

**AGENDA**  
**REGULAR MEETING OF THE MAYOR AND COUNCIL**  
**December 12, 2017**  
**SEAFORD CITY HALL - 414 HIGH STREET**

- 7:00 P.M.** - Mayor David Genshaw calls the Regular Meeting to Order.
- Invocation
  - Pledge of Allegiance to the Flag of the United States of America.
  - Executive Session - Personnel
  - Changes to agenda for this meeting.
  - Approval of minutes of the regular meeting on November 28, 2017.

**ALL ITEMS ON THIS AGENDA MAY OR MAY NOT BE VOTED ON.**

**7:05 P.M. PUBLIC HEARING:**

1. Review and recommendation of an ordinance to amend Chapter 15, Division 4; Design Standards - Commercial and Industrial Districts of the Municipal Code of Seaford, Delaware relating to Zoning, in the manner following, to wit:
  - Chapter 15 of the Municipal Code of Seaford, Delaware is hereby amended by adding a new language to Division 4 - Design Standards - Commercial and Industrial Districts to include R-3 High Density Residential Districts.

**Note: This was sent to Planning & Zoning for their review and recommendation since it would be something they would review in plans submissions. It will be placed on the January 9, 2018 agenda for the first reading.**

2. Walmart, 22899 Sussex Hwy, is seeking a preliminary and final site plan review for the construction of a 21'-3" by 46'-9" modular box at the front right corner of the existing Walmart store and will reduce parking by eight spaces.
3. Two Farms Inc., 500 High Street, is seeking a preliminary and final site plan review for a proposed 4,699 sq. ft. convenience store with fuel pumps, associated parking and landscape improvements.

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**CORRESPONDENCE:**

1. Councilwoman Peterson's letter announcing she will not be seeking re-election.
2. City Manager Slatcher's letter announcing her retirement effective February 28, 2018.
3. Chief of Police Flood's letter announcing his retirement effective April 2, 2018

**NEW BUSINESS:**

1. Present information from Sussex County to allow them to apply on behalf of the City of Seaford for Community Development Block Grant through the State of DE Housing Authority authorizing Mayor Genshaw to sign all documents.
2. Present for approval an Agreement for Participating in the Advanced Metering Infrastructure Program between American Municipal Power, Inc. and City of Seaford. This agreement is for the water meters not included in the borrowing through DEMEC for the electrical infrastructure.
3. Present a request for funding the water meters being purchased through the agreement with American Municipal Power, Inc.
4. Present a request for a non-budgeted expense from QEI to start-up and commission a Remote Terminal Unit (RTU) for the water department.
5. Present for approval agreement with Proximity Malt for Seaford Wastewater Treatment Facility to treat their waste stream.
6. Present Outdoor Recreation, Parks & Trails (ORPT), Division of Parks and Recreation matching grant to replace swings and resurface basketball court at Nutter Park.

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**NEW BUSINESS (CONTINUED):**

7. Electric Committee recommendation to pursue obtaining an appraisal to purchase 2.3+/- acers of land for the switching structure needed for the second tie point with Delmarva Power 69kV line out of their north substation.

**OLD BUSINESS:**

1. 2<sup>nd</sup> reading and adoption of an ordinance relating to the promotion of Economic Development and Commerce by regulations of certain involuntary payments required of Employees in the City of Seaford.

**REMINDER OF MEETINGS & SETTING NEW MEETINGS:**

1. City Offices and Utilities will be closed December 22<sup>nd</sup> and 25<sup>th</sup> for the Christmas Holidays and January 1<sup>st</sup> for the New Year.

**SPECIAL NOTICE: THE REGULAR COUNCIL MEETING ON DECEMBER 26, 2017 WILL NOT BE HELD DUE TO THE CHRISTMAS HOLIDAYS.**

**LEAF MACHINE WILL BE IN OPERATION STARTING OCTOBER 1<sup>ST</sup> THROUGH DECEMBER 31<sup>ST</sup>. In rain events help us to help you by clearing a catch basin or calling Public Works to have the catch basin cleaned at 302-629-8307 or after hours 302-629-4550.**

**CITY OF SEAFORD**

**Municipal Election – April 21, 2018**

The City of Seaford Municipal Election will be held on Saturday, April 21, 2018 in the City Council Chambers, City Hall, 414 High Street, between the hours of 7:00 a.m. E.S.T. and 3:00 p.m. E.S.T.

One (1) Mayor will be elected for a (2) year term and

Two (2) Council Members will be elected for a (3) year term.

**All candidates must have filed by 5:00 p.m., E.S.T., February 23, 2018. Registration can be completed at City Hall, 414 High Street. Registration hours are Monday through Friday,**

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**MUNICIPAL ELECTION AD CONTINUED:**

**8 a.m. until 5:00 p.m. or by appointment if you cannot register during these normal business hours.** Any candidate who withdraws his/her name must do so in writing. Any candidate who withdraws his/her name after 5:00 p.m., E.S.T., February 23, 2018 will still appear on the official ballot for election.

Anyone eighteen (18) years of age or older who is a bona fide resident to be eligible to vote **must have been registered at the Seaford City Hall by 5:00 p.m., E.S.T., March 23, 2018.** A nonresident property owner to be eligible to vote must be owner of record for a period of six (6) months immediately preceding the date of the Annual Municipal Election (October 21, 2017) and shall have one vote **provided he or she is registered on the “Books of Registered Voters” maintained at the City Hall. Registration hours are Monday through Friday, 8 a.m. until 5 p.m. or by appointment if you cannot register during these normal business hours.**

**The City of Seaford has independent registration procedures for the Annual Municipal Election. To vote, you must meet the eligibility requirements and be registered on the “Books of Registered Voters” maintained at City Hall.**

A person shall be required to register only one time. You are urged to check your registration if you did not vote in the last municipal election. If you have moved out of the City after your original registration, you will need to check your registry to assure you are an eligible voter.

All voters will need to show proof of residency which may be a State of Delaware driver’s license, a State of Delaware identification card, a federal or state tax return with address, a City of Seaford utility bill or real estate property tax bill, or other acceptable proof of residency or ownership.

**COMMITTEE REPORTS:**

- 1. Police & Fire – Councilwoman Leanne Phillips-Lowe**
- 2. Administration – Councilman Orlando Holland**
- 3. Code, Parks and Recreation – Councilwoman Grace Peterson**
- 4. Public Works & WWTF – Councilman William Mulvaney**
- 5. Electric – Councilman Dan Henderson**

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REGULAR MEETING OF THE MAYOR AND COUNCIL

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**EXECUTIVE SESSION:**

1. Personnel

**Mayor Genshaw solicits a motion to hold an Executive Session for the purpose of discussing personnel.**

**Mayor Genshaw closes the regular meeting and opens the Executive Session.**

**Mayor Genshaw reopens the regular meeting.**

**Mayor Genshaw solicits a motion to adjourn the regular Council meeting.**

**Mayor Genshaw closes the regular Council meeting.**



**HAPPY HOLIDAYS TO ALL!**

**NOTE:** Agenda shall be subject to change to include or delete Additional items (including executive session) which arise at the time of the meeting. (29 Del. C. S1004 (e) (3))

Date Posted: 12/5/17 - Website

Posted by: TNT

C-2  
12-12-17

December 1, 2017

TO: Mayor and Council

FR: Dolores J. Slatcher, City Manager / 

RE: Retirement – City of Seaford

All,

This letter is being written with excitement and reservation. It is time for me to leave and allow you all to move forward with new leadership.

I appreciate the opportunity to have been a part of this organizations for so many years. It has been an honor to be part of the team, to hire so many employees and see them develop their skills and leadership. This group of employees are far better prepared, trained, and willing to advance the City compared to when I began my career. They are also required to continue training to sustain the new regulations, advanced infrastructure, customer service, codes, human resources and finance.

This is an excellent work force that will support the work that needs to be done. It has always been about leaving the community better and providing the services they need and desire to improve their lives. And I have had so many Elected Officials who have mentored me and helped me to grow over the years.

Thank you for allowing me to determine when it was time for me to leave. My last day of employment with the City of Seaford will be February 28, 2018. If there is anything I need to wrap up on your behalf before then, please let me know. Thanks.

Cc: Charles Anderson, ACM  
June Merritt, DF&HR  
Annette Cole, HR Coordinator

C-3  
12-12-17

(302) 629-6644  
(302) 629-9341 ADMINISTRATION  
EMERGENCY 911  
FAX (302) 629-0672



300 VIRGINIA AVENUE  
SEAFORD, DELAWARE 19973

**POLICE DEPARTMENT**

December 4, 2017

Dolores J. Slatcher  
City Manager  
414 High Street  
Seaford DE 19973

Dear Dolores,

It is with great remorse and a heavy heart that I find myself writing this letter. As you are aware from our previous conversations, I have been considering retiring from my position with the City as Chief of Police. After much discussion and thought with my wife and family we feel that it is for the best. Therefore, this is my official notice of intent to retire, letting you and everyone know that, after over 43 years of service with the City I am retiring with an effective date of April 2, 2018.

It has been an amazing trip through the years since October 1974 and I have never looked back. If I had it to do all over again, I would choose the same path. It has been truly my honor to serve the City of Seaford and all of the citizens.

I can only tell you and the City employees with whom I work with on a daily basis is one of the main reasons that I have stayed as long as I have. The girls at City Hall are amazing.

I have not made this decision lightly. It comes with much thought and consideration of current health and circumstances surrounding myself and family.

I want to personally thank you for all of your support, and Mayor Slatcher for giving me the opportunity to serve the City of Seaford and all of the citizens. Finally, a special thank you to all of the City Staff and employees. They all are truly amazing people.

Sincerely,

  
Gary W. Flood  
Chief of Police

N.B.1  
12-12-17

## RESOLUTION

**WHEREAS**, City of Seaford recognizes the importance of fair housing for the citizens of Seaford; and

**WHEREAS**, the City of Seaford supports the goals of the Federal Fair Housing Law,

**NOW THEREFORE**,

**BE IT RESOLVED**, that the City of Seaford heartily encourages all parties involved in the renting, selling or financing of housing in the City of Seaford to insure that no person shall, on the grounds of race, color, national origin, religion, creed, sex, marital status, familial status, age, sexual orientation or disability be discriminated against or denied a fair and equal opportunity to housing; and

**BE IT FURTHER RESOLVED**, that the City of Seaford, when acting as administrator of a Community Block Grant, is hereby authorized to take such actions as deemed necessary to affirmatively further fair housing in connection with the said Community Development Block Grant.

Respectfully submitted,

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David Genshaw  
Mayor

# Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 11/30/2018)

N.B.1 12-12-17

**Instructions.** (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

**Applicant/Recipient Information** Indicate whether this is an Initial Report  or an Update Report

1. Applicant/Recipient Name, Address, and Phone (include area code):	2. Social Security Number or Employer ID Number:
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received
5. State the name and location (street address, City and State) of the project or activity:	

## Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3). <input type="checkbox"/> Yes <input type="checkbox"/> No	2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of \$200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9 <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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If you answered "No" to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form. **However,** you must sign the certification at the end of the report.

## Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(Note: Use Additional pages if necessary.)

## Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity (\$ and %)

(Note: Use Additional pages if necessary.)

## Certification

**Warning:** If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed \$10,000 for each violation.

I certify that this information is true and complete.

Signature:	Date: (mm/dd/yyyy)
X	

N.B.1  
12-12-17

**DELAWARE STATE HOUSING AUTHORITY (DSHA)  
FY18 DELAWARE CDBG APPLICATION FORM**

I. General Application Information

A. Name, address, phone number, DUNS number, and EIN number of Applicant:

Sussex County Council
2 The Circle Georgetown, DE 19947
302-855-7743
<b>EIN #:</b> 51-6000241 <b>DUNS #:</b> 052642915

B. Name, position and signature of Person Submitting Application:

Todd F. Lawson
County Administrator
Signature and Date:

C. Application on behalf of:

City of Seaford P.O. Box 1100 Seaford, DE 19973
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Name and position of authorizing official:

David Genshaw	Mayor
Signature and Date:	

D. For "On Behalf of" applications, written documentation authorizing each "on behalf of" application request must be attached as Exhibit 1. If information contained in a county's application for its unincorporated areas is to be repeated in the body of the "on behalf of" applications, e.g. administrative budget, management capacity, etc., then these sections contained in the "on behalf of" applications may simply reference the appropriate section in the county's application.

E. Name, address and phone number of Contact Person (if different from B above):

Brad D. Whaley, Director 302-855-7777
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N.B.1  
12-12-17

CITIZEN PARTICIPATION  
CERTIFICATE OF ASSURANCE

It is hereby assured and certified to the Delaware State Housing Authority that Sussex County, Delaware has met application requirements of (Attachment E Delaware Community Development Block Grant Program Policies and procedures) citizen participation requirements, and that Sussex County has:

- (1) made available information concerning the amount of funds that may be applied for;
- (2) made known the range of activities that may be undertaken with these funds;
- (3) made known the fact that more applications will be submitted to the State of Delaware than can be funded;
- (4) outlined the processes to be followed in soliciting and responding to the views and proposals of citizens, communities, nonprofit agencies, and others in a timely manner; and
- (5) provided a summary of other important program requirements.

The City of Seaford has held a public hearing on November 28, 2017 with required notice for all citizens, including low and moderate-income persons, to have an opportunity to present their views and proposals.

The City of Seaford has by resolution and after one public hearing, endorsed this application.

ATTEST:

CITY OF SEAFORD

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David Genshaw  
Mayor

RESOLUTION NO.

Councilman submitted to the Council the following Proposed Resolution:

ENDORISING PROJECT TO BE SUBMITTED TO THE DELAWARE STATE HOUSING AUTHORITY FOR FUNDING FROM THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AUTHORIZING TODD F. LAWSON, SUSSEX COUNTY ADMINISTRATOR, TO SUBMIT APPLICATION

WHEREAS, the City of Seaford resolves to apply for Community Development funds from the Delaware State Housing Authority in accordance with appropriate regulations governing Community Development Block Grant State of Delaware Program for Block Grants as contained in (Sections 570.488-499 24 CFR U. S. Department of Housing and Urban Development); and

WHEREAS, the City of Seaford has met the application requirements of (Attachment E Delaware Community Development Block Grant Program Policies and Procedures) Citizen Participation requirements; and

WHEREAS, Sussex County plans on accomplishing the requested projects with CDBG funds; and

WHEREAS, the City of Seaford hereby agrees to allow Sussex County to accomplish the projects in the targeted areas of Seaford; and

WHEREAS, the City of Seaford and Sussex County are in agreement with this activity.

