(STAFF RECOMMENDS ACCEPTANCE OF DEDICATION OF RIGHTS-OF-WAY AND PUBLIC INFRASTRUCTURE OF THE SENATORS LAKE SUBDIVISION. DEDICATION IS TO INCLUDE ALL OF THE REFERENCED PUBLIC IMPROVEMENTS.)
- 2. GOVERNING POLICY FOR ENERGY COMMODITY RISK MANAGEMENT**
(STAFF RECOMMENDS ADOPTION OF THE REVISED POLICY)
- 3. ADJOURNMENT OF UTILITY COMMITTEE MEETING**

LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE

AGENDA ADDITIONS/DELETIONS

- 1. BOND COUNSEL PROPOSAL - PUBLIC PRIVATE PARTNERSHIP (P3) - PARKING GARAGE**
(STAFF RECOMMENDS AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BALLARD SPAHR, LLP FOR LEGAL SERVICES FOR THE PURPOSE OF CONDUCTING SOLICITATIONS AND NEGOTIATIONS FOR A DOWNTOWN PARKING GARAGE "PROJECT")
- 2. REVIEW OF PENSION BENEFITS - COST OF LIVING ADJUSTMENT (COLA) (2018 BUDGET HEARING)**
(STAFF RECOMMENDS FUTURE AD HOC COST OF LIVING INCREASES FOR THE PARTICIPANTS OF THE DEFINED BENEFIT PLAN BE TAKEN UNDER CONSIDERATION IN YEARS WHERE THE PENSION PLAN IS FULLY FUNDED)
- 3. ADJOURNMENT OF LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE MEETING**

ADJOURNMENT OF COUNCIL COMMITTEE OF THE WHOLE MEETING

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THE AGENDA ITEMS AS LISTED MAY NOT BE CONSIDERED IN SEQUENCE. PURSUANT TO 29 DEL. C. §10004(E)(2), THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS, WHICH ARISE AT THE TIME OF THE MEETING.

ACTION FORM

PROCEEDING: Committee of the Whole (Utility)	AGENDA ITEM:
DEPARTMENT OF ORIGIN: Public Works	DATE SUBMITTED: 07-13-18
PREPARED BY: Sharon J. Duca, P.E., Public Works Director / City Engineer	
SUBJECT: Dedication of Rights-of-Way and Public Infrastructure – Senators Lake	
REFERENCE: N/A	
RELATED PROJECT: N/A	
APPROVALS: City Manager	
EXHIBITS: Attachment A – List of Public Improvements to be accepted by the City of Dover Attachment B – Map	
EXPENDITURE REQUIRED: \$ <u>N/A</u>	AMOUNT BUDGETED: \$ <u>N/A</u>
FUNDING SOURCE (Dept./Page in CIP & Budget): \$ <u>N/A</u>	
TIMETABLE: All infrastructure improvements will become the responsibility of the City of Dover upon action by City Council.	
RECOMMENDED ACTION: Acceptance of dedication of rights-of-way and public infrastructure of the Senators Lake Subdivision. Dedication is to include all of the referenced public improvements.	

BACKGROUND AND ANALYSIS

The City of Dover Department of Public Works requests that all public infrastructure improvements related to the Senators Lake Subdivision be dedicated to the City of Dover for permanent ownership and maintenance. Attachment A outlines all of the public improvements associated with the subdivision. The total construction value of the public improvements is \$403,399.50. Attachment B shows the general location and configuration of the subject rights-of-way. After construction was completed, City staff inspected the public improvements and developed a list of repairs to be made to meet the City of Dover Standards and Specifications for Public Works Construction. As of this date, all work required by the Public Works Director has been completed. A Release of Liabilities will be submitted as part of the dedication process. Required as-built drawings of the infrastructure as well as videos of the sanitary sewer mains have been provided to staff.

DEDICATION OF RIGHTS-OF-WAY AND PUBLIC INFRASTRUCTURE

SENATORS LAKE

ATTACHMENT A

The following is a list of all public improvements which are to be accepted by the City of Dover:

Sewer Utility Infrastructure (Construction Value = \$85,416.25):

8" SDR-35 PVC Sanitary Sewer Main	-	1,019 l.f.
6" PVC Sanitary Sewer Laterals	-	1,914 l.f. (54 laterals)
4' Diameter Sanitary Sewer Manholes	-	9 ea. (61 v.f.)

Water Utility Infrastructure (Construction Value = \$87,700):

8" Ductile Iron (Class 52 Cement Lined) Water Main	-	1,341 l.f.
6" Ductile Iron (Class 52 Cement Lined) Water Main	-	50 l.f.
2" Polyethylene Water Service Lines	-	1,480 l.f. (54 services)
8" Gate Valve	-	3 ea.
6" Hydrant Valve	-	2 ea.
Fire Hydrants	-	2 ea.

Storm Water Infrastructure (Construction Value = \$115,105):

Catch Basins	-	15 ea. (55 v.f.)
Junction Box	-	1 ea. (5 v.f.)
4' Diameter Storm Sewer Manholes	-	1 ea. (5 v.f.)
24"x30" Type III Reinforced Concrete Pipe	-	73 l.f.
30" Type III Reinforced Concrete Pipe	-	42 l.f.
24" Type III Reinforced Concrete Pipe	-	490 l.f.
18" Type III Reinforced Concrete Pipe	-	90 l.f.
15" Type III Reinforced Concrete Pipe	-	749 l.f.
Flared End Sections (Concrete)	-	1 ea.

