UTILITY COMMITTEE
AGENDA

JULY 27, 2015 - 5:00 P.M.

CITY HALL COUNCIL CHAMBERS
15 LOOCKERMAN PLAZA
DOVER, DELAWARE

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

AGENDA ADDITIONS/DELETIONS

1. **CONTRACT AWARD - NORTH AMERICAN ENERGY SERVICES (NAES) AMENDED AND RESTATED OPERATING AGREEMENT** (DUE TO TIME CONSTRAINTS, THIS ITEM HAS BEEN PLACED ON THE COUNCIL AGENDA FOR THE MEETING BEING HELD LATER IN THE EVENING)
   (STAFF RECOMMENDS AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDED AND RESTATED OPERATION AND MAINTENANCE AGREEMENT DATED JULY 1, 2015 BETWEEN THE CITY OF DOVER AND NORTH AMERICAN ENERGY SERVICES (NAES))

2. **ADJOURNMENT BY 5:50 P.M.**

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THE AGENDA ITEMS AS LISTED MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.

ACTION FORM

PROCEEDING: Utility Committee and City Council
DEPARTMENT OF ORIGIN: Electric **DATE SUBMITTED**: 7/15/2015
PREPARED BY: Scott D. Koenig, P.E., Donna Mitchell, Kirk Betts and Harry Maloney
SUBJECT: Contract Award - North American Energy Services (NAES) Amended and Restated Operating Agreement
REFERENCE: N/A
RELATED PROJECT: N/A
REVIEWED BY: Scott D. Koenig, P.E, City Manager and Donna Mitchell, CPA, Controller
EXHIBITS: Exhibit A – Letter dated July 15, 2015 from Mr. Kirk Betts; Exhibit B – Amended and Restated Operation and Maintenance Agreement dated July 1, 2015
EXPENDITURE REQUIRED: $ 797,304.00 **AMOUNT BUDGETED**: $ 859,200.00 **This expenditure represents the First Year of the agreement retroactive to July 1, 2015.** **FUNDING SOURCE (Dept./Page in CIP & Budget)**: Electric page 317
TIMETABLE: Utility Committee was briefed on July 13, 2015 and staff is requesting City Council approval July 27, 2015 with retroactivity back to July 1, 2015.
RECOMMENDED ACTION: Authorize the City Manager to execute the Amended and Restated Operation and Maintenance Agreement dated July 1, 2015 between the City of Dover and North American Energy Services (NAES).

BACKGROUND AND ANALYSIS

The City's power supply attorney, Mr. Kirk Betts, has been negotiating an agreement with North American Energy Services (NAES) on behalf of the City of Dover. Exhibit A highlights the parameters of the proposed agreement. Exhibit B represents the amended and restated operation and maintenance agreement between the City of Dover and North American Energy Services (NAES). The proposed contract term is July 1, 2015 through June 30, 2020. Mr. Betts will be in attendance at both the Utility Committee meeting as well as the City Council meeting on Monday, July 27, 2015 to discuss the proposed agreement and answer any questions that may arise.

Exhibit A

BETTS & HOLT LLP

COUNSELLORS AT LAW

1100 17th STREET ● SUITE 901 ● WASHINGTON, DC 20036
TELEPHONE 202.530.3380 ● FAX 202.530.3389

July 15, 2015

To: Scott Koenig, City Manager; Donna Mitchell, Controller/Treasurer;

Harry Maloney, Electric Director

From: Kirk Howard Betts, Betts & Holt LLP

RE: Proposed Agreement for Plant Operating Services

Background

On May 4, 2006, the City of Dover entered into an Operations & Maintenance Agreement with North American Energy Services (NAES) to maintain and operate Dover's generation.[1] The contract had an initial four year term and it was extended four times automatically for one year terms.