NOW, THEREFORE,

BE IT RESOLVED by the City of Seaford and Sussex County that they endorse and grant permission for the following activity:

APPLICATION: Rehabilitation/Infrastructure/Demolition

Total infrastructure project cost is \$\_\_\_\_\_, total CDBG grant request is \$\_\_\_\_\_. Matching funds in the amount of \$\_\_\_\_\_ will be provided by the City of Seaford general funds. **Note: To be used for Infrastructure projects only**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. PASSED BY THE CITY OF SEAFORD SUSSEX COUNTY, ON THE 28<sup>TH</sup> DAY OF NOVEMBER, 2017.

12 December 2017

WE GIVE MAYOR AUTHORIZATION TO SIGN RESOLUTION.

Council Members

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
David Genshaw  
Mayor

I DO HEREBY CERTIFY THAT THE FOREGOING TITLE OF RESOLUTION NO. \_\_\_\_\_ ADOPTED BY THE CITY OF SEAFORD IS THE SAME TITLE OF RESOLUTION NO. \_\_\_\_\_ ADOPTED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_

\_\_\_\_\_  
Robin A. Griffith  
Clerk of the County Council

N.B.1  
12-12-17

CERTIFICATION BY APPLICATIONS  
FOR  
THE DELAWARE CDBG PROGRAM

The application hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements with respect to the acceptance and use of Federal funds for this federally-assisted program. Also, the applicant gives assurance and certifies with respect to the program that:

- (a) It possesses legal authority to make an application and to execute a community development program.
- (b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the applicant to submit this application, all understanding and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the submission of the application and to provide such additional information as may be required.
- (c) That prior to submission of its application to DSHA, the applicant has met the following citizen participation requirements:
  - 1) Each applicant shall have provided all citizens, especially those living within the area(s) affected by the proposed application, with adequate opportunity for meaningful involvement on a continuing basis and for participation in the planning, implementation and assessment of its community housing and development plans and all CDBG applications related thereto. At the time of preparation of any application for funds under this program, the applicant shall provide adequate information to citizens including reasonable access to records on the past use of CDBG funds; and hold at least one public meeting (pursuant to advertisement in a publication of general local circulation) so that citizens will have the opportunity to comment on the community's past performance under the CDBG Program. A copy of the legal advertisement announcing the date, place and time of the meeting, and a transcript or summary of the comments received at the meeting must be included with the application. (Nothing in these requirements, however, shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of its community development program.);
  - 2) Each applicant certifies that it has obtained the review and comment of its Community Development Advisory Committee as required by the Delaware CDBG Citizen Participation Plan dated May 15, 2013 and Section 508 of the Housing and Community Development Act of 1987; and
  - 3) Each applicant certifies that it has included in its notice of public meeting the following language:

"...In accordance with the Section 106 Review Process established by the National Historic Preservation Act of 1966, as amended, comments are especially encouraged from interested agencies and individuals with respect to undertakings that may affect historic properties of significance to such agencies and individuals..."
- (d) It has developed its application so as to give maximum feasible priority to activities which benefit low- and moderate-income families or aid in the prevention or elimination of slums and blight; and activities which the application certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available to meet such needs.
- (e) Its chief executive officer or other officer of the applicant approved by DSHA:
  - (1) Consents to assume the state of a responsible Federal official under the National Environmental Policy Act of 1969 and other authorities as specified in 24 CFR 58.1(a)(3) and carry out this responsibility in accordance with the "Overview of Environmental Review Procedures" issued for the Delaware CDBG Program and dated July 1989; and meet the requirement of 24 CFR Part 58 and 24 CFR 570.604; and

- (2) Is authorized and consents on behalf of the applicant and himself/herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his/her responsibilities as such an official.
- (f) The program will be conducted and administered in compliance with:
- (1) Title VI of the Civil Rights Act of 1964 (Pub. L 88-352) and implementing regulations issued in 24CFR Part I;
  - (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended, and implementing regulations;
  - (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto (24 CFR Section 570.601);
  - (4) Section 3 of the Housing and Urban Development Act of 1968, as amended and implementing regulations of 24 CFR Part 135;
  - (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086 and implementing regulations issued at 41 CFR Chapter 60; and the state review requirements of the Architectural Accessibility Act (Chapter 73, Title 29, Delaware Code) and the applicable rules and regulations promulgated by the State Architectural Accessibility Board;
  - (6) Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 CFR Part 107;
  - (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended and implementing regulations at 24 CFR Part 8;
  - (8) The Age Discrimination Act of 1975 (Pub. L. 94-135) and implementing regulations when published;
  - (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 24 CFR Part 42 and all applicable regulations of the Delaware Uniform Relocation Act (Chapter 93, Title 29, Delaware Code);
  - (10) The labor standard requirements as set forth in 24 CFR, Parts 3 and 5, and HUD regulations issued to implement such requirements;
  - (11) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control, and abatement of water pollution;
  - (12) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
  - (13) The regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, A-87, A-110, A-122, and A-133 as they relate to the acceptance and use of Federal funds under this federally-assisted program and the Delaware CDBG Financial Management Handbook;
  - (14) Section 106 of the National Historic Preservation Act 1966, As amended via the Advisory Council on Historic Preservation's regulations, Protection of Historic and Cultural Properties (36 CFR 80);
  - (15) The provisions of the Hatch Act, which limits the political activity of employees;
  - (16) The lead-based paint requirements of 24CFR Part 35, Subpart B issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et. seq.).

- (g) It will comply with the CDBG Regulation CFR 570.611, which prohibits conflicts of interest and with HUD Standards of Conduct issued on November 1, 1985.
- (h) No member, officer, or employee of the applicant, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work to be performed in connection with the program assisted under the CDBG Program, and that it shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this certification:
- (i) It will give HUD, DSHA and the State Auditor and the Federal and State Comptroller Generals or any authorized representatives access to all records, books, papers, or documents related to the CDBG Program.
- (j) It certifies to affirmatively further fair housing in accordance with Section 104(b)(2) of the Act as amended, and agrees to participate in fair housing planning by cooperating in any analysis to identify impediments to fair housing choice within the jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and to maintain records reflecting the analysis and actions in this regard.
- (k) Because HUD has not issued final regulations implementing the 1983 and 1984 amendments to the Housing and Community Development Act of 1974, as amended, the following "special condition" is incorporated into these Program Guidelines as a certification by the applicant and will also be utilized in all CDBG contracts:

Notwithstanding any other provisions of these Program Guidelines, requirements of the Amendments to Title I of the Housing and Community Development Act of 1974, and HUD's final regulations related thereto, which supersede or are not provided in the FY18 Program Guidelines shall govern the use of the assistance provided by the state to local government units in FY18-FY19.

- (l) It will not attempt to recover any capital costs of public improvements assisted in whole or part with the Title I funds by assessing any amount against properties owned and occupied by persons of low-and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:
  - 1) assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than Title I funds; or
  - 2) for purposes of assessing any amount against properties owned and occupied by persons of low- and moderate-income who are not persons of very low income.
- (m) It certifies to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations in accordance with Section 519 of Public Law 101-44, (the 1990 HUD Appropriations Act).

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Title of Official

N.B. 2  
12-12-17

AMP Contract No. 2017-003842-MAS

**AGREEMENT FOR PARTICIPATION IN THE  
ADVANCED METERING INFRASTRUCTURE PROGRAM  
BETWEEN  
AMERICAN MUNICIPAL POWER, INC.  
AND  
THE CITY OF SEAFORD, DELAWARE**

WHEREAS, the City of Seaford, Delaware, a political subdivision and body public and corporate of the State of Delaware (herein "Municipality") owns and operates municipal utility systems, including electric and water; and

WHEREAS Municipality is a member of the Delaware Municipal Electric Corporation, a political subdivision and body public and corporate of the State of Delaware (herein "DEMEC"); and

WHEREAS, DEMEC is a member of American Municipal Power, Inc. ("AMP"), a not for profit corporation that provides various services to its members, directly or indirectly through various affiliated entities; and

WHEREAS, through DEMEC, Municipality is or will be receiving from AMP Advanced Metering Infrastructure ("AMI") services under AMP's hosted solutions strategy (the "AMI Program") in connection with Municipality's electric utility pursuant to that certain Second Addendum to Schedule to Master Services Agreement for Participation in the Advanced Metering Infrastructure Program (the "DEMEC Agreement"); and

WHEREAS, Municipality's water utility also desires to participate in AMP's AMI Program; and

WHEREAS, DEMEC is unable to serve as a conduit for the AMI Program with respect to certain water utility-related equipment and services (the "Water Components"); and

WHEREAS, Municipality and AMP wish to contract with one another directly in order to accommodate Municipality's participation in the AMI Program with respect to the Water Components only; and

WHEREAS, AMP has engaged in an RFP selection process and entered into resulting agreements (the "Vendor Agreements") with Silver Spring Networks, Inc. and ElectSolve Technology Solutions and Services, Inc. (collectively, the "Vendors") to provide certain AMI field equipment, communication components, and associated back office systems in connection with the AMI Project in order to provide a comprehensive AMI Program that has the advantages to participating AMP and DEMEC members of economies of scale, mitigation of risk from local technology deployment and support, and reduced burden of ongoing support.

NOW THEREFORE, this Agreement for Participation in the Advanced Metering Infrastructure Program (this "Agreement") is hereby entered into as of this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the

“Effective Date”) between Municipality and AMP (collectively, the “Parties”), and the Parties hereby agree as follows.

#### **ARTICLE I. SERVICES**

- A. For the term of this Agreement, AMP agrees to provide to Municipality, and Municipality agrees to take and pay for, the services set forth in Exhibit A – Scope of Services (the “Services”).
- B. The Services shall be completed in a timely manner in consultation with Municipality. The Services shall begin on a mutually agreeable date.
- C. AMP’s obligations to provide Services hereunder are contingent upon, and subject to, the delivery to AMP of Services by the Vendors, in accordance with the Vendor Agreements, or AMP’s ability to secure replacement Services in the event of a failure or inability to deliver or default by one or more of the Vendors.
- D. AMP shall, in the event of a failure or inability to deliver or default by one or more Vendors, and whether or not such failure or default leads to termination of a Vendor Agreement, in good faith use its best efforts to substitute for actual delivery replacement Services in a timely and reasonable manner.
- E. All Services shall be provided in accordance with all applicable laws, rules, regulations and codes. AMP shall, or shall require the applicable Vendor to, comply with any prevailing wage requirements applicable to the Services set forth in Exhibit A and any attachments thereto.
- F. Definitions for all capitalized terms used but not defined in Exhibits have the meanings given them in Exhibit B.

Notwithstanding that a DEMEC-Participating Municipality will receive the benefits of the AMI Program and this Schedule, AMP agrees to look solely to Municipality for payments due in accordance with the terms of this Schedule, and DEMEC cannot be held liable or responsible for inferior data or performance provided by Municipality.

#### **ARTICLE II. STANDARD OF CARE AND LIABILITY**

- A. The standard of care for all services performed or furnished by AMP under this Agreement will be the care and skill ordinarily used by professionals practicing under similar conditions at the same time and in the same locality as services performed pursuant to this Agreement. AMP shall not be responsible for the accuracy or completeness of (a) any information reported or supplied by Municipality pursuant hereto or (b) any reports derived from any inaccurate or incomplete information reported or supplied by Municipality pursuant hereto.
- B. In connection with the Services, AMP shall use reasonable diligence in assuring the equipment provided in connection with the Services sufficiently perform in accordance with applicable industry

standards and coordinate with Municipality's property that is integrated with Municipality's AMI system as of the date of commencement of the Services.

- C. In the event of termination of any Vendor Agreement, AMP shall use reasonable diligence to procure from the replacement vendor(s) warranties that provide Municipality with benefits no less favorable than those described in Exhibit C. To the extent permitted, AMP will assign to Municipality all Vendor or other third-party warranties related to the Services. However, AMP does not warrant or guarantee any specified level of performance with respect to the equipment and facilities provided in connection with the Services beyond the warranties AMP receives from the Vendors and assigns to Municipality. If the equipment and/or facilities provided in connection with the Services fail or are rendered partially or completely inoperable for any reason whatsoever, except to the extent caused by AMP's willful, wanton or intentional acts or omissions or recklessness, AMP shall not be liable for damages caused thereby to Municipality and such events shall not constitute a breach of AMP's obligations under this Agreement. In the case of a material Vendor default, AMP shall promptly exercise its rights under the relevant Vendor Agreement, or otherwise under the law, for the benefit of Municipality, provided that out-of-pocket costs and expenses associated with AMP's exercise of such rights are not subject to the annual cap set forth in Article V.C.
- D. EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, FOR ANY PRODUCT THAT AMP PROVIDES UNDER THIS AGREEMENT, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR

OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

- E. Each Party agrees to provide its own defense regarding any and all claims, demands or actions for injuries to persons or property by any third parties in any way resulting from, growing out of, or arising in or in connection with: (i) this Agreement, (ii) the construction, maintenance or operation of the other Party's system or other property, or (iii) any interruptions in service by the other Party.
- F. Subject to the provisions of this Article II, AMP assumes no responsibilities of any kind with respect to the construction, operation or maintenance of Municipality's electric or water system or other property owned or used by Municipality other than the equipment and/or facilities provided in connection with the Services.
- G. AMP shall carry, and shall require the Vendors to carry, appropriate amounts of property and casualty insurance for their respective employees and equipment used in performing the Services. The Vendors are contractually required to meet the insurance requirements set forth in Exhibit E.