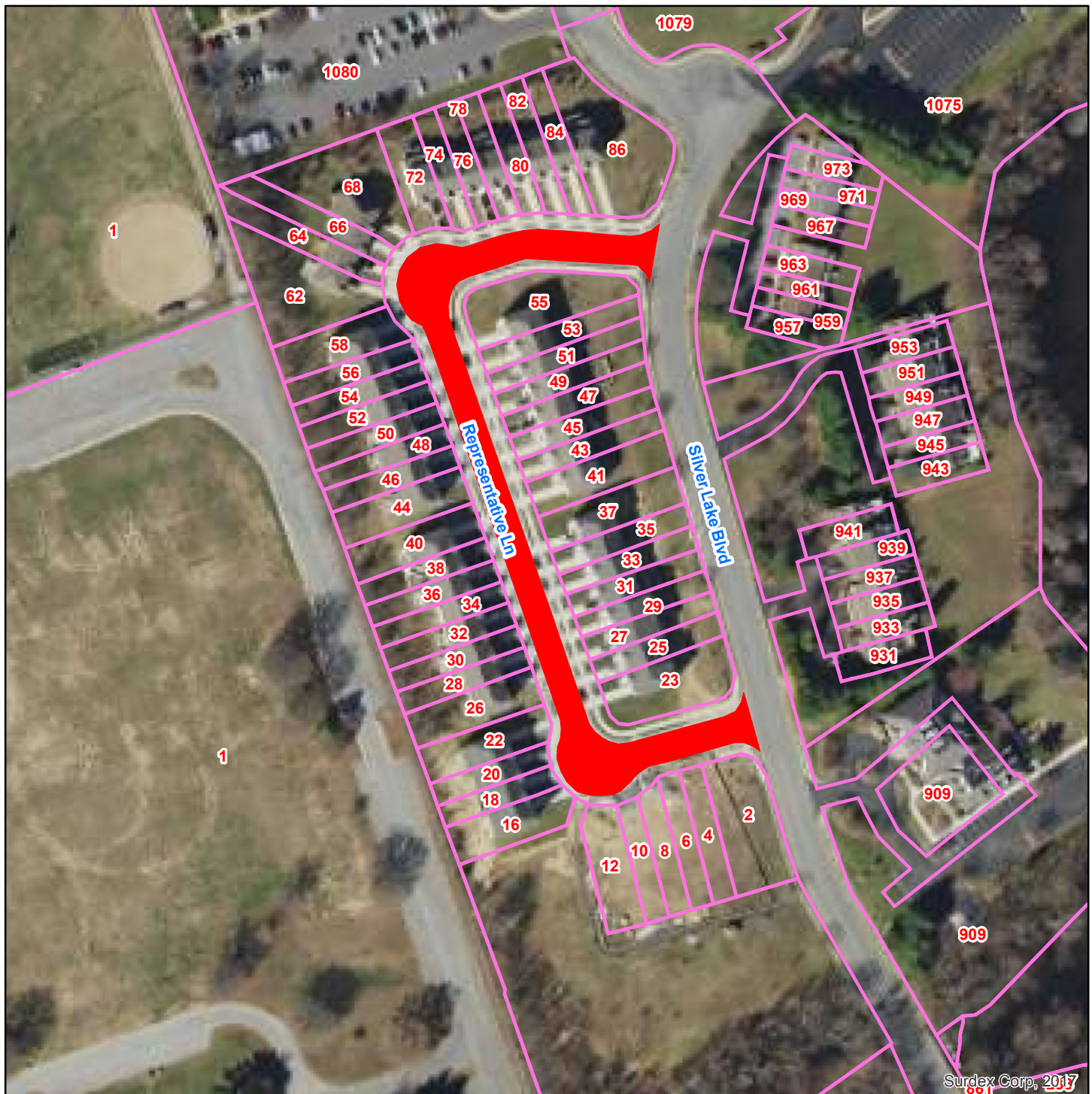
Street Infrastructure (0.178 miles) (Construction Value = \$115,178.25):

Representative Lane	Station 0+00 to Station 9+40	940 l.f.
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Attachment B

Senators Lake

Right of Ways to be Dedicated to the City of Dover



0 75 150 300 Feet





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Department: Public Works GIS
City of Dover, Delaware

Legend

Name

-  Area to be Dedicated
-  Dover Parcels

City of Dover, Delaware

Governing Policy

For

Energy Commodity Risk Management

Effective: ~~August 28, 2017~~ **TBD**

Formatted: Strikethrough

Approved by: City of Dover Council

(Last Revision August 28, 2017)

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PURPOSE OF THE RISK MANAGEMENT POLICY

A. Introduction

The City of Dover (“City”) and its customers are routinely exposed to energy price risk, volume variability risk, basis risk and credit risk – herein referred to collectively as energy commodity risk - in the normal conduct of serving its electric load requirements. Volatility of energy commodity prices and volumetric uncertainty (either supply/generation or load obligations) impose a substantial and direct risk to the City’s financial and operating performance.

By authority of its charter, the City has responsibility for overseeing the City’s electricity operations, including the management of its cost of serving Dover’s customers. By agreement dated May 6, 2011 and approved by the City (the “EMA”), the City has engaged The Energy Authority, Inc. (“TEA”) to assist the City with Asset Management and Strategic Planning Services, Risk Management Services, and Energy Management Services.

This Policy for Energy Commodity Risk Management (“Policy”) is established the explicit understanding that the City has retained and delegated responsibilities to TEA to provide Risk Management Services.

Additionally, the City has issued this Policy for dealing with the philosophy, framework and delegation of responsibilities necessary to govern activities related to Dover’s energy commodity risk management. As set forth herein, the City has established an organizational structure, delegated responsibility and established internal controls and procedures to ensure that all transactional and oversight activities are conducted in compliance with this Policy and in accordance with the City’s normal reporting, legal, financing and regulatory requirements relating to energy assets and transactions.

B. Scope of Policy

This Policy covers all transactions entered into the by the City of Dover designed to meet the City’s electric load requirement and the management of risk related to these transactions.

In the event of conflict between this Policy and the EMA, the Policy shall control. This Policy is separate and distinct from enterprise risk management policies and procedures addressing the City’s safe operation of its generating stations and energy infrastructure, insurance requirements, permit compliance, employee matters regulatory compliance with laws and regulations of the State of Delaware and Federal

Agencies such as EPA, FERC, NERC and CFTC or other potential risks to the City beyond the purchase and sale of fuel and electric power and its ancillary products.

C. Objectives and Risk Philosophy

The objectives of the Policy are to identify energy commodity price and credit risk exposures and give the City a framework for the quantification and management of these exposures. The Policy will identify the reports needed to convey how the identified risk exposures can potentially impact the City's overall cost of providing electricity service to its customers and report on the risk management of the transactions associated with City's electric load requirements.

Under the Policy, risk management activities will be conducted consistent with the City's overall objective of appropriate risk mitigation. There are several objectives of the Policy which, when taken and executed together, serve to manage the City's energy commodity price exposures. Specifically, the Policy:

- Establishes framework for developing credit limits for counterparties and quantifies and manages the credit exposures related to potential counterparty abrogation
- Quantifies the impact of the above exposures on City's financial results
- Manages the impact of the above exposures in line with the City's identified level of risk tolerance
- Provides clear delineation of responsibilities and authority, outline a separation of duties, and ensure reporting of risk is timely and accurate.
- Ensures that the impact of any action affecting the City's position is consistently quantified, monitored and authorized.

The City's risk management activities will be conducted consistent with its overall objective of appropriate risk mitigation and never for purposes of speculation.

D. Policy Administration

This Policy has been approved by the Executive Risk Management Committee and The Utility Committee of the Dover City Council. The Utility Committee must approve modifications to the Policy with the exception of the appendix information which can be modified with the approval of the Executive Risk Management Committee.

MANAGEMENT AND CONTROLS

This Policy articulates the management and organization of the City and TEA to serve as a control framework outlining delegation of duties and responsibilities.

A. Utility Committee of The City Council

The Utility Committee of The City Council (The Committee) has a responsibility to provide approval of this Policy. With this approval, The Committee also assumes additional duties. They will understand the risks the City is and could be exposed to due to their energy commodity risk management activities. In this role, the Committee will have a responsibility to also understand the City's policies and procedures, internal controls and systems which are used to help manage the City's energy commodity risks.

The Committee will approve any amendments to the Policy or limits within. The Executive Risk Management Committee will update the Committee periodically regarding the Policy and its functions. It will be the Committee's responsibility to:

- Discuss guidelines and strategic policies that govern the process by which the Energy Risk Management Committee assesses and manages risks
- Review and approve the risk policy at least annually
- Approve new members of the Executive Risk Management Committee
- Acknowledge the risk inherent in transactions covered under this Policy

B. Executive Risk Management Committee

An Executive Risk Management Committee ("ERMC") has been formed to provide executive management oversight for the City's energy commodity risk management activities. The ERMC is charged with the creation, amendment and administration of this Policy, including acquiring any approvals required by the Utility Committee, and will ensure that all energy commodity risk management activities of the City are performed consistent with this Policy. The ERMC will meet at least monthly to review compliance and conduct its business as described in this Policy.

The ERMC shall be comprised of the following voting members: The City Manager, The Director of Utility, The City's Controller and TEA's Client Service Manager.