Dover's generation consists of three steam units in the McKee Run plant and one combustion turbine at VanSant. NAES is responsible for operating and maintaining Dover's generation, staffing and collective bargaining, managing dispatch, environmental controls and complying with permits, guaranteeing capacity performance, maintaining records, preparing budgets, outage plans, and reports to governmental authorities.

The current contract provides for a management fee and reimbursement for all other costs, including staffing, relocation, insurances, training, permit fees, and advisors. All other plant operating costs (consumables, tools, spare parts, equipment, capital improvement projects, etc.) are paid directly by Dover. NAES management fee started at $175,000/year in 2006 and has escalated annually to almost $212,000 in 2015.

The contract also provides an incentive bonus (which started at $140,000 and is now approx. $173,000 for 2015-16) structure that rewards NAES and its personnel for achieving certain goals, such as commercial availability, dependable capacity, safety, and environmental performance. With the exception of 2014, NAES regularly achieved the full incentive bonus.

Both the management fee and the bonus escalated annually based on the Employment Cost Index for private industry works by industry and occupational group, published by the Bureau of Labor Statistics. The minimum was fixed at 1% per year. Since inception, escalation has increased the fixed fee and incentive fee components by 21.1%.

Negotiation Objectives

Discussions with Dover representatives produced the following objectives:

[1] The Agreement has been amended three times, June 1, 2006, July 1, 2007, and July 1, 2008.

- Update contract to address changes in operations, law, PJM, and decommissioning of McKee Units 1 and 2.
- Reduce the cost of NAES services.
- Address Dover financial concerns, including training, cost estimates for special services, cost of "home office services," qualifying suppliers and bidders, compliance with Dover procurement policies and practices.
- Address issues around performance incentives and accountability
- Incorporate market conditions affecting revenue and load growth
- Set new term and provide more flexibility for termination

Proposed Amended and Restated Operation and Maintenance Agreement

The proposed agreement addresses Dover's express objectives.

1. Lower the annual costs. The proposed agreement provides for a fixed annual management fee, paid monthly, that will have a starting cost $43,000 lower than the current agreement, but will be reduced further during the second and third years as staffing changes are implemented corresponding to the scheduled decommissioning of McKee Units 1 and 2. See Section 2.2 Management Fee. The fixed fee portion of the proposed agreement will be less than the current agreement costs in 2015-16 when it expires in 2020. Overall, fixed fee and reimbursable staffing expenses are estimated to reduce annual expenditures by more than $300,000/year compared to the current agreement, in addition to O&M costs avoided by closing Units 1 and 2. Some of these reductions start immediately, but the major reductions will be realized in 2017. The proposed effective date is July 1, 2015.

A major change in the proposed agreement is the shift to a fixed annual fee for managing Dover's generation. The fee includes the management fee (which is decreased from the current management fee), home office support (previously billed hourly as a reimbursable expense), operating incentives, employee bonuses, and burdens (previously computed and reimbursed by Dover). In this agreement, if NAES needs more staff or if Dover require more home office support, the risk of higher management costs resides with NAES. In other words, this agreement provides greater predictability. However, while also putting full responsibility on NAES to manage down the size of the staff while maintaining reliability, it also puts more of NAES' fee at risk, as described below.

2. Changed the focus from incentive bonus paid at year-end to performance based reduction where NAES pays Dover. The prior agreement had an incentive fee that had escalated to approximately $173,000 that would be awarded to NAES if it met certain criteria for availability, commercial unavailability, dependable capacity, safety performance, and environmental performance. Each performance standard had a dollar value. The proposed agreement contains objective performance standards that if not achieved penalize NAES. Under the proposed

agreement, Dover negotiated a substantially higher amount of compensation at risk, defined as the Maximum Performance Adjustment, if NAES does achieve not the performance standards. See Section 2.2 Definition of Maximum Performance Adjustment and Appendix B. The performance adjustment puts more of NAES' fee at risk every year of the contract—over $500,000/year compared to $172,000 now. NAES's bottom line will "feel" the implications of a plant failure and share in the cost that would be imposed on Dover by PJM, better aligning the performance interests of both parties more closely.