**ARTICLE III. MUNICIPALITY'S RESPONSIBILITIES**

- A. Municipality shall designate in writing an employee to act as Municipality's representative with respect to its responsibilities and the Services (the "Municipality Representative"). Such persons shall have complete authority to transmit instructions, receive information, and interpret and define Municipality's policies and decisions with respect to the Services. The Municipality Representative shall attend any pre-implementation, progress and other related meetings and inspections applicable to Municipality.
- B. Municipality shall provide information, comments and approvals as required in a timely manner to AMP when such input is necessary for AMP to perform the Services. The Municipality Representative shall give prompt written notice to AMP whenever he or she observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of the Services or any defect or nonconformance in the Services, or in the work of any Vendor or other contractor pursuant to this Agreement. Municipality shall reasonably cooperate with AMP in such a manner as to facilitate AMP's performance of its obligations under any Vendor Agreements.
- C. Municipality shall arrange access to and make all provisions for AMP and the Vendors to enter upon public and private property as required to perform the Services.

- D. In the event that Municipality determines that payment of prevailing wage is required in connection with all or any part of the Services, Municipality shall designate an employee or representative to serve as the prevailing wage coordinator.
- E. In accordance with Vendor requirements, Municipality shall comply with all applicable export laws; and not directly or indirectly provide, export or re-export, or otherwise make available (in any form, including visual access), AMI products or technology in violation of any such laws, restrictions, or regulations, without all necessary approvals or licenses. Products and technology may not be provided or made available either directly or indirectly, (i) into Cuba, Iran, North Korea, Sudan, Syria or any other country subject to United States trade sanctions, or to individuals or entities controlled by such countries or to nationals or residents of such countries (other than nationals who are lawfully admitted permanent residents of countries not subject to such sanctions); or (ii) to anyone on any denied, prohibited, or unverified list maintained by the United States Government, including the Office of Foreign Assets Control (OFAC) Specially Designated Nationals (SDN) List.

#### **ARTICLE IV. AMP'S RESPONSIBILITIES**

- A. AMP shall designate in writing an employee of AMP to act as AMP's representative with respect to its responsibilities and the Services (the "AMP Representative"). Such person shall have authority to transmit instructions, receive information, and relay AMP's policies and decisions with respect to the Services. The Representative will attend pre-implementation, progress and other related meetings and inspections on an as-needed basis.
- B. The AMP Representative shall give prompt written notice to Municipality whenever he or she observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of the Services or any defect or nonconformance in the Services, or in the work of any Vendor or other contractor pursuant to this Agreement.

#### **ARTICLE V. FEES AND BILLING**

- A. AMP shall be compensated for the Services in accordance with the Services Pricing Agreement as set forth in Exhibit D. Municipality will be charged fees for the provision of Services ("Services Fees") which shall be determined based on the amount of equipment and services provided by AMP and the corresponding price for such equipment and services as delineated in Exhibit D.
- B. Each month, AMP shall render to the Municipality an invoice for all amounts due under this Agreement.
- C. The Municipality shall pay the invoiced amounts no later than the due date shown on the invoice. Such date shall not be less than fifteen (15) days after the date of the invoice. The amounts due shall be considered paid when actually received by AMP during normal business hours, or deposited in AMP's

account and available for AMP's use. Amounts not paid on time or before the due date shall be payable with interest accrued at the lesser of: (i) the then current prime interest rate per annum of Citibank, N.A., or its successor, prorated by days from the due date to the date of payment; or (ii) the maximum rate that is authorized by law.

- D. In case a portion of any amount included in an invoice rendered pursuant to this Section is in bona fide dispute, the entire amount shall be paid when due, and any difference between the billed amount and the adjusted amount shall be promptly refunded after the determination of the adjusted amount, with interest thereon computed as provided in Section V.D. hereof. Notice of any such dispute shall be in writing and submitted no later than ninety days from the due date of the invoice in dispute.
- E. Billing disputes and any subsequent adjustments hereunder shall be limited to transactions occurring within an eighteen (18) month period ending on the last day of the month in which the notice of the dispute is submitted as required by Section V.E. hereof.

#### **ARTICLE VI. TERM**

- A. The term of this Agreement shall begin upon execution of this Agreement by the Parties and continue for an initial term of twelve months (12) months (the "Initial Term"). After the Initial Term, this Agreement shall renew for consecutive one (1) year terms until either Party notifies the other in writing, no less than sixty (60) days prior to the end of the then-current term, of its intent not to renew. Pricing for any renewal term shall be established by agreement of the Parties prior to the commencement of such renewal term.

#### **ARTICLE VII. DISPUTE RESOLUTION**

- A. The Parties agree to negotiate in good faith to settle any and all disputes arising hereunder.
- B. Good faith mediation shall be a condition precedent to the filing of any adversarial litigation in law or equity by either Party relating to this Agreement except injunctive litigation necessary to solely restrain or cure an imminent threat to public or employee safety. Before the remedies provided for in this Article VII may be exercised by either Party, such Party shall give written notice to the other Party that such Party believes that an event of default or impasse under this Agreement may have occurred, specifying the circumstances constituting the event of default or impasse in sufficient detail that the other Party will be fully advised of the nature of the event of default or impasse. The responding Party shall prepare and serve a written response thereto within ten (10) business days of receipt of such notice.
- C. The Parties shall attempt to resolve the controversy by engaging a single mediator, experienced in the subject matter, to mediate the dispute. The mediator shall be mutually selected by the Parties to the controversy and conduct mediation at a location in Ohio to be agreed upon by the Parties or absent

agreement, by the mediator. Within two business days of selection, the mediator shall be furnished copies of the notice, this Agreement, response and any other documents exchanged by the Parties. If the Parties and the mediator are unable to settle the same within thirty (30) days from selection, or such other time as the Parties agree, the mediator shall make a written recommendation as to the resolution of the dispute. Each Party, in its sole discretion, shall accept or reject such recommendation in writing within ten (10) days. Should the Parties be unable to agree upon a single mediator within five (5) business days of the written response of the responding Party, any Party or the Parties jointly shall petition the Presiding Judge of the Court of Common Pleas of Franklin County Ohio, to appoint a mediator, experienced and knowledgeable in the matters which are the subject of the dispute. Notwithstanding the preceding sentence, the parties reserve the right to file suit or pursue litigation in any court that is otherwise proper with respect to jurisdiction and venue. The Parties' consent to selection of a mediator by the Franklin County Court of Common Pleas shall not constitute consent to jurisdiction of such court or waiver of defenses as to venue or jurisdiction. The costs of the Mediator and the mediation shall be shared equally by the Parties to the dispute.

- D. In any litigation, any Party that fails to accept a mediator's recommendation regarding resolution of the dispute or disputes at issue shall be liable for the other Party's reasonable attorneys' fees and expenses incurred litigating such issue, not to exceed \$10,000, unless the result of such litigation materially improves such Party's position from such recommendation. For purposes of this subsection, "materially improve" shall mean, with regard to compensation or liability, twenty-five percent (25%) or greater improvement. All determinations under this paragraph shall be under the sole discretion of the presiding judge, and the record of the mediation and the mediator's recommendation shall be admissible for such purposes and for such purposes only, unless the Parties otherwise agree.
- E. The Parties may mutually agree to waive mediation or subsequent to mediation waive their right to litigate in Court and, in either case, submit any dispute hereunder to binding arbitration before a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or such other arbitration procedures to which they may agree. Such agreement shall be in writing and may otherwise modify the procedures set forth in this Article VII for resolving any particular dispute.
- F. Nothing in this Article VII shall be construed to affect jurisdiction or venue over any dispute that is otherwise appropriate under law.

#### **ARTICLE VIII. TERMINATION**

- A. Either Party may terminate this Agreement for cause upon sixty (60) days' written notice in the event of substantial failure by the other Party to perform in accordance with the terms hereof through no fault

of the terminating Party. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the Party receiving such notice begins, within ten (10) days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt thereof; provided however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty (30) day period, and if such Party has diligently attempted to cure the same and thereafter continues diligently to cure the same, the cure period provided for herein shall extend up to, but in no case more than, sixty (60) days after the date of receipt of the notice.

- B. Municipality or AMP may terminate this Agreement for convenience upon sixty (60) days' written notice.
- C. In the event of termination for any reason, AMP shall be entitled to compensation pursuant to the terms of this Agreement for Services provided until the termination date.

**ARTICLE IX. MODIFICATION**

- A. Modifications to this Agreement may, from time to time, be necessary. In the event either Party believes such a modification is required, both Parties agree to negotiate any such modifications in good faith. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed written instrument.

**ARTICLE X. NOTICES**

- A. Any notice required pursuant to this Agreement will be in writing via U.S. mail, addressed to the Party and address listed below:

Municipality:

City of Seaford, Delaware  
414 High Street  
Seaford, Delaware 19973  
Attn: City Manager\_

With copies to:

City of Seaford, Delaware  
414 High Street  
Seaford, Delaware 19973  
Attn: Mayor

AMERICAN MUNICIPAL POWER:

American Municipal Power, Inc.  
1111 Schrock Road, Suite 100  
Columbus, Ohio 43229  
Attn: Chief Information Officer

With copies to:

American Municipal Power, Inc.  
1111 Schrock Road, Suite 100  
Columbus, Ohio 43229  
Attn: General Counsel for Corporate Affairs

- B. Any notice given in writing under this Agreement shall be deemed to have been given by either Party to the other Party upon the date received or rejected by the other Party if sent by registered or certified mail, as shown in the Post Office receipt, or if not mailed by registered or certified mail, upon the date of receipt thereof by such other Party.

**ARTICLE XI. MISCELLANEOUS**

- A. It is recognized by Municipality that AMP, in undertaking or causing to be undertaken the administration of the AMI Program, must comply with the requirements of the Vendor Agreements and other related agreements; it is therefore agreed that this Agreement should be construed in a manner consistent with compliance with the provisions of all such agreements.
- B. Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Parties, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- C. The Parties recognize that information exchanged pursuant to this Agreement may be proprietary, trade secret and/or confidential and agree, to the extent consistent with law, to treat the same as such.
- D. The terms, provisions, covenants and conditions of this Agreement or any Schedule and the rights and obligations of the Parties thereto shall not extend to, inure to, bind, be transferred to or vest in the successors or assigns of either Party other than by operation of law, unless the prior written consent of the other respective Party or Parties shall be obtained.
- E. This Agreement is solely for the benefit of the Parties hereto and the terms and conditions contained herein do not inure to the benefit of any third parties.
- F. Any waiver at any time by either Party hereto of its right with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or any other matter. Except as provided in Section V.F. hereof, any delay, short of the statutory period of limitation, in asserting or enforcing any right under this Agreement shall not be deemed a waiver of such right.
- G. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between Municipality and AMP relating to the Services and supersedes all prior written or oral understandings, which shall terminate upon the effectiveness of this Agreement.
- H. This Agreement and any controversies arising hereunder are to be construed and determined in accordance with the laws and Constitution of the State of Ohio; provided however, that in respect of

the applicability of Delaware Code provisions to this Agreement, the laws of the State of Delaware shall apply.

- I. Municipality has authorized execution of this Agreement by motion of City Council documented in their meeting minutes, a copy of which has been provided to AMP.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties warrant and represent that all actions and authorizations necessary to authorize them to affix their signature to this Agreement have duly occurred and that they have been duly authorized to execute this Agreement on behalf of their respective Party, and hereto have executed this Agreement to be effective as of the Effective Date.

THE CITY OF SEAFORD, DELAWARE

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

AMERICAN MUNICIPAL POWER, INC.

\_\_\_\_\_

By: Marc S. Gerken, P.E.  
President/CEO

APPROVED AS TO FORM:

\_\_\_\_\_

By: Rachel Gerrick  
Senior Vice President & General Counsel  
for Corporate Affairs

## EXHIBIT A – SCOPE OF SERVICES

AMP's Advanced Metering Program enables Municipality to acquire Advanced Metering Infrastructure (AMI) equipment and services under contracts AMP has in place with its Vendors - Silver Spring Networks (Silver Spring), and ElectSolve Technology Solutions and Services (ElectSolve). The Program includes an operating model and associated roles and responsibilities for the deployment, operation and maintenance of all the components necessary to operate a fully functional AMI system.

A general description of the operating model can be described as follows:

- **Municipality's AMI Field Equipment.** The Municipality will deploy advanced meters, AMI Communications network components and related equipment and system integrations. These tasks are described more fully in this Exhibit.
- **AMI applications, systems, and related technologies.** The applications, servers and related infrastructure will be deployed by AMP and provided to the Municipality as a service.
- **Integration(s) to local system(s):** An integration to the Municipality's billing system will be completed, enabling the meter-to-cash processes. Additional integrations to other operational system are provided as required.

This Scope of Services expects that Municipality has an agreement in place for participation in AMP's Advanced Metering Program as described above.

AMP's contract with Silver Spring Networks allows municipality to purchase water meters and installation services. This Exhibit describes the services required for the Municipality to deploy water meters not capable of retrofit with an integrated interpreter/register or external wall mount AMI Communications Module to be replaced with compatible water meters.

Except as otherwise identified below as a responsibility of Municipality, AMP will provide the following Services to the Municipality which will be performed by Vendor Silver Springs Network:

### 1. Equipment purchase

- 1.1. AMP will purchase for Municipality, for the Fees specified in Exhibit D, Equipment and Tools requested by Municipality.
- 1.2. Equipment Delivery. Except any expedited deliveries that may be mutually agreed to in writing, the requested delivery date of Equipment must be no less than sixteen (16) weeks from Silver Spring receipt of the applicable Purchase Order. Silver Spring will ship Equipment FCA (Incoterms 2010), Silver Spring's production facility. Municipality may not cancel or modify a Purchase Order after Silver Spring's acceptance without Silver Spring's prior written consent.
- 1.3. Equipment Changes; End of Life. Silver Spring may, upon notice, add, replace, or change Equipment it offers for sale and, without prior notice but with prompt subsequent notice, implement engineering changes

needed to satisfy governmental requirements, protect Equipment or system security and integrity, or for environmental, health or safety reasons. Silver Spring may cease production of Equipment upon advance written notice at least six (6) months before the last delivery date for such Equipment (“**Last Order Date**”). AMP may issue a final Purchase Order for the discontinued Equipment prior to the Last Order Date. AMP may not cancel any portion of a Purchase Order issued for the discontinued Equipment.

1.4. Equipment warranties are described in Exhibit C.

1.5. **Endpoint Installation.** In any geographic area, Silver Spring will cause its Installation Subcontractor to install and troubleshoot Integrated Meters, in accordance with Silver Spring guidelines. This work is further described in Attachment 1 to Exhibit A.