The City's ERMC will make decisions following the process outlined in this Policy. TEA's Client Services Manager may include representatives from other areas within TEA in the monthly ERMC meetings who will attend in person or by conference call as non-voting advisors. Other City employees and TEA staff may also be asked to attend

meetings from time-to-time, as the ERM C deems necessary. The responsibilities of the ERM C shall include:

- Establish scope and frequency for management reporting to the Utility Committee.
- No less than annually, review the City's Energy Commodity Policies and Procedures for correctness and completeness.
- Review and approve any new risk report or change to an existing risk report provided by TEA to monitor risks outlined in this Policy.
- Understand and approve any models, methodologies, and assumptions used for measuring risks such as volume risk, process risk, counterparty risk and commodity risk.
- Monitor the City's risks and ensure they are within the limits and are being managed according to what is indicated within the City's Policy and associated procedures
- Understand the City's risk management objectives and risk tolerances.
- Review and approve the risk management and trading strategy programs and associated risk. Each program should be reviewed to ensure alignment with Policy objectives and compliance with risk limits within this Policy.
- Periodically review any risk management program approved in light of recent market changes, and ensure continued compliance with its established guidelines
- Review and approve new products, markets, trading counterparties and credit limits
- Review all violations and exceptions to this Policy and report such to the Committee.
- Approve the individuals or companies that engage in the City's commodity transactions and are subject to the limits within this Policy.
- Ensure that the individuals or companies authorized to transact on behalf of the City as well as manage its risks, are appropriately trained and qualified.
- Ensure independence and segregation of duties between front, middle and back office at TEA.
- Recommend changes to this Policy to the City's Utility Committee for approval and ensure the Utility Committee understands the City's overall compliance with this Policy and associated procedures.
- The ERM C will meet at least monthly to review risks identified and reported on by the Policy, this meeting shall be chaired by The City Manager. Minutes of each meeting of the ERM C shall be recorded and reflect any decisions and follow-up action items to be performed. These minutes will be reviewed and approved by the members of the ERM C in a timely manner.

Each member of the ERM C has a unique role as defined below:

1. City Manager

The City Manager is independent of all commercial functions and carries the responsibility of establishment and maintenance of risk management for the City. The City Manager will be a voting member of the ERM C and act as a chair of the ERM C. Other responsibilities include:

- Ensure this Policy is maintained.
- Oversee reviews of the City's energy commodity risks, limits, risk measurement methodologies and models, and programs and recommend changes to the ERM C.
- Ensure potential transactions and their impacts on the City's risks and limits defined within this Policy.
- Develop and monitor the implementation of the Policy, and oversee other risk management processes and procedures established by this Policy or otherwise by the ERM C.

2. Director of the Utility

The Director of the Utility has oversight for all trading, hedging, pricing, structuring, and market and operational risk management activities associated with the City. The Director of the Utility will be a voting member of the ERM C. Other responsibilities include:

- Review the effectiveness of transaction processing systems and procedures relating to risk measurement.
- Recommend operational risk and business risk assessment guidelines.

3. Controller

The Controller is independent of all commercial functions and carries the oversight responsibilities associated with the City's accounting practices. The Controller will be a voting member on the ERM C. Other responsibilities include:

- Perform financial accounting including accounting for hedging and derivatives activities.
- Comply with tax rules and make appropriate tax elections.
- Record realized and unrealized gains and losses.
- Reconcile general ledger, cash transactions and margin accounts.
- Implement tax-hedge accounting policies and other regulatory tax requirements.

- Develop and maintain documentation outlining standard procedures for conducting business.
- Invoice counterparties and resolve billing disputes.
- Perform daily/weekly/monthly transaction checkout with counterparties.
- Develop and maintain documentation outlining standard procedures for conducting business.

4. TEA Client Services Manager

The TEA Client Service Manager roles and responsibilities are defined exhibit B of the EMA between the City and TEA. The TEA Client Service Manager will be a voting member on the ERM. Other responsibilities include:

- Monitor risk reports between ERM meetings.
- Report to the Committee and the ERM on the City's adherence to all limits and functions within this policy.
- Engage the ERM in discussions regarding events or developments that could expose the company to potential losses.
- Recommend to the ERM specific risk limits consistent with the City's risk management objectives, risk tolerance, and risk management policy.
- Coordinate and distribute independent market fundamental analysis.
- Provide advisory support and recommendations as specified in Article 5 of the EMA.
- Update ERM on training of TEA employees.

DISCUSSION OF RISKS

This Policy covers the management of all material energy market risks faced by the City. A comprehensive list of risks that are or could be relevant to City is shown in Appendix C of the Policy. Among the most critical of these risks are commodity risk, counterparty risk, process risk, volume risk, and budget risk. These risks are measured by the limit structure and controls outlined in the Policy.

Commodity risk represents the potential adverse impacts to the value of the City's portfolio due to changes in the market. Commodity risk encompasses volatility risk, forward price risk, basis risk, correlation risk and liquidity risk.

Counterparty risk represents the potential losses the City could incur due to delivery risk and receivable risk. Delivery risk stems from a supplier or trading counterparty that is unable or unwilling to perform on its commitments including but not limited to delivery or receipt of commodities. Receivable Risk includes the City's risk associated with a counterparty's timeliness of payment for services rendered.

Process risk represents the risks associated with process problems including, but not limited to, inaccurate data capture, untimely trade execution or settlement problems. Controls over process risks are embedded in the organizational structure of TEA through the design processes and operating procedures.

Volume Risk represents the potential for unforeseen changes from projections of excess or shortfall of capacity or energy from the actual needs. When variances are large coupled with large costs to transact and adverse moves in market prices this risk could be realized. In management of this risk, the City must be aware of the fact that unexpected variations in volume are often highly correlated with price movements.

Budget Risk represents the potential to deviate outside of tolerable bounds of the City's budget. Deviations from budget can be caused by forecast error or unforeseeable adverse changes in market prices.

Regulatory Risk arises from participation in regulated markets. With the Independent System Operator (ISO) implementation of Federal Energy Regulatory Commission (FERC) Order 741, the City faces increasing regulatory risk when participating in wholesale energy markets. The TEA Compliance department works in conjunction with the TEA Risk Control department to help the City manage regulatory risk.

Regulatory risk is managed by:

- Annual Compliance Training for all employees participating in regulated markets;
- Integration of the appropriate compliance culture within the Trading department through ongoing interaction between Compliance and Trading;
- An independent monitoring and exposure measurement on transactions that could trigger an increase in regulatory risk.

MARKETING AND TRADING PRACTICES

A. Standards of Conduct

Individuals authorized to transact for the City shall not misrepresent, conceal or withhold information regarding energy commodity trading and risk management transactions to any person responsible for the accurate recording and/or reporting of such transactions; participate in any such transaction or similar activity for the benefit of any party other than the City; or hold or be a beneficiary of any financial interest in any entity with which the employee is engaged in trading or other business activity (other than ownership of an interest in a mutual fund managed by another party). Further, no employee authorized to place or execute such transactions may engage in trading power or energy commodities derivative instruments for his or her personal account.

B. Products, Activities and Limitations

Pursuant to achieving the City's core objectives for the purpose of energy commodity risk management, the following limitations shall apply.