3. Clarifies scope of services included. The proposed agreement clarifies staffing and home office staff responsibilities that are included in the monthly fee. These services have been billed on an hourly basis and averaged about $75,000/year. They will be included in the Management Fee going forward. See Appendices A and F.

4. Procurement obligations. There is a positive tension on how costs are managed and contracts awarded. This tension also creates conflicting objectives between lowering costs and increasing plant operating revenue. The current draft seeks to focus on increasing revenue through more attention to reliability to maximize the generating resource and the City's investment in those resources. We have heard during these negotiations an appreciation for oversight and a concern about micro-management and mixed signals. The approach that is being recommended necessarily involves the terms of the contract and the collaboration of NAES and the City's finance office, particularly procurement, to make it work smoothly.[2]

The original and current agreement are based on having a third party operate and maintain Dover's generation. The agreement provides for an annual operating and capital budget and regular consultation concerning plant performance and costs. The plant operating and maintenance budget is provided as part of the Dover budget development cycle. A substantial part of the budget is for staffing, planned maintenance, and capital repairs and replacements (also planned). We are recommending a contingency in the budget for unplanned work. It is not intended to be a fund for cost overruns or discretionary projects, but it is intended to address the reality that generating plants, particularly of this vintage, experience equipment failures.

The procurement process follows the 2012 procurement procedures, Administrative Manual, AMP 501, latest edition, which was approved by the City. Although this appears to be a parallel procurement system, our recommendation is to continue using these procedures since the equipment and services are within NAES' particular expertise and it has the greatest knowledge of suppliers for the types of equipment and services needed. Moreover, planned maintenance and CIPs would all be reviewed as part of the budget process and also during periodic meetings with Dover's Representative, Electric Utility Director Harry Maloney. We believe his presence provides a day-to-day awareness of the utility, oversight, and qualified point of contact for NAES and the City who also is in regular consultation with the City Manager and Controller.

[2] A recent inquiry involving cell phone service highlights the overlapping work and interests of the parties. It may expedite matters if the City and NAES clarify the scope of procurements, i.e., which are general services and which require specific plant expertise, to determine which services and types of procurements may be most efficiently managed by the City and by NAES.

Mr. Maloney provides a level of technical capability regarding generating plants, distribution, PJM, and municipal procurement that has not been present in recent years.

Another consideration is that the agreement and PJM impose substantial penalties for failure to dispatch (availability). Consequently, both NAES and the City have an aligned interest in assuring the generating plants are ready to be dispatched and that unplanned outages, as well as planned outages, are as short as possible.

5. Duration of Agreement. The proposed agreement is for five years (2015-2020). Notice for termination or renewal has been shorted to six months for Dover, and twelve months if requested by NAES. The agreement expires in 2020.

6. Updated Agreement. The proposed agreement deletes all references to the transition period when NAES initially assumed responsibility for plant operations. It incorporates the changes anticipated by the scheduled withdrawal of McKee Units 1 and 2 from service in 2017. It clarifies areas of responsibility between distribution and generation, and updates all the appendices.

AMENDED AND RESTATED

OPERATION AND MAINTENANCE AGREEMENT

between

THE CITY OF DOVER, DELAWARE

and

NAES CORPORATION

Dated as of

July 1, 2015

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AMENDED AND RESTATED
OPERATION AND MAINTENANCE AGREEMENT

This AMENDED AND RESTATED OPERATION AND MAINTENANCE AGREEMENT (the "Agreement") dated as of July 1, 2015 (the "Effective Date") by and among the City of Dover, Delaware (the "Owner" or "City"), a Delaware municipality, with offices located at 15 Loockerman Plaza., Dover, Delaware 19903, and NAES CORPORATION (f/k/a NORTH AMERICAN ENERGY SERVICES COMPANY) ("NAES"), a Washington corporation, with offices located at 1180 NW Maple Street, Suite 200, Issaquah, WA 98027.