1.5.1. **Installation Subcontractor Responsibilities.** Silver Spring will cause its Installation Subcontractor to perform the following tasks during the Deployment Phase and after Access Point and Relays are installed:

1.5.1.1. Install Endpoints, in accordance with Integrated Meter Provider guidelines regarding installation procedures and Silver Spring guidelines regarding the sequence of Endpoint installations.

1.5.1.2. Within 24 hours of installation, load into UIQ the location file information of each Integrated Meter.

2. Project Management – Provide oversight of AMI deployment operations.

2.1. **Silver Spring Project Implementation**

2.1.1. **Silver Spring Responsibilities.** Silver Spring, through its Project Manager, will manage the AMI Project and Silver Spring deliverables under this Exhibit during the Deployment Period:

2.1.1.1. Creating, tracking and updating the Project Schedule.

2.1.1.2. Providing weekly status reports addressing the progress of the AMI Project, issues and outstanding action items.

2.1.1.3. Participate in Municipality requirements gathering and configuration specifications kickoff

2.1.1.4. Attending weekly meetings as agreed to with AMP’s project team to coordinate AMI Project activities between the Parties.

2.1.1.5. Coordinating Silver Spring’s deliverables to AMP and Municipality’s third party contractors.

2.1.1.6. Answering general questions and providing overall program facilitation.

2.1.2. **AMP & Municipality Responsibilities.**

2.1.2.1. AMP and Municipality will each designate a Project Manager to coordinate all AMP & Municipality activities related to AMI Project.

2.1.2.2. AMP and Municipality’s Project Managers will work to create efficient paths of communication with Silver Spring, including prioritizing communication requests made to the Silver Spring team.

2.1.3. **Delays.** Additional costs incurred as a direct result of any delay will be the responsibility of the Party who caused such delay.

3. Training – Provide end-user training to the Municipality to enable a smooth transition to new process and environment.

3.1. **Silver Spring Training** – Silver Spring will perform the following training services

3.1.1. During Field Network Installation Phase – Silver Spring will train, for a period not to exceed two (2) Business Days, Municipality and/or its designated representatives on troubleshooting procedures and tools for communication problems with Integrated Meters.

3.1.1.1. Silver Spring will provide special training on enabling RF communication from meter rooms and other interior hard-to-reach service points:

3.1.1.2. Silver Spring will instruct Municipality and/or its designated representative's staff on how to recognize field conditions that may create RF interference between a service point and exterior locations of Access Points and Relays (e.g., service points with a significant amount of metal enclosures or which are located in deep basements / sub-basements), to enable Municipality and/or its designated representatives to refrain from installing Integrated Meters at such locations or to plan for continued on-site reading of such meters until later remediation.

During Deployment Phase - Silver Spring will train Municipality and/or its designated representative's field personnel and relevant contractors on the specific aspects of installing Endpoints. This training will be completed within two (2) Business Days.

## ATTACHMENT 1 – SILVER SPRING SUBCONTRACTOR INSTALLATION SCOPE OF WORK

### General Notes

- 1.1 The description of the Installation Subcontractor's work herein will be performed pursuant to an agreement between Silver Spring and its Installation Subcontractor. Although AMP acknowledges that Silver Spring will engage a subcontractor for certain services, Silver Spring will remain liable for all duties designated herein as responsibilities of either Silver Spring or the Installation Subcontractor.
- 1.2 Pricing reflected in Exhibit D includes the use of the Installation Subcontractor's work order management system, handheld devices, GPS collection, photograph capabilities, data management, and work order reports.
- 1.3 Pricing does not include cutting, drilling or grinding of locking devices and agreed to in writing and signed by Silver Spring and the Installation Subcontractor.
- 1.4 Pricing assumes seamless flow of work with full utilization of each installation crew at all times. Contractor will be fully engaged in deployment planning and development of proposed work flow, recognizing specific requirements of individual installations, including those meters behind locked doors.
- 1.5 Hours of operation are defined in local time as:
  - 1.5.1 Regular Business Hours >> 8:00 a.m. – 6 p.m., Mon-Fri. (excludes AMP's recognized holidays)
  - 1.5.2 After-Hours >> All other times

### Safety

- 1.6 All Installation Subcontractor safety procedures implemented for this program will be in accordance with Silver Spring, AMP and Municipality safety procedures as well as state and local ordinances. Installation Subcontractor will also provide all safety equipment needed to protect installation personnel, motorists and the general public from injury. All Installation Subcontractor personnel will strictly enforce and adhere to all safety rules and procedures. Subcontractor to comply with Municipality's safety procedures.
- 1.7 All employees assigned to work on Municipality's endpoints installation shall comply with all applicable federal, state, and local laws and regulations in the performance of the Services.
- 1.8 Installation Subcontractor will manage and run employee training and safety programs.
- 1.9 Installation Subcontractor will provide personal protective equipment, tools & equipment for all employees.
- 1.10 Installation Subcontractor will provide appropriate identification, as agreed to with Silver Spring, AMP and Municipality.
- 1.11 Installation Subcontractor will perform ongoing field safety audits.
- 1.12 Installation Subcontractor shall comply with OSHA, and provide periodic reporting of OSHA recordable injuries and motor vehicle incidents.
- 1.13 Silver Spring shall be responsible for the cost of repair or replacement to Property damaged by Installation Subcontractor; AMP and Municipality recognize that Silver Spring may recover such costs from the Installation Subcontractor.

### Project Management

- 1.14 AMP and Municipality will assign a project manager to serve as the main point of accountability and contact for Silver Spring and the Installation Subcontractor. The project manager will also attend weekly deployment meetings during the Project and provide comprehensive daily, weekly, monthly and quarterly updates on action items and deliverables.
- 1.15 The plan is based on a five-day work week; however, Installation Subcontractor, Silver Spring, or Municipality may request to have the installer work Saturdays and evenings as necessary in the event of delays. Such changes to work hours shall be as mutually agreed to between Silver Spring, the Installation Subcontractor and Municipality, approved by AMP and Municipality in advance, and this may impact pricing.
- 1.16 The Installation Subcontractor plans to continuously perform the installation of the Equipment, and there will be no work stoppages other than Municipality-designated holidays and weather days.

- 1.17 All endpoints will be released in route-read order. Municipality will provide a meter-reading schedule prior to the Project start date. AMP and Municipality will ensure a seamless flow of work that allows for full utilization of each installation crew.
- 1.18 Installation Subcontractor will manage all Services in accordance with the project schedule, staffing and Silver Spring's or Municipality's project plan and develop and manage the detailed route saturation plan.

**People, Resources and Tools**

- 1.19 Installation Subcontractor will implement a hiring plan that includes background checks and pre-employment drug testing.
- 1.20 Installation Subcontractor will ensure its employees meet the appropriate experience, qualifications and requirements for the specified Services. Employees shall maintain the necessary proficiency to safely and accurately perform such Services on an ongoing basis.
- 1.21 Installation Subcontractor will provide a work order management system (WOMS). Provision of WOMS includes typical flat file transfer based integration(s) with AMP's enterprise systems.
- 1.22 Installation Subcontractor will provide work management handheld devices, mobile phones, and data plans for handheld devices and phones.
- 1.23 Installation Subcontractor will provide vehicles and fuel. Municipality will provide secure parking as required for Installation Subcontractor's fleet.

**Warehousing and Inventory Management**

- 1.24 Municipality will provide warehouse and cross dock facilities, labor, material handling equipment, and services (e.g., staging, handling, scrapping, manage consumables, etc.). Provide appropriate office space, crew space, training space, break rooms, bathrooms, etc. Provide satellite [e.g., "remote"] cross dock facilities/locations and related labor, as required.
- 1.25 AMP and Municipality shall source and store approximately 8 weeks of new Equipment inventory at any given time (i.e., for most Municipalities, 100% of Equipment needed for the deployment, plus 3-5% for spares, shall be procured, delivered, and stored prior to installation commencing).
- 1.26 Municipality will provide inventory management and tracking for all equipment and accessories provided by/procured for Silver Spring or Installation Subcontractor including Integrated Meters; and seals, locking rings and other similar items.
- 1.27 Installation Subcontractor will provide materials forecasts and coordinate with Silver Spring, AMP and Municipality regarding the delivery of equipment and accessories needed to meet Project requirements. Municipality will coordinate deliveries at its warehouse.
- 1.28 Removed meters and meter materials will be returned to Municipality's warehouse. Optionally, Municipality may have the Installation Subcontractor dispose of all removed meters and meter materials at no additional fee to utility.
- 1.29 At its cost and expense, Municipality will be responsible for Replacement of all materials damaged or lost from its warehouse.

**Installation Considerations – All equipment**

- 1.30 Installation Subcontractor will obtain and maintain all necessary licenses that are required to perform the Services, and submit proof of license to AMP and Municipality.
- 1.31 Installation Subcontractor will submit its proposed installation and inspection processes to Silver Spring, AMP and Municipality for review with a reasonable opportunity to provide feedback prior to implementation.
- 1.32 Installation Subcontractor will provide a "before" and "after" photograph of all installations. In addition, for the relevant endpoints, provide photographs of register data and the entire Endpoint set. Some of these can be done as part of the "before" or "after" photograph. Store and maintain all photos in a manner that allows for retrieval and transfer to AMP and Municipality, as requested.
- 1.33 Installation Subcontractor will manage keys provided for access. Manage seals, locking devices and barrel locking tools.
- 1.34 Installation Subcontractor will install ancillary equipment such as external antennas and cables, as required.

- 1.35 Installation Subcontractor will provide data capture of normal GPS data accuracy of approximately +/- 5 meters of the installed device.
- 1.36 Installation Subcontractor will provide at least 2 documented field attempts on 2 separate days and 2 documented written attempts (door hangers) , to attempt to complete each meter installation, prior to Returning to Utility (“RTU”).
- 1.37 Should the installer find tampering or unsafe conditions that require the technician to wait for a Municipality employee to arrive, the response time under normal conditions will not exceed 30 minutes. Should the installer be required to stay beyond this time, the Installation Subcontractor will be reimbursed at a time and materials rate as listed in Exhibit D.
- 1.38 It is the sole responsibility of the Municipality to provide access to installation sites. Additional fees may be charged, with AMP and Municipality’s prior approval, if installers cannot get access to >5% of attempted sites on any given day, or >3% of attempted sites in a given week. As these thresholds are approached, installation Subcontractor will notify AMP and Municipality to allow access issues to be resolved in a time manner.
- 1.39 End Customer Engagement
  - 1.39.1 Installation Subcontractor will schedule an appointment for all life support End Customers.
  - 1.39.2 Municipality will implement an End Customer claims program. Municipality will manage and resolve customer claims resulting from the Installation Subcontractor’s products and services.
  - 1.39.3 Installer will leave a door hanger after each visit or completed endpoint installation. Door hangers and all such related customer communications material will be provided by Municipality.
- 1.40 AMP and Municipality will be responsible for all marketing and End Customer communications.
- 1.41 End Customer contact information will be provided by Municipality at least 30 days prior to the applicable deployment date and the installer will be allowed to contact End Customer to schedule installation appointments, where necessary. Contractor recognizes that customer contact information may change due to move-ins/move-outs within this 30-day window.

**Specific Installation Considerations – Integrated Meter Exchange**

- 1.42 All new Integrated Meter installations are assumed to be in the same size & type as existing meter. Accuracy of data regarding existing meters is the sole responsibility of Municipality.
- 1.43 Municipality will provide a list of life support and critical load meters prior to the Project start date. The Installation Subcontractor will not be held responsible for End Customer claims relating to life support or critical load meters where it was not notified in advance of a life support and critical load meter by Municipality.
- 1.44 Municipality will provide keys where meters are located behind locked gates.
- 1.45 Pricing for the installation services assumes that no more than 1% of accounts measured on a monthly basis will result in RTU status.

**Quality and Audits**

- 1.46 For Endpoints, the Installation Subcontractor shall audit 100% of each installer’s work in the field during the first 10 days and 5% thereafter.
- 1.47 Installation Subcontractor will revisit and correct any problems found by audits of the installer’s work.

**Reporting**

- 1.48 In addition, Installation Subcontractor will provide activity reports on a regular basis to Silver Spring, AMP and Municipality. Reports and data will include:
  - 1.48.1 Daily and/or weekly summary reports with installation status.
  - 1.48.2 Detail information defining the installation of each device.
  - 1.48.3 Detail monthly report of all installations.

**Additional Services and Resources to be Provided by Silver Spring**

Silver Spring will:

- 1.49 Interface with AMP and Municipality team, as needed.
- 1.50 Proactively communicate any issues that might/will delay the Project.
- 1.51 Resolve any complaints filed against Installation Subcontractor employees by Silver Spring, AMP, Municipality, End Customer, or any other external party.

**Additional Services and Resources to be Provided by AMP and/or Municipality**

AMP will:

- 1.52 Provide a Project manager to coordinate AMP and Municipality's activities related to the Project.
- 1.53 Proactively communicate any issues that will delay the installation pace or Project.

Municipality will:

- 1.54 Resolve any complaints filed against Municipality's employees by Silver Spring or Installation Subcontractor.
- 1.55 Provide rings and seals; provide barrel locking tools.
- 1.56 Perform new Integrated Meter and IMU sample testing.
- 1.57 Perform removed meter "as-found" calibration testing.
- 1.58 Provide hazardous waste containers for batteries delivered at its warehouse; remove and replace when full.

**Call Center Support**

- 1.59 All End Customer calls will be received by Municipality.
- 1.60 The installer is responsible for follow-up calls as are required to perform and complete its installation services or address installation related issues received by Municipality's call center.