- Permissible instruments will be restricted to the products and instruments specified in Appendix A – Approved Products of the Policy;
 - All physical forward transactions shall be governed by the Edison Electrical Institute (EEI), North American Energy Standards Board (NAESB), or similar agreements with counterparties approved by the City.
 - The City reserves the right to enter into financial hedge transactions to effectuate Policy objectives, but does not authorize TEA to enter into financial hedge transactions on its behalf. Any such financial transactions that the City may enter into shall be governed by ISDA agreements with counterparties as approved by the City.
- The maturity for each permissible instrument will be restricted to the maturity limits specified in the risk limits section of the Policy.
- Transaction volumes for each risk management transaction will be restricted to the amounts specified in the Risk Limits section of the Policy.
- Risk management transactions will be outlined in the *City of Dover Hedge Program* which will be approved by the ERM. Risk management transactions may include the following:
 - Hedging the forward price of purchased power for delivery to the City as needed to meet its electric load requirements.
 - Hedging the forward price of natural gas and fuels as needed to generate power to meet the City's electric load requirements.
 - Unwinding of hedges to accommodate changes in expected load requirements, or for economic reasons subject to explicit constraints set by the ERM.

C. Contract Documentation and Confirmations

No over-the-counter transaction may be executed until an EEI, NAESB, or similar agreement has been authorized by the City, approved by the ERM and fully executed by the parties.

Written confirmations will be required from counterparties, as defined in the Master Service Agreement between the City and counterparty, within one business day or such longer time as required by the contract in question for all risk management transactions. Contemporaneous with any commitments and prior to receipt of written confirmations, verbal commitments shall be memorialized internally as to instrument structure, quantity, relevant time horizon, price and any other relevant terms; such internal

documentation shall be time stamped and correlated to the ultimate written confirmation to or from the counterparty. Both the internal documentation as well as the written confirmation from the counterparty shall be provided to TEA's Risk Control Group immediately upon receipt for verification.

In the event that there is a material failure to provide timely documentation or confirmations, then at the City Manager's sole discretion, the offending individual's authorization may be suspended. Similarly, if the failure to provide timely documentation or confirmations is due to the failure of counterparty, then at the discretion of the City Manager, a moratorium may be imposed on transactions with that counterparty. In such cases, the City Manager shall notify the ERMCM of the issues leading to the suspension or moratorium shall.

Nothing herein shall inhibit the City Manager from bringing control issues to the TEA's Client Services Manager prior to a decision on materiality or the imposition of a suspension of trading privileges or counterparty moratorium.

D. Training

The ERMCM will ensure that all City employees and/or TEA Staff that will execute transactions on behalf of the City will have appropriate training in the markets in which the transactions occur.

E. New Product Protocol

As required to manage the City's energy commodity risk the ERMCM shall approve new products provided the requirements of the New Product Approval Procedure are met.

RISK LIMITS AND RISK MEASUREMENTS

A. Limits

The limit structure is designed to quantify the types of risk in the City's energy commodity portfolio. The City will manage and report on its energy commodity market risk using Delegation of Authority Limit, a Volume Limit and a Locational Limit.

1. Delegation Authority

The Utility Committee delegates the following approval authority limits to the Dover ERMCM. The ERMCM may not delegate these authorities to individuals authorized to commit Dover to financial obligations.

Position	Maturity Limit	Term Limit	Notional Value Limit
Dover ERM	5 years	5 years	20,000,000
TEA	1 month	1 month	1,000,000

This limit structure is not intended for use when transacting day-ahead and real time in the PJM market.

2. Volume Limits

For no reason should a transaction be executed that exceeds the City's electric load requirements. If there is an adjustment to the City's electric load requirements and the existing transactions greater than 100% of the adjusted electric load requirements the ERM will review and approve the offsetting strategy deployed in sufficient proportion to mitigate the encroachment.

3. Locational Limits

Non-Commodity Transactions must support the requirement of one of the City's generation units, native load or transaction locations.

B. Stress Testing and Back Testing

The City's positions shall be periodically stress tested and models shall be back tested. The processes around these tests are outlined in the *Stress Testing and Back Testing Procedure*.

C. Instances of Exceeding Risk Limits

Should the City or TEA enter into a transaction that causes the portfolio to exceed any above mentioned limits the Director of the Utility shall, in addition to notifying the ERM, also notify the Chair of The Committee as soon as practicable and shall provide periodic reports to the Chair on the status the transactions for as long as the City is exceeding its limits. The ERM will review and determine whether any liquidation or offsetting of transactions is warranted. The incident will be documented as a Policy Exception by the Director of the Utility.

CREDIT POLICY

Credit Risk is the risk due to the uncertainty in a counterparty's ability to meet its contractual obligations. The primary objective of this credit policy is to mitigate, to the

extent commercially reasonable, the credit risks associated with transactions covered in this Policy while still allowing the City to achieve its objectives.

A. Measuring Credit Risk

The status of credit risk will be measured and reported through reports provided by TEA.

The current credit exposure will be reported at the agreement level via a Counterparty Credit Report provided by TEA. This information will be made available in real time to TEA trading personnel so that it can be checked prior to executing transactions for the City. Those responsible for risk oversight at the City and TEA will have access to this information no less frequently than once per day. The ERM will monitor overall credit utilization and any credit exceptions at least monthly. When measuring the current credit risk, netting will be applied to the exposure if the City's contract with a counterparty includes provisions for netting.

B. Analysis and Extension of Credit Limits

Physical and financial commodity transactions will be executed with counterparties approved by the ERM with credit available to support the transactions. The creditworthiness of a counterparty will be determined by both qualitative and quantitative factors. Factors shall include, but not limited to:

- A company's debt credit ratings provided by the rating agencies.
- Financial data such as an analysis of the income statement, balance sheet, and cash flow, as well as liquidity and capital structure.
- Subjective factors such as company's fuel diversity, overall size, risk management policy and internal controls, geographic diversity, and market intelligence.

A credit limit is the amount of unsecured credit granted to a counterparty. Unsecured credit exposure includes amounts owed by the counterparty, whether billed or not, and the mark-to-market differences in value of any collateral which the counterparty has provided the City. Any net exposure above the collateral threshold will require the posting of collateral by a counterparty. Further information on the City's procedure for establishing credit is contained in the *Counterparty & Credit Review Process*.

Collateral thresholds, term limitations and credit exposure limits will be subject to the maximums indicated in Appendix B, based upon the lower of the S&P and Moody's credit ratings.

At no time will the City incur a credit exposure with any counterparty greater than \$60,000,000.

C. Instances of Exceeding Credit Limits

The City and TEA are restricted by the credit limits approved by the ERM. The ERM can suspend trading with a counterparty, if that counterparty's credit limit has been reached or exceeded. **The City or TEA traders shall not exceed the Counterparty Credit Limit by executing transactions with any counterparty without approval of the ERM.**

The ERM will determine when it's appropriate to require additional collateral if a counterparty's credit exposure exceeds its credit limit. Collateral includes standing letter of credit, cash, and prepayments.

All credit exceptions will be documented and reported to the ERM and the Committee as Policy Exceptions.

REPORTING

A. Risk Reporting

Preparation of timely reports is critical to monitoring risk. TEA will furnish the required reports on a regular frequency for the City in a format acceptable to the ERM. In addition, the ERM and its designees will be provided access to the City's risk reports as updated daily via TEA's secure Web Portal.