RECITALS

1. Owner owns the Facility (this and other capitalized terms are defined in Article II).

2. Owner and NAES entered into that certain Operation and Maintenance Agreement dated as of May 4, 2006 (as amended on June 1, 2006, July 1, 2007, and May 5, 2008) pursuant to which NAES is performing operation and maintenance services on behalf of Owner at the Facility (the "Existing Agreement").

3. The Parties desire to amend and restate the Existing Agreement in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and of the mutual covenants, undertakings and conditions set forth below, the Parties agree as follows:

ARTICLE I - AGREEMENT

1.1. Agreement. This Agreement consists of the recitals, and the terms and conditions set forth in this Agreement, as well as the appendices that are referenced in the table of contents and attached to this Agreement. The recitals, appendices and terms and conditions must be read together to obtain a full understanding of the intent of the Parties.

1.2. Relationship of the Parties. Owner is retaining NAES as an independent contractor to operate and maintain the Facility on behalf of Owner. Subject to any limitations expressly set forth in this Agreement, Owner delegates to NAES, and NAES accepts from Owner, the responsibility of operating and maintaining the Facility, as more specifically described below.

1.3. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to operation and maintenance of the Facility and supersedes all prior negotiations, undertakings, agreements and business term sheets. Neither Party will be bound by or deemed to have made any representations, warranties, commitments or undertakings, except as expressly stated in this Agreement.

ARTICLE II - DEFINITIONS

2.1 Rules of Construction. For all purposes of this Agreement (including the preceding sections and recitals) unless otherwise required by the context in which any defined term appears, capitalized terms have the meanings specified in this Article II. The singular includes the plural, as the context requires. "Includes" or "including" means "including, but not limited to." The terms "ensure" and "reasonable efforts" will not be construed as a guarantee, but will imply only a duty to use reasonable effort and care, consistent with Prudent Operating and Maintenance Practices, and will include reasonable expenditures of money and at least such efforts as NAES would undertake for its own assets or operations or for services provided to an Affiliate. "Gross negligence" will not be construed as simple or ordinary negligence, it being the intent of the Parties to preserve a distinction between errors made inadvertently while attempting to perform with due care and actions taken with a knowing disregard for a substantial foreseeable risk, notwithstanding whether a court would otherwise apply such distinction at common law. "Day" (regardless of capitalization) shall mean a calendar day, unless specifically designated as a Business Day. References to articles, sections and appendices mean the articles and sections of, and appendices to, this Agreement, except where expressly stated otherwise.

2.2 Definitions. For all purposes of this Agreement (including the preceding sections and recitals), unless otherwise required by the context in which any defined term appears, capitalized terms have the meaning specified in this Section 2.2.

"Administrative Procedures Manual" means the manual, developed and provided by NAES that includes, among other things, information, policies, and procedures pertinent to NAES's performance hereunder, including (i) reporting, (ii) correspondence and review procedures, (iii) procurement and contracting procedures, (iv) accounting, bookkeeping and record keeping, and (v) personnel procedures for NAES's activities at the Facility.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such first Person. The term "control" (including related terms such as "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Annual Facility Operating Plan" means the annual facility operating plan adopted pursuant to Section 5.3.

"Agreement" means this Operation and Maintenance Agreement, as the same may be modified or amended from time to time in accordance with its provisions.

"Applicable Law" means any federal, state or local laws, regulations, codes, judgments, orders, and PJM requirements applicable to the operation of generation, Permits, licenses or government approvals as may be applicable to the Facility, Owner or NAES.