## EXHIBIT B – DEFINITIONS

1. “Access Points” or “APs” means Equipment that acts as an interface between the NAN and the WAN that allows UIQ to communicate with the Endpoints.
2. “AMI” or “Advanced Metering Infrastructure” means hardware and software that, along with communications services, enable automated meter reading and other capabilities.
3. “AMI Project” means AMP’s AMI project as described in the applicable SOW, excluding materials, equipment, software or services provided by third parties not under Silver Spring's direction or control.
4. “Business Day” means weekdays excluding Silver Spring holidays as Silver Spring will specify annually in advance.
5. “Deployment Period” means the period under the applicable SOW commencing on SOW Effective Date, or date on which an applicable notice to proceed is issued, whichever is later, and ending upon completion of Acceptance Testing.
6. “End Customer” means a residential or commercial customer of any Municipality.
7. “Endpoints” means and includes Integrated Meters and any other device that the Parties agree in writing is an Endpoint.
8. “Equipment” means all hardware and related accessories Silver Spring provides to Municipality under this Schedule that is identified as such in an exhibit.
9. “Fees” means, with respect to any SOW, all amounts payable thereunder.
10. “Installation Subcontractor” means a subcontractor to Silver Spring that performs installation services of Access Points, Relays, and Endpoints.
11. “Integrated Meter” means an electricity metering endpoint provided by the Integrated Meter Provider into which the Communications Module has been integrated in accordance with applicable specifications.
12. “Integrated Meter Provider” means a supplier of Integrated Meters for AMP, as agreed to by the Parties in writing.
13. “Product(s)” means a combination of Equipment and Software.
14. “Project Manager” means the person each Party appoints to handle the day-to-day management of the Parties’ respective responsibilities described in the applicable SOW.
15. “Project Schedule” means the schedule for delivery of the Products and completion of Services under an applicable SOW, as the Parties mutually agree in writing.
16. “Purchase Order” means AMP’s ordering document referencing this Schedule Agreement.
17. “Relay” means Silver Spring’s wireless receiver that routes and forwards information through the Silver Spring mesh network.

18. "RF" means radio frequency.
19. "SaaS (Software as a Service)" means the Service where Silver Spring operates Software on Silver Spring servers at a Silver Spring data center and makes such Software accessible to AMP, and AMP's Authorized Users, on a subscription basis.
20. "SOW" means an amendment to a Vendor Agreement which specifically addresses work to be performed for Municipality.

**EXHIBIT C - WARRANTIES**

Vendor Silver Spring has contractually provided to AMP the following warranties:

*Product Warranties.*

1. **Equipment Warranty.** For a period of one (1) year from the delivery date of Equipment (“**Equipment Warranty Period**”), Silver Spring warrants that such Equipment provided by Silver Spring shall be: (i) new unless AMP and the Municipality give prior written approval otherwise; (ii) in conformity with the requirements of the Vendor Agreement; and (iii) free from defects in materials and workmanship. An extended warranty is available to the municipality as an extra cost option. If selected by the Municipality, pricing for the extended warranty is provided in Exhibit D. As the sole and exclusive remedy, Silver Spring will, at its option and expense, repair or replace the non-conforming Equipment during the warranty period described in this Section. Prior to returning a unit of Equipment for repair or replacement, AMP or Municipality will obtain from Silver Spring a return manufacturer’s authorization (“**RMA**”) number, which shall be placed on all packaging, labeling, and other communications relating to the return. Silver Spring may require that the Equipment be evaluated prior to issuing an RMA number. Once Silver Spring confirms the nonconformity or defect and determines that it cannot be repaired at Purchaser’s site, Silver Spring will accept return of such Equipment for repair or replacement and return the Equipment as promptly as possible and in accordance with Silver Spring’s standard RMA procedures. The warranty period for replaced or repaired Equipment shall be the greater of (i) the remaining warranty period of the nonconforming Equipment that was repaired or replaced, or (ii) six (6) months from the delivery date of such replaced or repaired Equipment. Should Silver Spring fail or be unable to perform the necessary repairs, replacements, and tests in accordance with Silver Spring’s RMA procedures, AMP may perform or cause to be performed the necessary work at Silver Spring’s expense. The Equipment warranty does not cover Equipment in poor operating condition due to: (a) changes to the Equipment not made or approved by Silver Spring in writing; (b) use with cables, mounting kits, antennas, battery backups and other devices connected to Equipment or third party software or firmware that Silver Spring has not provided to AMP or Municipality or approved for use with such Equipment in writing; (c) Municipality’s or a third party’s misuse, abuse, negligence, or failure to install, test, handle or operate the Equipment in accordance with the applicable documentation; (d) certain force majeure events; or (e) incorrect data, or data entry or output by Municipality or a third party.
  
2. **Water IMU Battery Warranty.** Silver Spring warrants that any Water IMU with an external transmitter installed shall be free from battery defects in manufacturing and design for a period of twenty (20) years from the delivery date of such Water IMU (“**Water Battery Warranty Period**”). Silver Spring or its suppliers will repair or replace a Water IMU product that is non-performing due to battery failure free of charge for the first ten (10) years of the Water Battery Warranty Period and at a prorated replacement cost based on the current list price during the remaining ten (10) years of the Water Battery Warranty Period as follows:

Water Battery Warranty Period Year #	Prorated Replacement Cost (per non-conforming water IMU product)
11	30% of then-current price of the replacement water IMU product
12	35% of then-current price of the replacement water IMU product
13	40% of then-current price of the replacement water IMU product
14	45% of then-current price of the replacement water IMU product
15	50% of then-current price of the replacement water IMU product
16	55% of then-current price of the replacement water IMU product
17	60% of then-current price of the replacement water IMU product
18	65% of then-current price of the replacement water IMU product
19	70% of then-current price of the replacement water IMU product
20	75% of then-current price of the replacement water IMU product

*Services Warranty.* For a period of six (6) months from the completion date of the Services, Silver Spring warrants to AMP that any Services performed pursuant to any SOW shall be free from defect or failure due to faulty workmanship. The sole and exclusive remedy, and Silver Spring's entire liability, for any breach of this warranty will be for Silver Spring to correct or re-perform any nonconforming Services during the warranty period described in this Section, at Silver Spring's expense, provided that Silver Spring shall have no obligation to re-perform any non-conforming Services if the Vendor Agreement with Silver Spring has terminated or expired.

**EXHIBIT D - PRICING SCHEDULE**

**I. SERVICES**

**Field Equipment**

Water Meters	\$56,935.15
Water Meter Installation Services	\$29,299.00

**SERVICES TOTAL** **\$86,234.15**

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**SERVICES - DETAILED BREAKDOWN**

<b>Water Meters</b>				
<b>Item</b>	<b>Catalog Number</b>	<b>SSN Price / Unit (\$USD)</b>	<b>Quantity</b>	<b>Total</b>
5/8"x3/4", MultiJet Meter, lead free body w/plastic bottom, eLinx register USG	225-100004	\$101.44	52	\$5,274.88
1", MultiJet Meter, lead free body w/plastic bottom, eLinx register USG	225-100005	\$158.75	46	\$7,302.50
1 ½" Flanged MultiJet Meter, lead free body, w/eLinx encoder USG	225-1000-08	\$376.28	15	\$5,644.20
2" Turbine meter, lead free body w/eLinx encoder USG	225-0900-41	\$673.00	41	\$27,593.00
3" Turbine meter, lead free body w/eLinx encoder USG	225-0900-42	\$938.13	8	\$7,505.04
Octave Ultrasonic 3" w/ Ductile Iron Body & Encoded Register (O303-E1-A09)	225-060006	\$1,565.23	1	\$1,565.23
Octave Ultrasonic 4" w/ Ductile Iron Body & Encoded Register (O304-E1-A09)	225-060007	\$2,050.30	1	\$2,050.30
<b>Total</b>				<b>\$56,935.15</b>

<b>Water Meter Installation</b>				
<b>Item</b>	<b>Catalog Number</b>	<b>Price / Unit (\$USD)</b>	<b>Quantity</b>	<b>Total</b>
Installation, 5/8"x1/2" pd-inside settings	290-001007	\$77.70	46	\$3,574.20
Installation, 5/8"x1/2" pd-outside settings	290-001008	\$40.50	6	\$243.00
Installation, 1"pd-inside settings	290-001009	\$80.90	32	\$2,588.80
Installation, 1"pd-outside settings	290-001010	\$41.30	14	\$578.20
Installation, 1.5" pd-inside settings	290-001011	\$206.70	10	\$2,067.00
Installation, 1.5" pd-outside settings	290-001011	\$202.80	5	\$1,014.00
Installation, 2" Compound-inside settings	290-001011	\$229.70	15	\$3,445.50
Installation, 2" Compound-outside settings	290-001011	\$225.40	26	\$5,860.40
Installation, 3" Compound-inside settings	290-001011	\$646.30	5	\$3,231.50
Installation, 3" Compound-outside settings	290-001011	\$636.60	4	\$2,546.40
Installation, 4" Compound-inside settings	290-001011	\$1,033.60	1	\$1,033.60
Installation, Pulling Wire	290-001011	\$29.40	106	\$3,116.40
<b>Total</b>				<b>\$29,299.00</b>

## EXHIBIT E – VENDOR INSURANCE REQUIREMENTS

### Article 1 General Insurance Requirements

- 1.1 Throughout the performance of the Work or longer as may be described below, Vendors must obtain, pay for, and keep in force, the minimum insurance coverage described in this Schedule of Insurance.
- 1.2 Before starting the performance of any Work, upon renewal of any policy, and upon a change of any insurance carrier, Vendors must deliver to AMP certificates evidencing that the required insurance is in force.
- 1.3 With the exception of government-controlled workers compensation coverage:
  - 1.3.1 Vendors must place the insurance with companies that (1) are satisfactory to AMP, (2) hold an A.M. Best Rating of A-, VII, or higher, and (3) are authorized to conduct business in the state where the Work will be performed;
  - 1.3.2 Vendors will (1) provide at least 30 days' written notice to AMP (as certificate holder) of the cancellation or non-renewal of the insurance and (2) provide at least 10 days' written notice to AMP (as certificate holder) of the cancellation of the insurance for non-payment of premium; and
  - 1.3.3 within 30 days of AMP's request, Vendors must submit insurance-company certified copies of policy endorsements.
- 1.4 Vendors must pay all deductibles, or self-insured retentions, or both contained in Vendors' policies of insurance required or provided in connection with the Vendor Agreement or any task order or statement of work. AMP reserves the right to approve or reject all levels of self-insured retention, captive insurance programs, or other alternative risk financing Vendors may use to comply with any insurance requirement.
- 1.5 AMP does not represent that required coverage or limits are adequate to protect Vendors.
- 1.6 Failure of AMP to demand a certificate or other evidence of full compliance with the insurance requirements or failure of AMP to identify a deficiency from evidence that is provided will not be construed as a waiver of Vendors' obligation to maintain the required insurance.
- 1.7 To the fullest extent permitted by applicable law, Vendors waive all rights against AMP and its agents and employees for damages to the extent covered by insurance, except rights to the proceeds of the insurance. This waiver shall not apply to any professional liability policy maintained in connection with the Work.
- 1.8 Upon AMP's request, Vendors shall add any AMP Municipality(s) as additional insured(s) on those policies which AMP is named as an additional insured pursuant to the requirements herein.

### Article 2 Vendors' Minimum Coverage Requirements

- 2.1 Workers Compensation. Vendors must maintain workers compensation coverage meeting the requirements of applicable law.
- 2.2 Employers Liability / Stop Gap Coverage. Vendors must maintain employers' liability / stop gap coverage with (1) an each-accident limit of not less than \$1,000,000, (2) a disease each-employee limit of not less than \$1,000,000, and (3) a disease policy limit of not less than \$1,000,000.
- 2.3 Commercial General Liability. Vendors must maintain commercial general liability ("CGL") coverage which provides (1) an each-occurrence limit of not less than \$2,000,000, (2) a general-aggregate limit of not less than \$2,000,000, and (3) a products and completed-operations aggregate limit of not less than \$2,000,000.
  - 2.3.1 The CGL insurance must be written on ISO occurrence form CG 00 01 10 01 or a substitute form, providing at least equivalent coverage for liability arising from premises, operations, independent

contractors, products/completed-operations, personal and advertising injury, and liability assumed under an insured contract.

- 2.3.2 Vendors must include American Municipal Power, Inc. and Municipality as an additional insured(s) under the CGL policy using ISO endorsement CG 20 10 07 04 and ISO endorsement CG 20 37 07 04 or a substitute form(s) providing equivalent coverage.
  - 2.3.3 The CGL insurance must apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs which cover the additional insured(s).
  - 2.3.4 The CGL policy must not exclude coverage to the additional insured(s) for bodily injury or property damage arising out of the products/completed-operations hazard.
  - 2.3.5 Vendors must maintain the CGL insurance in effect for no less than 5 years after the earlier of the termination the Vendor Agreement or completion of all Work.
- 2.4 Business Automobile Liability. Vendors must maintain business automobile (“BA”) coverage written on ISO form CA 00 01 10 01 or a substitute form, providing at least equivalent coverage with a limit of not less than \$1,000,000 each accident.
- 2.4.1 The coverage must extend to any auto owned (if any), non-owned, leased, rented, hired, or borrowed.
  - 2.4.2 Vendors must include American Municipal Power, Inc. and Municipality as an additional insured(s) under the BA policy.
- 2.5 Umbrella/Excess Liability. Vendors may employ an umbrella/excess liability policy to achieve the above-required minimum coverage.
- 2.6 Professional Liability. If the Work include any professional services, Vendors must maintain professional liability insurance which provides (1) an each-claim limit of not less than \$2,000,000, and (2) an annual-aggregate limit of not less than \$2,000,000.
- 2.6.1 The professional liability policy must have an effective date which is on or before the date on which Vendors first started to provide any Work.
  - 2.6.2 Vendors must maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination the Vendor Agreement or completion of all Work.
  - 2.6.3 If the Work include any professional design services and Vendors is not authorized under applicable law to directly provide professional design services, Vendors may satisfy the requirements of this **Section 2.6** by providing a contractor’s professional liability insurance policy.

***[End]***

Memorandum

TO: Mayor and Council

FR: Dolores J. Slatcher, City Manager /LOP

RE: Water Meter Funding – Advanced Metering Infrastructure Program  
American Municipal Power

DATE: December 7, 2017

All,

First the reason for the separate contract with AMP is because DEMEC could not borrow funds for our water meters under their structure as they are limited to electric.

Attached is the most recent adjusted metering cost prepared by Berley Mears, Director of Public Works in the estimated amount of \$99,642.02, which is being recommended to be paid from the water reserve account. As you will see in the AMP contract there are different numbers as these were numbers developed earlier.

The water meters have unique challenges and costs related to their installations as some are inside commercial and industrial facilities, which when originally installed they were not required to place them in meter pits outside. The owners bought the meter from the City and installed them as part of their construction either building new or performing renovations.