Reports required on a monthly basis and for periodic meetings of the ERM include the following:

- **Profit and Loss Report**

The Profit and Loss (P&L) Report shows the daily realization of transactions at either the transaction price or the market price as transaction roll from unrealized to realized. This report should show volumes, transaction prices and market prices of realized physical and financial power and fuel transactions.

- **Mark to Market Report**

The Mark to Market ("MTM") Report conveys the potential transaction exposure, of all existing forward transactions executed, if the energy commodity portfolio was liquidated at the most recent market settlement prices. This report should show volumes, transaction prices and market prices of unrealized physical and financial power and fuel transactions.

- **Daily Activity Report**

The Activity Report presents a summary of the day's trades executed in the bilateral energy market.

- **Cost of Service Report**

The City's exposure to energy price risk shall be monitored and reported on a Cost-of-Service basis. All calculations are at the wholesale level. The Cost-of-Service recognizes all prior (expired) months within the Power Year on the basis of actual (incurred) costs, and recognizes all forward (pending) months within the Power Year on the basis of expected forward power and fuel prices and expected forward load-following risks. As defined below, the Cost-of-Service is an aggregation of Forward Energy Commodity Portfolio Cost, the Load Following Cost Expectation and the City's Budget Target for Purchase Power Expense.

- The Net Purchased Power Cost shows the net cost of all physical and financial transactions related to the City's anticipated commodity requirements for power and fuel and is based on the price of all hedge transactions plus the forward market price of all unhedged transactions valued at current forward prices for energy commodities, customer-level cost per MWH of all physical and financial transactions related to Dover's actual plus anticipated energy.
- The expected fixed costs defined as load-serving entity (LSE) capacity costs, transmission costs and TEA management fees.
- The Expected Load-Following Cost for a specified power year is defined as the expected cost (or revenue) associated with intra-month load variations due to weather or other events affecting demand. TEA has completed a historical analysis to measure the effective monthly average unit cost paid for Dover's PJM Wholesale Load Responsibility (WLR) was calculated for each month since July 2013. From this analysis, TEA recommends using the post-Garrison results as a proxy for future estimates of the WLR and ~~As an interim measure due to lack of necessary market information and the rapid evolution of the PJM RTO market, the ERM~~ ~~C has specified \$2.50 per MWH as an estimate of the Load Following Cost to be used for estimating the City's Forward Cost-of-Service Report. The ERM~~ ~~C will update the Expected Load Following estimate while lack of necessary market information persists no less than annually.~~

- For the historical payment analysis, an effective monthly average unit cost paid for Dover's PJM Wholesale Load Responsibility (WLR) was calculated for each month since July 2013. This effective unit cost was constructed using Dover's monthly PJM load payment (Dover Budget line item: PJM – Energy, Congestion & Losses), adding back the West Hub hedging credits, and dividing by the WLR. The values pre-Garrison-online and post-Garrison-online were compared with both straight and WLR-weighted averages. This effective LMP therefore includes the effects of intra-month load variations, contributions of both the DALMP and RTLMP, and the additional PJM charge types reflected in the monthly Dover Budget line item: PJM – Energy, Congestion & Losses. Pre-Garrison (July

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2013 – May 2015) weighted average monthly load costs were \$3.02, while the average post-Garrison cost (Jun 2015 – Apr 2018) has been \$2.60.

-
- The Budget Target for Purchase Power Expense represents the City's view of expected purchase power expense.

B. Credit Reporting

- **Counterparty Credit Report**

The Counterparty Credit Report conveys the exposure to all counterparties with which the City has credit exposure resulting from its energy commodity risk management activities.

- **CFTC Reporting**

The City understands that transacting over the counter (OTC) swaps carries an additional Commodity Futures Trading Commission (CFTC) reporting function. Once required by the CFTC, the City will report on how the City generally meets its financial obligations associated with entering into non-cleared swaps in a manner acceptable to the CFTC.

C. Hedge Effectiveness Reporting

If the City's transactions require a hedge effectiveness test, those testing results will be reported to the ERMCM no later than one month after the end of the financial reporting period. The report will include a summary of testing methodology, assumptions of the testing and the outcome of results with a pass or fail by transaction.

INFORMATION TECHNOLOGY SYSTEMS

Since information systems play a vital role in The City's trading abilities, the City shall ensure that the information systems and technology used to store all transaction information is maintained and secure. The City's transactions will be stored in TEA's enterprise trading and risk management system. TEA uses the TriplePoint Commodity XL (CXL) system, integrated with Commodity XL for Credit Risk (Credit Risk). TEA has assigned a Database Administrator (DBA) that is charged with the database security and maintenance for the transaction database, CXL.

The following safeguards for data security and backup will be installed:

- Transaction data stored in the system of record will be replicated daily to ensure data redundancy;
- The CXL database will be backed up at least daily after the close of business.

POLICY DISTRIBUTION AND COUNSEL

A. Distribution Outside The City

The City's Policy is restricted to the use of the City and TEA organizations. It shall not be distributed outside these organizations without the consent the ERMC.

B. Designated Counsel

Questions about the interpretation of any matters of this Policy should be referred to ERMC. The ERMC will provide clarification and explanation on any updates to this Policy.

All legal matters stemming from this Policy will be referred to the City's Legal Counsel.

APPENDIX A – Approved Products

The following shall constitute a list of approved products to be utilized by TEA to manage the City’s energy commodity portfolio:

- Physical Power
- Physical Natural Gas
- Physical Residual Fuel Oil (#2)
- Capacity
- Financial Power
- Financial Options
- PJM Demand Bids and Generation Offers
- PJM InSchedules
- PJM Transmission Products
 - Financial Transmission Rights
 - Annual Auction Revenue Rights
- PJM Tier 2 Synchronized Reserves

The above instruments can be executed by TEA on behalf of the City of Dover for the current and next two successive Power Years (July to June).

APPENDIX B - Approved Counterparties and Threshold Tables

This Appendix establishes approved counterparties and their Collateral thresholds. Collateral thresholds, term limitations and credit exposure limits that are subject to the following maximums based upon the lower of the S&P and Moody's credit ratings:

Credit Thresholds from Dover Extended to the Counterparty

Exelon Generation Company, LLC

Threshold	S&P	Moody's
\$ 60,000,000	AAA	Aaa
\$ 50,000,000	A- to AA+	A3 to Aa1
\$ 40,000,000	BBB+	Baa1
\$ 30,000,000	BBB	Baa2
\$ 20,000,000	BBB-	Baa3
\$ -	Below BBB-	Below Baa3

AEP Energy Partners, Inc.

Threshold	S&P	Moody's
\$ 10,000,000	BBB- and Above	Baa3 and Above
\$ -	Below BBB-	Below Baa3

BP Energy Company

Threshold	S&P	Moody's
\$ 60,000,000	AA- to AAA	Aa3 to Aaa
\$ 45,000,000	A+	A1
\$ 30,000,000	A	A2
\$ 15,000,000	BBB to A-	Baa2 to A3
\$ -	Below BBB	Below Baa2

Calpine Energy Services, L.P.

Threshold	S&P	Moody's
\$ 25,000,000	AAA	Aaa
\$ 15,000,000	AA- to AA+	Aa3 to Aa1
\$ 10,000,000	A- to A+	A3 to A1
\$ 5,000,000	BBB+	Baa1
\$ 3,000,000	BBB- to BBB	Baa3 to Baa2
\$ -	Below BBB-	Below Baa3

EDF Trading North America, LLC

Threshold	S&P	Moody's
\$ 18,000,000	Fixed	Fixed

PSEG Energy Resources & Trade, LLC

Threshold	S&P	Moody's
\$ 20,000,000	BBB- and Above	Baa3 and Above
\$ -	Below BBB-	Below Baa3

Sequent Energy Management, L.P.