"Bankruptcy" means a situation in which (i) a Person files a voluntary petition in bankruptcy or is adjudicated as bankrupt or insolvent, or files any petition or answer or consent seeking any reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution or similar relief for itself under the present or future applicable Federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, conservator or liquidator of such Person or of all or any substantial part of its properties (the term "acquiesce," as used in this definition, includes the failure to file a petition or motion to vacate or discharge any order, judgment or decree within fifteen (15) days after entry of such order, judgment or decree); (ii) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against any Person seeking a reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy act, or any other present or future Applicable Law relating to bankruptcy, insolvency or other relief for debtors, and such Person acquiesces and such decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or a trustee, receiver, conservator or liquidator of such Person is appointed with the consent or acquiescence of such Person and such appointment remains unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive; (iii) a Person admits in writing its inability to pay its debts as they mature; (iv) a Person gives notice, to any Governmental Authority of insolvency or pending insolvency, or suspension or pending suspension of operations; or (v) a Person makes a general assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors (other than in the ordinary course of such party's business).

"Budget" means a budget adopted pursuant to Section 5.3.

"Business Day" means any day on which commercial banks in the location of the Facility are authorized to be open for business.

"CMMS" means the computerized maintenance management system utilized by NAES at the Facility.

"Confidential Information" has the meaning set forth in Section 12.1.

"Dispute" has the meaning set forth in Section 14.7.1.

"Due Date" means, with respect to any NAES invoice, the date that is thirty (30) days following the date on which NAES submits the invoice to Owner, except for charges that are disputed pursuant to Section 7.4 hereof, in which case the Due Date is thirty (30) days following the date of the final resolution of the dispute.

"Effective Date" means the date first above written.

"Emergency" means an event or act that is imminently likely to (i) endanger persons; (ii) damage, destroy, or cause a loss of all or any portion of the Facility; or (iii) damage, destroy, or

cause a material adverse effect on the integrity or security of, the Owner's electric distribution system; or (iv) an emergency declared by PJM.

"Energy Manager" means an entity appointed by Owner as its agent to perform strategic dispatch of the Facility, and acquire fuel and other products necessary to serve Owner's distribution load.

"Environmental Law" means any federal, state or local statute, rule, regulation, order, code, Permit, directive or ordinance and any binding judicial or administrative interpretation or requirement pertaining to (i) the regulation and protection of health, safety, and the indoor or outdoor environment; (ii) the conservation, management, development, control or use of land, natural resources, or wildlife; (iii) the protection or use of surface water and ground water; (iv) the management, manufacture, possession, presence, use, generation, transportation, or handling of, or exposure to any Hazardous Material; or (v) pollution (including release of any hazardous substance to air, land, surface water and ground water).

"Expiration Date" means May 31, 2020, or the last day of any Extended Term, as the case may be.

"Extended Term" has the meaning set forth in Section 8.1.

"Extra Work" has the meaning set forth in Section 7.2(x).

"Extraordinary Item" means any purchase order or contract for services issued by NAES on behalf of Owner in an amount greater than Twenty-five Thousand Dollars ($25,000) or an annual blanket purchase order or service contract or multiple purchase orders or service contracts with the same party that NAES reasonably anticipates will exceed Twenty-five Thousand Dollars ($25,000) during an Operating Year.

"Facility" means the McKee Run and VanSant 11 power generation facilities, collectively, located in Dover, Delaware, and includes all electrical or thermal devices and related structures and connections (up to the points of interconnection identified in Appendix C) that are located at the Site and used for the production of power for the benefit of Owner, all as more fully described in Appendix C.

"Facility Agreements" means this Agreement, the Interconnection Agreement, the Fuel Acquisition Agreements, the PJM Agreement, applicable equipment maintenance agreements in effect or entered into from time to time by Owner, and equipment contracts with regard to warranties and equipment design and specifications and portions of the Financing Agreements, if any, relevant to this Agreement.

"Facility Manuals" means Facility equipment manuals, system descriptions, system operating instructions, equipment maintenance instructions and pertinent design documentation

created by the Persons that constructed the Facility or manufactured its equipment, to the extent provided to NAES by Owner pursuant to Section 4.4.1.