It is anticipated due to the field conditions the installer will incur additional costs and the City will have to pay them. That is why we would ask that adjustments be authorized per the Director of Public Works and any unforeseen funding be from the water reserve account as well.

Therefore staff would recommend the estimated \$99,642.02 with any unknown necessary field adjustments or new customers added since the estimate was prepared be included in the authorized use of the Water Reserve funds to pay for the full implementation of the Advanced Metering Infrastructure Program for water meters.

Cc: Charles Anderson, ACM  
June Merritt, DF  
Berley Mears, DPW

<u>size</u>	<u>outside location</u>	<u>meter cost</u>	<u>meter labor</u>	<u>module labor</u>	<u>total</u>
5/8"	6	101.44	40.5	28.6	\$1,023.24
1"	11	158.75	41.3	28.6	\$2,515.15
1.5"	4	376.28	202.8	28.6	\$2,430.72
2"	23	673	225.4	28.6	\$21,321.00
3"	3	938.13	636.6	28.6	\$4,809.99
4"		1273.4	1015.1	28.6	\$0.00
					\$32,100.10
<u>size</u>	<u>inside location</u>	<u>meter cost</u>	<u>meter labor</u>	<u>module labor</u>	<u>total</u>
5/8"	46	101.44	77.7	28.6	\$9,556.04
1"	34	158.75	80.9	28.6	\$9,120.50
1.5"	11	376.28	206.7	28.6	\$6,727.38
2"	18	673	229.7	28.6	\$16,763.40
3"	4	938.13	646.3	28.6	\$6,452.12
3" oactive	1	1565.23	646.3	28.6	\$2,240.13
4" oactive	1	2050.3	1015.1	28.6	\$3,094.00
Pulling wire	115	29.4			\$3,381.00
					\$57,334.57
<u>quantity</u>	<u>cost</u>				<u>total</u>
5/8" gaskets	104	0.45			\$46.80
1" gaskets	90	0.65			\$58.50
1.5" gaskets	30	2.14			\$64.20
1.5" bolts	60	2.31			\$138.60
2" gaskets	82	2.42			\$198.44
2" bolts	164	2.31			\$378.84
3" gaskets	16	1.44			\$23.04
4" gaskets	2	2.04			\$4.08
bolts for 3"	64	2.94			\$188.16
bolts for 4"	16	3.02			\$48.32
					\$1,148.98
			Total		\$90,583.65
			conting.		\$9,058.37
			<b>Grand Total</b>		<b>\$99,642.02</b>

NR 4  
12-12-17

MEMORANDUM

TO: Mayor & Council

FROM: Dolores J. Slatcher, City Manager /LOP

RE: Non-budgeted Expense for new RTU startup & commissioning  
Water Department

DATE: December 7, 2017

All,

Attached is QEI quote #11172017 in the amount of \$10,000 to perform the RTU (Remote Terminal Unit) startup and commissioning along with travel and living expenses while in Seaford. This is a new RTU Berley Mears, Director of Public Works has purchased to install in the water pumping station and needs programmed. Rick Garner, Electrical Engineer programmed these RTUs in the past and is no longer with us. Now we need the outside vendor to the programming.

The recommendation is to hire QEI and pay the related invoice from the Water Reserve Account based on the actual time and material used to program this RTU.

Cc: Charles Anderson, ACM  
Berley Mears, DPWs  
June Merritt, DF



60 Fadem Road, Springfield, NJ 07081 USA  
T: +1 973 379 7400 F: +1 973 379 2138  
www.qeiinc.com

**QEI BUDGETARY QUOTATION NO. 11172017**

November 17, 2017

City of Seaford  
P.O. Box 1100  
Seaford, DE 19973  
Attn: Berley A. Mears III / 302 629-8307 ([publicworks@seafordde.com](mailto:publicworks@seafordde.com))

**Onsite RTU Start-up and Commissioning**

Line Item	Description	QTY	Unit price	Total price
1	RTU Startup & Commissioning	5 Days	\$1,650.00	\$8,250.00
2	Travel & Living Expenses	5 Days	\$350.00	\$1,750.00
<b>Total:</b>				<b>\$10,000.00</b>

The above quote is an estimate for both time onsite and expenses. QEI anticipates that five (5) days will be required. However, if additional or less time is needed it will be charged and included with the final quote.

**NOTE: This service is provided on a portal-to-portal basis.**

**This quote expires 12/17/2017**

N.B. 5  
12-12-17

## WASTEWATER DISPOSAL SERVICES AGREEMENT

This WASTEWATER DISPOSAL SERVICES AGREEMENT ("Agreement"), is entered into and made effective this \_\_\_\_ day of December \_\_\_\_\_, 2017 ("Effective Date") by and between PROXIMITY MALT, Laurel, Delaware ("PROXIMITY") and the CITY OF SEAFORD, Delaware ("CITY"). PROXIMITY and CITY shall each be referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, PROXIMITY operates a malting facility in Laurel, Delaware (the "Site"); and

WHEREAS, the PROXIMITY Site generates wastewater which is mostly from the malting process in nature (the "Wastewater") for which it desires to utilize the CITY for disposal and treatment services; and

WHEREAS, CITY is willing to allow PROXIMITY to deliver its wastewater from the Site to the CITY'S Wastewater Treatment Facility (the "Facility") for disposal and treatment via an assigned discharge point.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Grant of Permit:

CITY hereby grants PROXIMITY the right to discharge wastewater into the CITY'S Wastewater Treatment Facility subject to the terms and conditions of this Agreement.

2. Agreement/Term:

The Parties agree that wastewater delivered by PROXIMITY to the Facility during the term of this Agreement will be disposed of and treated by CITY in accordance with this Agreement. Nothing in this Agreement shall be construed to require PROXIMITY to deliver wastewater to the Facility. The term of this Agreement shall begin on the effective date and shall continue for a one (1) year period following such date. If PROXIMITY chooses to extend this agreement past the expiration date they shall make this request to the CITY sixty (60) days prior to the expiration date of this agreement.

3. Delivery of Wastewater; Hauler Requirements:

PROXIMITY will utilize a dedicated hauler to deliver the wastewater to the Facility. When delivering wastewater to the Facility the dedicated hauler will deliver only PROXIMITY wastewater and will not include in such deliveries sludge or other wastewater from any other location or facility.

4. Acceptance, Disposal, and Treatment of Wastewater:

CITY agrees to receive and accept wastewater at the Facility delivered by PROXIMITY's hauler pursuant to the terms of this Agreement. Upon receipt of the

wastewater at the Facility, CITY shall have responsibility for the treatment and disposal of the wastewater. The CITY agrees to accept wastewater during normal working days/hours. The CITY agrees they have verified that this wastewater does fall within the guidelines of their permitted operation and therefore they are permitted to accept, treat and dispose of it. The initial period duration shall be determined at the sole discretion of the Director of Public Works.

5. Disposal Quantities:

PROXIMITY shall be permitted to deliver between zero and forty-seven-thousand-five-hundred (47,500) gallons per day

6. Compliance with Laws:

The Parties agree to comply with all federal, state, and local laws, rules, and regulations applicable to the performance of this Agreement.

8. Invoicing:

\_\_CITY shall invoice PROXIMITY in accordance with the terms of this Agreement for the actual quantity of wastewater delivered by Proximity on a monthly basis. At the end of each month during which PROXIMITY delivers wastewater to the Facility, CITY shall submit to PROXIMITY's authorized representatives an itemized invoice, in a form satisfactory to PROXIMITY, detailing charges for the quantity of wastewater delivered to Facility by PROXIMITY during that month. The process fee for each delivery will be derived by multiplying the actual volume delivered and the rate of (\$0.04 per gallon). CITY shall charge PROXIMITY the agreed upon rate of \$0.04 per gallon delivered. CITY shall furnish, upon request, any records relating to the invoice prior to or after payment by PROXIMITY. Within thirty (30) days after PROXIMITY receives the invoice, PROXIMITY shall pay CITY the undisputed amounts set forth in such invoice in accordance with the rates agreed upon in writing by the Parties; provided that PROXIMITY shall have no obligation to pay any amounts due in connection with this Agreement in the event of any breach of this Agreement by City. Notwithstanding the foregoing, any payment otherwise due on a Saturday, Sunday or PROXIMITY holiday shall be due on the following business day. Payment shall be considered made when payment checks are received by the CITY, or when payment by electronic funds transfer is initiated by PROXIMITY. The CITY will have the right to terminate this agreement in whole should the CITY not receive the payment within the above required thirty (30) days after receipt of the invoice. The CITY reserves the right to charge interest at 1.5% per month which is equivalent to 18% annually.

9. Suspension of Disposal:

CITY agrees to accept for treatment the wastewater of PROXIMITY pursuant to the terms of this Agreement; provided however, that CITY reserves the right to refuse to accept for treatment the wastewater should the wastewater treatment facility experience an "upset" or need to stop introduction into the system. In the event that the CITY

deems it necessary to stop receiving wastewater PROXIMITY shall not bring any wastewater to the CITY until further notice from the CITY.

10. Termination:

\_\_\_\_\_ Upon written notice (by certified mail or email) to CITY, PROXIMITY may at any time, in its sole discretion, without cause, cost, penalty, or liability (whether or not for breach of this Agreement), terminate this Agreement in whole or in part, effective the date specified in such notice. If terminated by PROXIMITY without cause, CITY will be entitled to payment for the portion of the wastewater delivered to Facility in accordance with the terms of this Agreement prior to the time of termination. If CITY desires to terminate this Agreement, it shall provide PROXIMITY 60 Days written notice (by certified mail or by email) of its intent to terminate. If CITY provides such notice, this Agreement shall terminate in whole or in part, effective on a date agreed to in writing by the Parties.

11. Notices Each to the Other:

All official notices each to the other shall be sent to:

City of Seaford

Proximity Malt

Attn: City Manager

Attn: David Kuske, VP Operations

P.O. Box 1100

644 S. 5<sup>th</sup> Street

414 High Street

Milwaukee, WI 53204

Seaford, DE 19973

12. Indemnification:

\_\_\_\_ Except in the case of negligence by the City, PROXIMITY agrees to indemnify, defend, and hold harmless the CITY; its employees, elected and appointed officials from any and all suits, claims, demands, actions, losses or damages arising from the loss of life and/or injury or damage to persons or property whatsoever by reason of or in connection with this agreement.

13. Miscellaneous:

a. The Agreement is the entire agreement between the Parties regarding its subject matter and supersedes any terms and provisions of previous dates.

b. No amendment of this Agreement shall be effective unless it is in writing and signed by CITY and an authorized representative of PROXIMITY.

c. The Parties understand and acknowledge that CITY, its subcontractors, and the employees of either are not agents or employees of PROXIMITY and have no authority to

obligate or bind PROXIMITY in any way without the express written permission of an authorized representative of PROXIMITY.

d. Any course of dealing, delay or failure of PROXIMITY to enforce any of the provisions of this Agreement shall not be deemed a waiver of the right of PROXIMITY thereafter to enforce any and each such provision.

e. If any provision of this Agreement should be found void or otherwise unenforceable, such provision shall be deemed to be revised and modified to the extent necessary to make it legally enforceable. In any event, the remaining provisions of this Agreement shall be enforceable as though the void or unenforceable provision did not exist.

f. The headings of this Agreement are of no binding effect, and shall not be used to construe this Agreement.

g. The rights and remedies described in this Agreement are not exclusive, are cumulative or (to the extent applicable) alternative, and are in addition to other rights or remedies available at law or in equity or otherwise.

h. CITY shall not suspend performance under this Agreement, alter the payment terms set forth herein, or terminate this Agreement due to the creditworthiness of PROXIMITY.

i. This Agreement and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or in any way relates to this Agreement, shall be governed by the internal laws of the State of Delaware (including its laws regarding statutes of limitations), without regard to conflicts of law principles.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement as of the date first written above.

**Proximity Malt**  
**33222 Bi-State Boulevard**  
**Laurel, Delaware 19956**

**City of Seaford**  
**414 High Street**  
**Seaford, Delaware 19973**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

N.B.5  
12-12-17

## D. Slatcher

---

**From:** Matt Musial <mattm@proximitymalt.com>  
**Sent:** Monday, December 04, 2017 10:45 AM  
**To:** Public Works  
**Cc:** C. Anderson; D. Slatcher; Dave Kuske  
**Subject:** Re: agreement

Berley,

Please consider this the official notice we are in agreement with the disposal rate of \$0.04 per gallon. Also we are working to get a signed agreement to you today as well. But with our CEO out last week and the CFO tied up today it might be until tomorrow morning until a signed agreement is in your in box. Please consider this the official request for getting on the agenda on dec 12

Cheers,  
Matt

On Dec 1, 2017, at 4:54 PM, Public Works <[publicworks@seafordde.com](mailto:publicworks@seafordde.com)> wrote:

Hello Matt,

Not to rush you, but I wanted to let you know that we will need a signed agreement by Monday at 3:30 pm to make it on the agenda for the December 12<sup>th</sup> date. This is the only meeting in December, so if it does not make it on the 12<sup>th</sup> it will have to wait until the first meeting on January 9<sup>th</sup>. Thanks Matt.

Berley A. Mears III  
City of Seaford  
P.O. Box 1100  
Seaford, DE 19973  
302.629.8307 (O)  
302.628.6022 (F)

**From:** Matt Musial [<mailto:mattm@proximitymalt.com>]  
**Sent:** Thursday, November 30, 2017 12:03 PM  
**To:** Public Works <[publicworks@seafordde.com](mailto:publicworks@seafordde.com)>  
**Cc:** C. Anderson <[canderson@seafordde.com](mailto:canderson@seafordde.com)>; D. Slatcher <[dslatcher@seafordde.com](mailto:dslatcher@seafordde.com)>  
**Subject:** Re: agreement

Berley,

Thank you for your efforts to get this in place. I look forward to working with you all throughout this project.



State of Delaware  
Department of Natural Resources and Environmental Control  
Delaware Division of Parks and Recreation  
89 Kings Highway  
Dover, Delaware 19901

N.B.U  
12-12-17

November 15, 2017

Kate Hickey  
Superintendent of Parks & Recreation  
320 Virginia Avenue  
Seaford, Delaware 19973

Dear Ms. <sup>Kate</sup>Hickey:

The Division of Parks and Recreation is pleased to announce preliminary approval of your Outdoor Recreation, Parks and Trails (ORPT) grant request to replace swings and to resurface basketball court at Nutter Park. The ORPT Grant Agreement attached is the contract between the City of Seaford and our Division outlining the Grant obligations and commitments.