Threshold	S&P	Moody's
\$ 5,000,000	Fixed	Fixed

Conectiv

Threshold	S&P	Moody's
Unspecified *	Above BBB+	Above Baa3
\$ -	Below BBB-	Below Baa3

* Conectiv does not have a defined credit threshold, so for planning purposes, a \$10,000,000 threshold is imposed as a conservative limit

Macquarie Energy, LLC

Threshold	S&P	Moody's
\$ 25,000,000	AAA	Aaa
\$ 20,000,000	AA- to AA+	Aa3 to Aa1
\$ 15,000,000	A- to A+	A3 to A1
\$ 10,000,000	BBB+	Baa1
\$ 5,000,000	BBB	Baa2
\$ -	BBB- or below	Baa3 or below

Morgan Stanley Capital Group

Threshold	S&P	Moody's
\$ 25,000,000	AAA	Aaa
\$ 20,000,000	AA- to AA+	Aa3 to Aa1
\$ 15,000,000	A- to A+	A3 to A1
\$ 10,000,000	BBB+	Baa1
\$ 5,000,000	BBB	Baa2
\$ -	BBB- or below	Baa3 or below

NextEra Energy Marketing, LLC

Threshold	S&P	Moody's
\$ 30,000,000	AAA	Aaa
\$ 25,000,000	AA- to AA+	Aa3 to Aa1
\$ 20,000,000	A- to A+	A3 to A1
\$ 15,000,000	BBB+	Baa1
\$ 10,000,000	BBB	Baa2
\$ -	BBB- or below	Baa3 or below

Deutsche Bank

Threshold	S&P	Moody's
\$ 25,000,000	AAA	Aaa
\$ 20,000,000	AA- to AA+	Aa3 to Aa1
\$ 15,000,000	A- to A+	A3 to A1
\$ 10,000,000	BBB+	Baa1
\$ 5,000,000	BBB	Baa2
\$ -	BBB- or below	Baa3 or below

Barclays Bank

Threshold	S&P	Moody's
\$ 25,000,000	AAA	Aaa
\$ 20,000,000	AA- to AA+	Aa3 to Aa1
\$ 15,000,000	A- to A+	A3 to A1
\$ 10,000,000	BBB+	Baa1
\$ 5,000,000	BBB	Baa2
\$ -	BBB- or below	Baa3 or below

Credit Thresholds from the Counterparty Extended to Dover**AEP Energy Partners, Inc.**

Threshold	S&P	Moody's
\$ 10,000,000	BBB- and Above	Baa3 and Above
\$ -	Below BBB-	Below Baa3

BP Energy Company

Threshold	S&P	Moody's
\$ 30,000,000	AA to AAA	Aa2 to Aaa
\$ 25,000,000	AA-	Aa3
\$ 20,000,000	A+	A1
\$ 15,000,000	A	A2
\$ 5,000,000	BBB to A-	Baa2 to A3
\$ -	Below BBB-	Below Baa3

Calpine Energy Services, L.P.

Threshold	S&P	Moody's
\$ 10,000,000	AA- to AAA	Aa3 to Aaa
\$ 7,500,000	A- to A+	A3 to A1
\$ 5,000,000	BBB+	Baa1
\$ 3,000,000	BBB- to BBB	Baa3 to Baa2
\$ -	Below BBB-	Below Baa3

Exelon Generation Company, LLC

Threshold	Fitch	Moody's
\$ 60,000,000	AAA	Aaa
\$ 50,000,000	A- to AA+	A3 to Aa1
\$ 40,000,000	BBB+	Baa1
\$ 30,000,000	BBB	Baa2
\$ 20,000,000	BBB-	Baa3
\$ -	Below BBB-	Below Baa3

Conectiv

Threshold	Fitch	Moody's
Unspecified *	Above BBB+	Above Baa3
\$ -	Below BBB-	Below Baa3

***Conectiv does not have a defined credit threshold, so for planning purposes, a \$10,000,000 threshold is imposed as a conservative limit**

PSEG Energy Resources & Trade, LLC

Threshold	S&P	Moody's
\$ 12,000,000 *	Fixed	Fixed

***Threshold is \$12,000,000 as long as Dover maintains a Debt Service Coverage greater than 1.25% and Total Net Assets of at least \$50,000,000 and Total Net Assets do not decline by more than 25% on a fiscal year end basis.**

Morgan Stanley Capital Group

Threshold	S&P	Moody's
\$ 25,000,000	AAA	Aaa
\$ 20,000,000	AA- to AA+	Aa3 to Aa1
\$ 15,000,000	A- to A+	A3 to A1
\$ 10,000,000	BBB+	Baa1
\$ 5,000,000	BBB	Baa2
\$ -	BBB- or below	Baa3 or below

Macquarie Energy, LLC

	Threshold	Fitch	Moody's
\$	25,000,000	AAA	Aaa
\$	20,000,000	AA- to AA+	AA3 to Aa1
\$	15,000,000	A- to A+	A3 to A1
\$	10,000,000	BBB+	Baa1
\$	5,000,000	BBB	Baa2
\$	-	BBB- or below	Baa3 or below

NextEra Energy Marketing, LLC

	Threshold	Fitch	Moody's
\$	23,000,000	AAA	Aaa
\$	18,000,000	AA- to AA+	AA3 to Aa1
\$	13,000,000	A- to A+	A3 to A1
\$	8,000,000	BBB+	Baa1
\$	3,000,000	BBB	Baa2
\$	-	BBB- or below	Baa3 or below

EDF Trading North America, LLC

	Threshold	S&P	Moody's
\$	18,000,000	Fixed	Fixed

Deutsche Bank

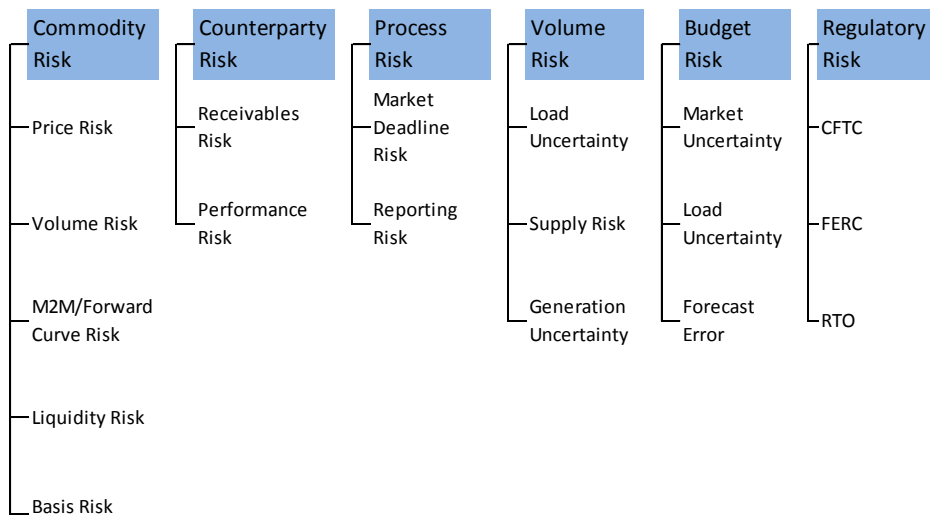
	Threshold	Fitch	Moody's
\$	25,000,000	AAA	Aaa
\$	20,000,000	AA- to AA+	AA3 to Aa1
\$	15,000,000	A- to A+	A3 to A1
\$	10,000,000	BBB+	Baa1
\$	5,000,000	BBB	Baa2
\$	-	BBB- or below	Baa3 or below

Barclays Bank

	Threshold	Fitch	Moody's
\$	25,000,000	AAA	Aaa
\$	20,000,000	AA- to AA+	AA3 to Aa1
\$	15,000,000	A- to A+	A3 to A1
\$	10,000,000	BBB+	Baa1
\$	5,000,000	BBB	Baa2
\$	-	BBB- or below	Baa3 or below

APPENDIX C – Business Risks

Business Risks Topology



APPENDIX D – Glossary

Back Office – That part of a trading organization which handles transaction accounting, confirmations, management reporting, and working capital management.

Bilateral Transaction - Any physical or financial transaction between two counterparties, neither of whom is an Exchange or market entity (e.g. MISO).

Capacity – The real power output rating of a generator or system, typically in megawatts, measured on an instantaneous basis.

Commodity - A basic good used in commerce that is interchangeable with other commodities of the same type. Commodities are most often used as inputs in the production of other goods or services. The quality of a given commodity may differ slightly, but it is essentially uniform across producers. When they are traded on an exchange, commodities must also meet specified minimum standards, also known as a basis grade.

Financial Bilateral Transaction – A Bilateral Transaction that is non-physical and is defined by a Source Point, Sink Point, and Delivery Point that may be any CP Nodes as specified by the Midwest ISO.

Financial Forward – An agreement regarding a position in a specified commodity, a specified price, and a specified future settlement date, that does not result in physical delivery of the commodity. Rather one party in the agreement makes a payment to the other party on the basis of the commodity price at the future date.

Front Office – That part of a trading organization which solicits customer business, services existing customers, executes trades and ensures the physical delivery of commodities.

Hedging Transaction - A transaction designed to reduce the exposure of a specific outstanding position or portfolio; “fully hedged” equates to complete elimination of the targeted risk and “partially hedged” implies a risk reduction of less than 100%.

Mark-to-Market Value – A measure of the current value of unrealized positions; includes both Open Positions and Closed Positions.

Middle Office – That part of a trading organization that measures and reports on market risks, develops risk management policies and monitors compliance with those policies, manages contract administration and credit, and keeps management and the Board informed on risk management issues.

Policy – Dover’s Governing Policy for Energy Commodity Risk, as amended and approved by The Utility Committee.

Portfolio – A collection of transactions.

Realized Gains/(Losses) – The amount earned (or lost) from a transaction, considered to be **realized** once the time for performance has lapsed (e.g. delivery of power in the case of physical transactions or expiration of an option in the case of financial transactions).

Term – The total duration of a contract, defined as the number of days between the beginning flow date and ending flow date, inclusive.

Unrealized Gains/ (Losses) – The amount expected to earn (lose) on a specific transaction(s); however, the time for performance has not lapsed. The total value of Unrealized Gains/ (Losses) is the Mark-to-Market value.

APPENDIX E - Swap Transaction Representative

Purpose:

To ensure that the City of Dover, a Special Entity under the Dodd-Frank Financial Reform Act, selects a qualified representative ("Representative") to provide advice and guidance when entering into swap transactions with Swap Dealers or Major Swap Participants.

Definitions:

Special Entity: As defined in 7 U.S.C. 6s(h)(2)(C) and further interpreted in 17 C.F.R. 23.401(c). The City of Dover is a Special Entity as defined by 17 C.F.R. 23.401(c)(2).

Swap Dealer: As defined in 7 U.S.C. 1a(49) and further interpreted in 17 C.F.R. 1.3(ggg)

Major Swap Participant: As defined in 7 U.S.C. 1a(33) and further interpreted in 17 C.F.R. 1.3(hhh)

Representative: As defined in this policy and 17 C.F.R. 23.450

Policy:

Selection: The City of Dover shall endeavor to seek and employ an individual or entity that will voluntarily act as a Representative for all energy commodity swap transactions between XXXX and any Swap Dealer or Major Swap Participant. The Representative must meet the following qualifications identified in 17 C.F.R. 23.450(b):

- (i) Has sufficient knowledge to evaluate the transaction and risks;
- (ii) Is not subject to a statutory disqualification;
- (iii) Is independent of the swap dealer or major swap participant;
- (iv) Undertakes a duty to act in the best interests of the Special Entity it represents;
- (v) Makes appropriate and timely disclosures to the Special Entity;
- (vi) Evaluates, consistent with any guidelines provided by the Special Entity, fair pricing and the appropriateness of the swap; and
- (vii) In the case of a Special Entity as defined in § 23.401(c)(2) or (4), is subject to restrictions on certain political contributions imposed by the Commission, the Securities and Exchange Commission, or a self-regulatory organization subject to the jurisdiction of the Commission or the Securities and Exchange Commission; provided however, that this paragraph (b)(1)(vii) of this section shall not apply if the representative is an employee of the Special Entity.

The Representative and the City of Dover shall enter into a legal agreement that binds the Representative to comply with items (i) through (vii) in this policy.

At no longer than any 12 month interval, the City of Dover shall review the performance of the Representative to ensure compliance with items (i) through (vii) in this policy.

ACTION FORM

PROCEEDING: CCW – Legislative, Finance & Administration Committee	AGENDA: 07/24/18
DEPARTMENT OF ORIGIN: City Manager	
PREPARED BY: Donna Mitchell, City Manager	
SUBJECT: Bond Counsel Proposal – Public Private Partnership (P3) – Parking Garage	
APPROVALS: City Council	
ATTACHMENTS: Ballard Spahr Proposal – July 9, 2018	
EXPENDITURE REQUIRED: \$100,000 – \$150,000	AMOUNT BUDGETED: \$200,000
FUNDING SOURCE: City Manager Budget – Consulting Services \$200,000	
TIMETABLE:	
RECOMMENDED ACTION: Authorize the City Manager to enter into a contract with Ballard Spahr, LLP for legal services for the purpose of conducting solicitations and negotiations for a downtown parking garage “Project”.	

Dover City Council has expressed interest in a downtown parking garage. Staff has reached out to Ballard Spahr LLP, the City’s current bond counsel, for assistance from their P3/Infrastructure Group for this Project. In doing so, the City will have the expertise needed for the Project and subsequent negotiations. Using the bond counsel will also provide confidentiality of competitive pricing and negotiations.

Phase 1 of the engagement will include preparing a Request for Qualifications and Request for Proposal for the selection of a preferred vendor. Ballard Spahr will assist the City with evaluating responses, participate in meetings with proposers and internal City meetings, draft project documents, and research potential financing options and other items as necessary for the Project. The estimated cost for Phase I is \$60,000 - \$75,000.

Phase 2 of the engagement will commence upon the selection of a preferred developer for the Project and will end upon closing. This will include finalizing and negotiating project documents, participating in meetings with the preferred developer, internal meetings and conference calls, finalizing due diligence and research with respect to potential financing issues, assisting the City with governmental and regulatory permits, advising the City on related legal issues including environmental, real estate, tax and financing issues, and any other items needed for the Project’s successful closing. Phase 2 is estimated to cost \$40,000 - \$75,000.