By accepting ORPT assistance, the City of Seaford accepts responsibility for maintaining Nutter Park for public outdoor recreation uses in perpetuity. The attached map is a depiction of the ORPT protection area.

Please sign the Grant Agreement and map for **ORPT 17-174** and return them to me for our Department Secretary's signature. After the Grant Agreement is fully signed, you will receive a copy for your record. Also, please include the Certificate of Insurance outlined in Section 11 of the Grant Agreement.

If you have any questions regarding the Grant Agreement or the grant process, please contact me at 302 739-9241.

Sincerely,

A handwritten signature in blue ink that reads "Bob Ehemann".

Bob Ehemann  
Program Manager

Enc: Grant Agreement, Protection Map, Reimbursement Forms and Status Report



## GRANT AGREEMENT



THIS GRANT AGREEMENT (“Agreement”) is entered into by and between the State of Delaware, Department of Natural Resources and Environmental Control, Division of Parks and Recreation located at 89 Kings Highway, Dover, Delaware, 19901 (“Grantor”), and the City of Seaford, located at 320 Virginia Avenue Seaford, Delaware 19973 (“Grantee”).

### W I T N E S S E T H :

WHEREAS, Grantor is charged with administering and granting funds from the **Delaware Land & Water Conservation Trust Fund**, pursuant to 30 *Del. C.* § 5423 (**Outdoor Recreation, Parks and Trails Program or “ORPT Program”**) for municipal and county outdoor recreation and conservation investments.

WHEREAS, the Grantor provided all eligible agencies a notice of grant cycle, dated April 13, 2017 requesting Pre-Applications be submitted on-line by May 26, 2017.

WHEREAS, the Grant Review Committee comprised of Grantor, the Delaware Park and Recreation Council (“DPRC”) and the Council on Greenways and Trails (“CGT”) met on June 13, 2017 and reviewed Pre-Applications for eligibility, local match availability and readiness. The Grant Review Committee determined tentative distribution and requested Grantee to submit an Application.

WHEREAS, the Grantee has made an application for the replacement of swings and resurface basketball courts at Nutter Park (“ORPT Project”) to Grantor for a Grant under the ORPT Program, in an amount of \$10,125.00.

WHEREAS, the Grantor and DPRC members of the Grant Review Committee reviewed Applications and modeled for ranking purposes.

WHEREAS, on November 2, 2017, the DPRC unanimously recommended funding this project at the requested amount. The Grantor, with consultation from DPRC, has (i) considered the Application under the criteria for the ORPT Program, and (ii) resolved to grant **Ten Thousand One Hundred and Twenty Five Dollars (\$10,125.00)** to the Grantee in accordance with the terms and conditions of this Agreement and Attachments hereto.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Term.

- (a) The term of the Grant Agreement shall be from **November 2, 2017 through June 30, 2019**. This Agreement shall commence upon the execution of this Agreement by the parties and shall continue until Grantor provides Grantee its final disbursement of Grant Funds due on Grantee's final reimbursement request; or **June 30, 2019** whichever occurs first. The parties may agree to extend this Agreement for a mutually agreeable term to be specified in writing.

2. Obligation(s) of Grantee.

- (a) Grantee shall use the Grant Funds to carry out the ORPT Project, herein described and in the Application and Project Map hereto as Exhibit A:

The Grantee will advertise and select qualified consultants to install new swings and safety surfacing and resurface the basketball court at Nutter Park. The swings and surfacing will meet both the Consumer Product Safety Commission and accessibility guidelines.

- (b) Grantee shall appoint a "Project Coordinator" who will oversee the completion of the ORPT Project and serve as a person of contact for Grantee in communications with Grantor. Grantee agrees to reference the assigned grant number and project name in any written correspondence or billing submitted to the Grantor. Grantee agrees to notify Grantor of changes in key personnel to the ORPT Project or organization or any development that may impact the schedule or scope of the ORPT Project within a reasonable time not to exceed thirty (30) days.
- (c) Grantee shall manage and complete the Project in a professional and competent manner. Grantee shall take reasonable efforts to assure that the Project is in conformance with all pertinent federal, state, and local statutes, codes, ordinances, resolutions and other applicable regulations. Grantee shall solely bear the costs of permits and other relevant costs required in the performance of this Project for work done prior to this Agreement unless a Certification of Investment was issued by the Grantor. Grantee is solely responsible for any and all costs or expenses incurred in excess of the Grant Funds awarded.
- (d) Grantee shall submit ORPT Reimbursement Request Forms included herein as Exhibit B and an updated Status Report along with demonstration of eligible expenses with each grant reimbursement request while a project is active. The Status Report shall be submitted at least two (2) times annually, by December 31<sup>st</sup> and by June 30<sup>th</sup>. Any Grant Funds not expended prior to the end of the Term of this Agreement remain with the Grantor.

- (e) Grantee agrees to credit the participation of the ORPT program in any advertisement or public comments, in accordance with Section 20 (b) of this Agreement, related to the project for which funds are granted. Further, Grantee shall post a permanent park signage displaying the ORPT logo acknowledging the ORPT Program assistance.
- (f) Grantee shall provide sufficient funds to assure effective operation and maintenance of areas developed with ORPT Program assistance for the useful life of the investment.
- (g) **Grantee agrees that lands acquired or developed with ORPT Program assistance shall remain in public outdoor recreation or conservation uses in perpetuity and shall not be converted to other uses.** The Project Map outlines the land protected for the public's use. If the Grantee cannot prevent a conversion of the land to another use, the Grantee must notify the Grantor, in accordance with Section 12 of this Agreement, prior to the conversion. Grantee agrees that the land cannot be converted to another use, other than conservation or outdoor recreation, without prior written approval by the Delaware General Assembly. The Grantee must agree to replace the original land in accordance with the conditions set forth in the ORPT Manual (manual available upon request). If a conversion of land is approved by Delaware General Assembly, the Grantee agrees that any replacement land shall then become subject to the same provision as the original land. The Grantee further agrees to effectuate such replacement of the original land as determined solely by the Grantor.
- (h) **Grantee agrees that land acquired with ORPT Program assistance shall have the following language in the deed of conveyance:**

“These lands are acquired for outdoor recreation or conservation purposes in accordance with the Land and Water Conservation Trust Fund, (Title 30, Ch 54, Subchapter II Conservation Trust Fund)). Property acquired or improved with ORPT Program assistance shall remain in public outdoor recreation or conservation in perpetuity and remain open for public use. Furthermore, said property may not be converted to other uses without a subsequent act of the General Assembly. If the Grantee intends to convert all or a portion of this property to another use, the Grantee must notify the State Division of Parks and Recreation, Department of Natural Resources & Environmental Control prior to the conversion.”

### 3. Order of Precedence.

Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any exhibits, amendments or modifications thereto); (b) Grantee's Application for grant funds and (c) Grantor's Grant Application Instructions. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

4. Obligations of Grantor; Disbursement & Limitation of Grant Funds.
- (a) Grantor shall serve as administrator of the Grant Funds under this Agreement. Grantor shall furnish Grant Funds to Grantee on a reimbursable basis. Upon incurring eligible expenses, Grantee shall complete and submit to Grantor appropriate ORPT Reimbursement Request Forms.
  - (b) Grantor shall reimburse Grantee up to fifty-percent (50%) of eligible project expenses within thirty (30) days of receipt of Grantee's Reimbursement Request Form, Status Report and demonstration of expenditures. If Grantor disputes a portion of a reimbursement expenditure, Grantor agrees to 1) pay the undisputed portion of the reimbursement request of receipt and 2) provide Grantee a detailed statement of Grantor's position on the disputed portion of the reimbursement expense within thirty (30) days of receipt. Grantee shall then have thirty (30) days from receipt of Grantor's detailed statement to resolve the disputed portion of the reimbursement expense amount.
  - (c) Grantor shall not be obligated to reimburse ORPT Project costs incurred by Grantee prior to the issuance of a Purchase Order allocating the Grant Funds approved by the Delaware Department of Finance. Grantor shall notify Grantee within fourteen (14) days of when the Purchase Order has been approved and Grant Funds are made available to Grantee.
  - (d) Grantor's obligation to reimburse Grantee will not exceed the total amount of Grant Funds awarded to Grantee from the ORPT Program and authorized in the Purchase Order. Grantor's total liability that may become due under this Agreement is limited to the authorized amount set forth in Grantor's Purchase Order. Grantor is in no way liable for any such excess costs, fees or expenses.
  - (e) Grantor reserves the right to withhold disbursement of Grant Funds if Grantor determines, in its sole discretion, that (i) Grantee's performance or completion of the Project is in violation of any federal, state, or local law or rule; or creates a risk to the public health, safety or environment; (ii) Grantee fails to make substantial progress in the completion of the ORPT Project; and (iii) Grantee fails to comply with the terms of this Agreement.
  - (f) Grantor is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.
  - (g) Grantor shall supply the ORPT Program logo to Grantee for use in signage displaying the ORPT logo acknowledging the ORPT Program assistance.
5. Independent Status. It is understood that Grantee is an independent entity, and is not an agent or employee of Grantor. Grantee shall complete the Project in its own manner and method. Grantee shall be solely responsible for, and shall indemnify, defend and save Grantor harmless from all matters relating to the payment of its employees, including

compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

6. Modifications. Grantee shall provide written notice to Grantor within a reasonable time not to exceed Thirty (30) days of planned changes or modifications which impact the scope, schedule or funding of the ORPT Project for which the Grant Funds were awarded. For clarification, any additional Grant Fund requests of Twenty Five Thousand (\$25,000) Dollars or less will be reviewed by Grantor. Additional Grant Fund request of Twenty Five Thousand (\$25,000) Dollars or more will require a Council review. In either case, there is no guarantee that the request will be partially or fully funded. If Grantor determines that the changes or modifications are of such significance as to no longer qualify the ORPT Project for Grant Funds, Grantor may terminate this Agreement at its discretion.
7. Procurement & Subcontractors. Grantee shall follow the State of Delaware Purchasing and Bidding Thresholds for the procurement of goods, supplies, and services, including a subcontractor(s). Grantee is only required to use the formal bidding procedures when a purchase is made in an amount that exceeds the threshold limits listed below:
  - (a) Material and Non-Professional Services:
    - Less than \$10,000 - Open Market Purchase
    - \$10,000 - \$24,999 - 3 Written Quotes
    - \$25,000 and over - Formal Bid
  - (b) Public Works:
    - Less than \$50,000 - Open Market Purchase
    - \$50,000 - \$99,999 - 3 Letter Bids
    - \$100,000 and over - Formal Bid
  - (c) Professional Services:
    - Less than \$50,000 - Open Market
    - \$50,000 and over - Formal RFP Process
8. Assignment. Any attempt by Grantee to assign or otherwise transfer any interest in this Agreement without the prior written consent of Grantor shall be void.
9. Termination.
  - (a) Grantor may, by written notice to Grantee, terminate this Agreement if it is found that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Grantee or any agent or representative of Grantee to any officer or employee of the State of Delaware or Grantor with a view toward securing a contract or securing favorable treatment with respect to the awarding of Grant Funds or making of any determinations with respect to the performance of this Agreement.

- (b) If sufficient funds are not appropriated by the Delaware General Assembly, or other appropriate federal or state agency, to sustain in whole or in part Grantor's performance under this Agreement; or if such appropriation is reduced such that the amount of the appropriation is insufficient to sustain said performance; this Agreement shall be null and void at the insistence of Grantor. Grant Funds cannot be recalled or otherwise taken back once disbursed to Grantee.
  - (c) Grantee acknowledges that Grantor has an obligation to ensure that public funds are not used to subsidize private discrimination. Grantee recognizes that if it refuses to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Grantor may declare Grantee in breach of this Agreement, terminate this Agreement, and designate Grantee as non-responsible.
  - (d) Grantee warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Grantor shall have the right to terminate this Agreement.
  - (e) This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given (i) not less than fifteen (15) calendar days written notice of intent to terminate and (ii) an opportunity for consultation with the terminating party prior to termination.
  - (f) This Agreement may be terminated in whole or in part by the Grantor for its convenience, but only after Grantee is given; 1) no less than 15 calendar days written notice of intent to terminate; and 2) an opportunity for consultation with Grantor prior to termination.
  - (g) If the facilities or equipment used by the Grantee shall be damaged or destroyed by fire, Act of God, or otherwise, so that same cannot be used for the purpose herein, then in that event, at the option of the Grantor, this Agreement shall terminate and each party shall be released from further obligations hereunder the Agreement.
  - (h) The rights and remedies of Grantor provided in this Section 9 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
10. Indemnification. Grantee or any agent contracted to conduct work under this Agreement shall indemnify and hold harmless Grantor, the State of Delaware, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of Grantee, its agents or employees, or (B) Grantee's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Grantee shall have been notified promptly in writing by

Grantor of any notice of such claim; and (ii) Grantee shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

11. Insurance.

(a) Grantee shall maintain the following insurance during the term of this Agreement or any extension thereto:

1. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
2. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, and
3. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, and
4. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

(b) Grantee shall provide Forty-Five (45) days written notice of cancellation or material change of any policies.

(c) Before any activity in furtherance of this Agreement is undertaken by Grantee, the Certificate of Insurance and/or copies of the insurance policies shall be filed with the State. The certificate holder is as follows:

State of Delaware, Department of Natural Resources and Environmental Control  
Division of Parks and Recreation /ORPT Grant Program  
89 Kings Highway  
Dover, De 19901

(d) In no event shall the State of Delaware be named as an additional insured on any policy required under this Agreement.