The agreement can be terminated at any time for any reason by written notice.

1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
TEL 215.665.8500
FAX 215.864.8999
www.ballardspahr.com

July 9, 2018

City of Dover
P.O. Box 475
Dover, DE 19903-0475
Attention: Donna Mitchell, City Manager

Re: Agreement For Legal Services – City of Dover - Parking P3 Project

To Whom it May Concern:

We are pleased that you have asked the firm to serve as your counsel. This letter will confirm our discussion with you regarding your engagement of the firm for this matter and will describe the basis on which we will provide legal services to you. Accordingly, we submit for your approval the following provisions governing our engagement. If you are in agreement, please sign the enclosed copy of this letter in the space provided below. If you have any questions about these provisions, or if you would like to discuss possible modifications, do not hesitate to call.

1. *Client; Scope of Work.* Our client in this matter will be the City of Dover, Delaware (the “City”). We will be engaged to advise the City in connection with a potential public-private partnership project consisting of the concession of the City’s existing parking assets and the development of a new parking garage in the City (the “Project”). Working with the City Solicitor and other representatives of the City, we anticipate that the scope of work will be separated into two phases:

(a) Phase 1. Phase 1 will start immediately upon our engagement and will end with the selection of a preferred developer for the Project. Our scope of work in Phase 1 will include (1) preparing and assisting the City in preparing procurement documents, including an RFQ and an RFP; (2) assisting the City in evaluating responses to the RFQ and the RFP; (3) participating in meetings with proposers for the Project; (4) participating in internal meetings with the City and its other advisors; (5) drafting various project documents; and (6) researching potential financing options and other research issues that may come up with respect to the Project.

(b) Phase 2. Phase 2 will commence upon the selection of a preferred developer for the Project and will end upon closing. Our scope of work in Phase 2 will include (1) finalizing and negotiating the various project documents; (2) participating in meetings with the preferred developer; (3) participating in internal meetings and conference calls; (4) finalizing due diligence and research with respect to the Project and potential financing issues related to the Project; (5) assisting the City in receiving any required governmental and regulatory approvals and permits; (6) ensuring that the Project complies with federal and state law; (7) advising the City on related legal issues including environmental, real estate, tax and financing issues; and (8) other items needed to bring the Project to a successful close.

In addition to the phases described above, if the City requires additional work after closing with respect to the implementation of the Project, we would agree to a revised scope of work and estimated budget at that time.

2. *Staffing.* Steve Park, a partner and the Head of Ballard's P3/Infrastructure Group will lead the Ballard team for this engagement. We anticipate that other members of our core team will include Sara McCormick, a senior associate in our Real Estate Department and Stephanie Kim, an associate in our P3/Infrastructure Group. We will supplement the core team with other lawyers with expertise in tax, real estate, public finance and other areas.

3. *Term of Engagement.* Either of us may terminate the engagement at any time for any reason by written notice, subject on our part to applicable rules of professional conduct.

4. *Conclusion of Representation; Retention and Disposition of Documents.* Unless previously terminated, our representation of the City will terminate upon our sending you our final statement for services rendered in this matter. Following such termination, any otherwise nonpublic information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. At your request, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained by the firm. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. All such documents retained by the firm will be transferred to the person responsible for administering our records retention program. We may destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

5. *Fees and Expenses.* Our fees will be based on the billing rate for each attorney and legal assistant devoting time to this matter. We estimate our legal fees in the following ranges:

Phase 1 – \$60,000 – 75,000

Phase 2 – \$40,000 – 75,000

Total – \$100,000 – 150,000

We will include on our statements separate charges for performing services such as photocopying, messenger and delivery service, computerized research, travel, search and filing fees. Fees and expenses of others (such as consultants, appraisers, and local counsel) generally will not be paid by us, but will be billed directly to you.

Statements normally will be rendered monthly for work performed and expenses recorded on our books during the previous month. Payment is due promptly upon receipt of our statement. If any statement remains unpaid for more than 30 days, we may suspend performing services for you and withdraw as your counsel. At closing, we anticipate that the City will be able to have any legal fees previously paid reimbursed by the financing for the Project. In the event that the Project is terminated by the City or does not reach closing for any reason, we would expect to be paid our expenses to date.

6. *Client Responsibilities.* You agree to cooperate fully with us and to provide promptly all information known or available to you relevant to our representation. You also agree to pay our statements for services and expenses in accordance with paragraph 5 above.

7. *Conflicts.* As we have discussed, you are aware that the firm represents many other companies and individuals. It is possible that present or future clients may have disputes or transactions

with the City. The City agrees that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse.

Once again, we are pleased to have this opportunity to work with you. Please call me if you have any questions or comments during the course of our representation.

Very truly yours,



Steve T. Park

AGREED:

CITY OF DOVER

By: _____
Name:
Title:

ACTION FORM

PROCEEDING: CCW - Legislative, Finance & Administration Committee	
DEPARTMENT OF ORIGIN: City Manager	DATE SUBMITTED: 7/16/18
PREPARED BY: Donna Mitchell, City Manager	
SUBJECT: Review of Pension Benefits – Cost of Living Adjustments	
APPROVALS: City Council	
EXPENDITURE REQUIRED: \$88,000 plus annually, estimated based on 2017 data	
AMOUNT BUDGETED: \$0	
FUNDING SOURCE (Dept./Page in CIP & Budget): None identified	
RECOMMENDED ACTION: Staff recommends future ad hoc cost of living increases for the participants of the Defined Benefit Plan be taken under consideration in years where the Pension Plan is fully funded.	

Included in the Fiscal Year 2018 Budget, City Council approved an ad hoc 2% cost of living adjustment for the General Pension Plan retirees'. The annual cost was \$87,982 as calculated by the City's actuary. At that time a cost of living adjustment had not been granted since 2006. During the 2019 Budget Hearing, the question was raised by a retiree regarding a reoccurring agenda item for a cost of living adjustment for General Pension Plan Retirees'.

The General Pension Plan - Defined Benefit (DB) Plan does not have a provision for cost of living adjustments, therefore in the past ad hoc COLA's have been considered and approved when presented to City Council. The DB Plan was closed to new hires in 2009 as was the Medicare B reimbursement. These actions were a result of new accounting standards that require the City to recognize any unfunded liabilities for future commitments.

The City currently has 210 non-police DB Plan retirees/spouses of which 110 also receive Medicare B reimbursements. The Defined Contribution Plan "DC Plan" currently has 27 retired employees. The City currently has 95 non-police DB Plan active employees and 141 DC Plan active employees.

It is staff's recommendation to discontinue considering and approving ad hoc COLA's until such time the Defined Benefit Plan is fully funded. The reasons of which are as follows –

- Equitable treatment among all employee classes in accordance with plan documents under City control. DC Plan retirees are not eligible for COLA's.
- Continuation of ad hoc increases adds to the unfunded liability and the annual required contribution thus reducing funds available for ongoing operations.
- City Council has made good faith efforts to reduce the unfunded liability by appropriating favorable personnel variances from prior year's budgets to accelerate the funding level.
- The accounting standards have changed whereas, ad hoc increases must be recognized as if they are annual increases. This would have a significant impact to the unfunded liability.

While we can understand the retiree's rational, retirement plans have been moving away from this provision. The State of Delaware Pension Plans with COLA provisions are now closed to new hires.