12. Notices. All notices, reports or other written communication required or permitted herein shall be given in writing to the physical and or email addresses set forth below:

If to Grantor:

Grants Coordinator  
Delaware Department of Natural Resources & Environmental Control  
Division of Parks & Recreation  
89 Kings Highway  
Dover, DE 19901  
[Robert.ehemann@state.de.us](mailto:Robert.ehemann@state.de.us)

If to Grantee :

Attn: City Manager  
City of Seaford  
PO Box 1100  
Seaford, DE 19973  
[dslatcher@seafordde.com](mailto:dslatcher@seafordde.com)

13. Force Majeure. Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.
14. Entire Agreement; No Oral Modification. This Agreement constitutes the entire agreement pertaining to the subject matter hereof between Grantor and Grantee. Neither this Agreement nor any Appendix may be modified or amended except by the mutual written agreement of the parties. The provisions of this Agreement supersede all prior oral and written applications, quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Grantee consents to jurisdiction and venue in the State of Delaware.
16. Severability. If any term or provision of this Agreement shall be held illegal, invalid or unenforceable by a Court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement. Such term or provision held invalid shall be deemed modified to the extent necessary in the Court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.
17. Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and shall not be construed to define, limit or prescribe the scope or intent of this Agreement or any part thereof.
18. Confidentiality. To the extent possible under 29 Del. C. 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.
19. Surviving Clauses. The following clauses survive the termination of this Agreement: Section 10 "Indemnification;" Section 15 "Governing Law"; and Section 18 "Confidentiality."

20. Miscellaneous Provisions.

- (a) The rights and remedies of Grantor provided for in this Agreement are in addition to any other rights and remedies provided by law. Grantor and the State of Delaware do not waive its sovereign immunity by entering into this contract and fully retain all immunities and defenses provided by law with regard to any action based on this Agreement.
- (b) Grantee will not use the State of Delaware's name or the Great Seal of the State of Delaware, either expressly or impliedly, in any of its advertising or soliciting materials without the State of Delaware's express written consent.
- (c) Grantee certifies that the information reported herein is true, accurate and complete to the best of Grantee's knowledge based upon reasonable diligence of individuals with material knowledge of the Project. Grantee understands that these representations are made in support of claims for government funds.
- (d) Approval by Grantor of Grantee's request to subcontract or acceptance of or payment for subcontracted work by Grantor shall not in any way relieve Grantee of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.
- (e) Grantee shall be and remain liable for all damages to Grantor caused by negligent performance or non-performance of work under this Agreement by Grantee, its subcontractor or its sub-subcontractor.

Grant Agreement No.: ORPT 17-174

[This section left intentionally blank, signatures follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date signed below.

**GRANTOR  
STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL  
DIVISION OF PARKS AND RECREATION**

Signature: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: Shawn M. Garvin

Title: Secretary

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**GRANTEE  
City of Seaford**

Signature: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**Outdoor Recreation Parks and Trails Program (ORPT)**  
**Project No: ORPT 17-174**  
**Nutter Park**

**City of Seaford**



Under the Land and Water Conservation Trust Fund, 30 Del.C. Chapter 54, §5423(d) lands receiving ORPT assistance shall remain in public outdoor recreation or conservation uses in perpetuity.

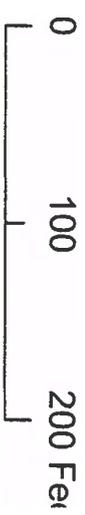
ORPT Program Coordinator

Project Sponsor

Date: \_\_\_\_\_

**Legend**

 ORPT 17-174





# Outdoor Recreation, Parks & Trails Program

## Delaware Land & Water Conservation Trust Fund

RF-1

Construction/Development Reimbursement Request Form\*

Exhibit B

<b>Project Name:</b>	<b>DTF Project No:</b>
<b>DTF Grant Amount:</b>	<b>Billing No:</b> _____
<b>Total Sponsor Match (Cash):</b>	<b>Check One:</b> ( ) Progress    ( ) Final
<b>Total Sponsor Match (Other):</b>	

Billing Categories					
Architectural /Engineering Fees	Construction & Improvements	Equipment Costs	Other Costs	Total Cash Expenditures This Billing (RF-4)	Requested DTF Reimbursement This Billing (not to exceed 50% Total Expenditures This Billing)
+	+	+	=		
					<b>DTF Grant Balance</b>

I certify that to the best of my knowledge and belief that billed costs of disbursement are in accordance with the terms of the Project Agreement, that reimbursement represents the State's 50% share which has not been previously requested, that an inspection has been performed, and all work is accorded by private parties or public entities that persons were, on the grounds of race, color, religion, sex, or national origin, excluded from participation, denied benefits of, or otherwise subject to discrimination in the outdoor recreation programs or facilities of the managed and operated by the Project Sponsor.

<b>Typed Name:</b>	<b>Title/Agency:</b>
<b>Signature:</b>	<b>Date:</b>

\*Cash Expenditures Form (RF-4) must accompany this request



Outdoor Recreation, Parks and Trails (ORPT) Program

**Project Status Report**

Reporting Period: July 1, 2017 to Dec 31, 2017



Agency: \_\_\_\_\_

Project Title: \_\_\_\_\_

ORPT Project No. \_\_\_\_\_

Project Scope:

Progress/Accomplishments/Expenditures this Reporting Period:

Objectives For Next Reporting Period (from \_\_\_\_\_ to \_\_\_\_\_):

Anticipated Completion Date: \_\_\_\_\_

Additional Comments:

Project Coordinator: \_\_\_\_\_

Date: \_\_\_\_\_

N.B 7  
12-12-17

MEMORANDUM

To: Mayor and Council

Fr: Dolores J. Slatcher, City Manager

RE: Electric Committee Recommendation  
Obtain an appraisal – Purchase 2.37+/- acres  
Electrical Switching Structure

Date: December 7, 2017

All,

Attached is a google earth view of a potential 2.37+/- acres of land owned by Mr. Lou Ramunnol who is developing Melanie's Ridge on Bridgeville Highway. These lands are part of the Melanie Ridge development but he has no plans to develop them.

As part of the long-term planning staff sought to see if Mr. Ramunnol would be interested in selling off this acreage for the needed switching station as the second electrical tie-point to Delmarva Power's 69 kV North Substation. This was originally to be in our current substation planning based on available funds in the project. With the AMI project funded by DEMEC we are authorized to borrow up to \$9 million dollars. With current bid prices and the projects not finalized we most likely will be below the \$9 million dollars but there would not be enough to proceed with the purchase of land, design, bidding and construction of the second tie-point. However there is the opportunity with an adjoining land owner to purchase the necessary land needed for this structure.

This information was presented to the Electric Committee on November 30, 2017 and their recommendation was to appoint someone to investigate the purchase of land needed for the switching gear structure and the second tie-point with Delmarva Power. With this motion staff is recommending to Council that the City Manager be authorized to obtain quotes for an appraisal of the lands to proceed with the process ultimately of an offer to Mr. Ramunnol for the purchase of the 2.37+/- acres for the electric switching station to tie to the Ross Substation for the second tie-point. The appraisals would be brought back to Council for award prior to moving forward with any work.

Having a second tie-point allows Delmarva to service their 69 kV transmission line without shutting off power to the City of Seaford, as was done in the spring of 2017. This gives them and us options and minimize disrupting service to our residents and businesses.

Cc: Charles Anderson, ACM  
Bill Bennett, Director of Electric  
June Merritt, DF



© 2017 Google

Google Earth

**Draft Ordinance**

N.B 5

11-28-17

OR 1

12-12-17

2nd Reading &  
Adoption

**ORDINANCE NO. \_\_**

**AN ORDINANCE RELATING TO THE PROMOTION OF ECONOMIC  
DEVELOPMENT AND COMMERCE BY REGULATION OF CERTAIN  
INVOLUNTARY PAYMENTS REQUIRED OF EMPLOYEES IN THE CITY OF  
SEAFORD**

**WHEREAS**, the City of Seaford as set forth in its Charter has assumed pursuant to Title 22 Section 802 of the Delaware Code all of the powers of the State that are not specifically prohibited by statute;

**WHEREAS**, Section 3 of the Charter of the City of Seaford confers upon City Council the exercise of all powers under the City Charter

**WHEREAS**, it is the intent of this Ordinance to provide that no employee covered by the National Labor Relations Act be required to join or pay dues to a union, or refrain from joining a union, as a condition of employment;

**WHEREAS**, the City Council desires to promote economic development and worker freedom within all of the City of Seaford, directly and in cooperation with public and private entities promoting the City of Seaford and its resources, its people, and its many geographical and cultural advantages;

**WHEREAS**, the City of Seaford and its residents compete for the expansion of employment opportunities with other cities, counties, and states (including states such as Michigan, Kentucky, Indiana, and a majority of the other states in the U.S.) whose citizens benefit from the protection under similar right to work legislation, and the City of Seaford desires to compete on a level playing field with other cities, counties, and states that have enacted such right to work legislation;

**WHEREAS**, the City Council believes that right to work legislation is not "anti-union" legislation, but actually could lead to healthier, more robust unions who freely compete for employee membership; and

**WHEREAS**, the City Council of Seaford hereby finds and determines that it is in the best interest of the citizens of the City of Seaford to promote and encourage direct commerce for the protection and convenience of the public, by giving employees in the private sector covered by the National Labor Relations Act freedom to choose employment without restraint or coercion regarding the payment of mandatory dues, fees, or other payments to a labor organization as a condition of that employment; and

**WHEREAS**, the City Council believes that the goals of the foregoing can be furthered through the passage of this Ordinance and amending the City Code as provided for herein;

**NOW, THEREFORE, THE CITY OF SEAFORD HEREBY ORDAINS:**

**Section 1. Declaration of public policy.** It is hereby declared to be the public policy of the City of Seaford in order to ensure individual freedom of choice in the pursuit of employment, for the protection and convenience of its citizens who desire the broadest choice of employment opportunities, to permit its citizens to choose to increase their real take home pay by decreasing mandatory payroll deductions in order to stimulate savings and economic growth, and to encourage an employment climate conducive to the economic development of the City of Seaford, including recruiting new businesses to the City of Seaford, that the right to work shall not be subject to undue restraint or coercion. The right to work shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of a labor organization.

**Section 2. Terms.** The terms “employee,” “employer,” “labor organization,” and “person” as used in this chapter shall have the same meanings as defined by the National Labor Relations Act. The terms “employee”, and “employer”, do not refer to public employees or public employers.

**Section 3. Freedom of choice guaranteed, discrimination prohibited.** No person covered by the National Labor Relations Act in the City of Seaford shall be required as a condition of employment or continuation of employment:

- (a) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
- (b) to become or remain a member of a labor organization;
- (c) to pay any dues, fees, assessments or other charges of any kind or amount to a labor organization; or
- (d) to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments or other charges regularly required of members of a labor organization.

**Section 4. Voluntary deductions protected.** It shall be unlawful to deduct from the wages, earnings, or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the employer, with the following exception:

1. If the card on its face clearly states that it is irrevocable for a period of up to one year after its effective date, that shall be the maximum period of time an employee is prohibited from ceasing payroll deductions;
2. Notwithstanding the foregoing, an employee’s express choice to revoke his authorization is to be given effect as soon as the period of irrevocability passes.

**Section 5. Agreements in violation, and actions to induce such agreements, declared illegal.** Any agreement, understanding or practice, written or oral, implied or expressed, between any labor

organization and employer that violates the rights of employees as guaranteed by provisions of this Article is hereby declared unlawful, null and void and of no legal force or effect.

**Section 6. Coercion and intimidation prohibited.** It shall be unlawful for any person, labor organization or officer, agent or member thereof, or employer, or officer thereof, by any threatened or actual intimidation of an employee or prospective employee, or an employee's or prospective employee's parents, spouse, children, grandchildren or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to an employee's or prospective employee's property, to compel or attempt to compel such employee to join, affiliate with or financially support a labor organization or to refrain from doing so, or otherwise to forfeit any rights as guaranteed by provisions of this Article. It shall also be unlawful to cause or attempt to cause an employee to be denied employment or discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employees.

**Section 7. Penalties.**

A. Any person who shall violate a provision of this Article and/or fails to comply with any notice of violation shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of \$250 for the first conviction; \$500 for the second conviction; \$1,000 for the third conviction; and for the fourth and any subsequent conviction of the same violation that has still not been corrected, the fine for such conviction shall be \$2,500. The fines specified herein for the second through fourth convictions shall not be suspended. Upon conviction of a first violation of this Article, the court may order the defendant to correct the violation by a certain date, not to exceed 10 days from the date of the conviction. Jurisdiction over the enforcement of this provision shall be in the Justice of the Peace Courts of the State of Delaware.

B. In addition to prosecuting a violator in the Justice of the Peace Courts, the City Manager, or his/her designee, is authorized, but is not required, to institute appropriate proceedings at law or in equity to restrain, correct, abate or enjoin a violation or to require the removal of the offending condition at the expense of the person who is found to be in violation of these provisions. If the City prevails, the Court shall order the violator to pay the City's reasonable attorney's fees and costs of the action.

C. The penalties set forth in this section shall not affect the City's right to also recover expenses incurred pursuant to this chapter.

**Section 8. Civil remedies.** Any individual harmed as a result of any violation or threatened violation of the provisions of this Article shall have the right to pursue in a court of competent jurisdiction a civil cause of action to enjoin further violations and to recover the damages sustained, together with the cost of the lawsuit, including reasonable attorneys' fees. Such remedies shall be independent of and in addition to the penalties and remedies prescribed in other provisions of this Article.

**Section 9. Duty to investigate.** It shall be the duty of the City Manager, or his/her designee, to investigate complaints of violation or threatened violations of this Article and to take all means at his/her command to ensure the effective enforcement of this Article.

**Section 10. Prospective application.** The provisions of this Article shall apply to all contracts entered into after the effective date of this Article by employers or labor organizations covering employees within this City and shall apply to any renewal or extension of any such contract.

**Section 11. Severability.** If any provision of this Article, or application thereof to any person, entity or circumstances, shall be invalid or unenforceable to any extent, the remainder of this Article, and the application of such provision to other persons, entities or circumstances, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**Section 12. When effective.** This Article shall take effect 30 days after an advertisement is published in a newspaper with local circulation informing the public of the adoption of this Article by City Council.

**Section 13. Inclusion of provisions in City Code.** The provisions of §§ 1 through 12 of this Ordinance are hereby made Chapter 5, Article 5 – Regulation of Involuntary Payments Required of Employees, and the sections shall be number §§ 5.5.1 through 5.5.12.

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORDINANCE NO. \_\_ ADOPTED BY THE CITY COUNCIL OF SEAFORD ON THE \_\_ DAY OF \_\_\_\_ 2017.**

**SECRETARY TO THE COUNCIL**