"Financing Agreements" means any and all loan agreements, notes, bonds, indentures, security agreements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust, participation agreements and other documents relating to the construction, interim and long-term financing for the construction, operation and maintenance of the Facility and any refinancing thereof (including a lease pursuant to which Owner is the lessee of the Facility) provided by the Lenders, including any and all modifications, supplements, extensions, renewals and replacements of any such financing or refinancing.

"Force Majeure Event" has the meaning set forth in Section 14.6.1.

"Fuel" means natural gas and fuel oil.

"Fuel Acquisition Agreements" means, collectively, all agreements as shall be in effect from time to time between Owner and any other entity for the supply or delivery of Fuel to the Facility.

"Governmental Authority" means any federal, state, local or foreign governmental department, commission, board, bureau, authority, agency, court, instrumentality or judicial or regulatory body or entity.

"Hazardous Materials" means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyl's ("PCBs"); (b) any chemicals, materials or substances that are now or hereafter become defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under Applicable Law; or (c) any other chemical, material, substance or waste declared to be hazardous, toxic or polluting material by any Governmental Authority, exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority.

"Home Office Personnel" means the Project Manager and such other employees of NAES who are engaged in the provision of the Services, except for Site Personnel.

"Initial Term" has the meaning set forth in Section 8.1.

"Interconnection Agreement" means the agreement dated September 12, 2004 by and between Owner and Delmarva Power & Light Company, as the same may be modified or amended from time to time in accordance with its terms.

"Late Payment Rate" means the Prime Rate plus 1% of interest per annum as published in the Wall Street Journal, Credit Markets & Commodities, "Money Rates," Prime Rate.

"Lender" means any entity or entities providing financing or refinancing under the Financing Agreements in connection with construction or permanent financing for the Facility, and their permitted successors and assigns.

"Liabilities" has the meaning set forth in Section 10.1.

"Management Fee" means for each Operating Year during the Term, the amounts set forth in the table below:

Operating Year	Management Fee
2015-2016	$797,304
2016-2017	$781,287
2017-2018	$792,633
2018-2019	$815,289
2019-2020	$838,631

"Maximum Performance Adjustment" means for each Operating Year during the Term, the amounts set forth below:

Operating Year	Maximum Performance Adjustment
2015-2016	$532,304
2016-2017	$509,587
2017-2018	$514,043
2018-2019	$529,613
2019-2020	$545,667

"NAES" has the meaning set forth at the beginning of this Agreement and includes its successors and permitted assigns hereunder.

"NAES Indemnitees" has the meaning set forth in Section 10.2.

"NAES Proprietary Information" has the meaning set forth in Section 13.3.

"O&M Manuals" means the operating procedures and Facility systems descriptions, maintenance procedures, training, safety, chemistry and environmental manuals, together with the documents and schedules described in such manuals.

"Operating Costs" has the meaning set forth in Section 7.3.1.

"Operational Phase" means that period during the Term starting on the Effective Date and ending with the termination of this Agreement.

"Operational Phase Services" means those Services to be performed by NAES during the Operational Phase, as described in Section 3.1 and listed in Appendix A.

"Operating Year" means the period that commences on July 1 and ends on June 30 of the next calendar year, or such earlier date that this Agreement is terminated during any such Operating Year.

"Owner" has the meaning set forth at the beginning of this Agreement and includes Owner's successors and permitted assigns hereunder. The Owner may be represented by the Owner's Representative as described in Section 5.2.

"Owner Indemnitees" has the meaning set forth in Section 10.1.1.

"Owner's Representative" has the meaning set forth in Section 5.2.

"Party" means a party to this Agreement and "Parties" means, collectively, both Parties to this Agreement, unless the context clearly requires a different construction.

"Performance Adjustment" has the meaning set forth in Section 7.7.

"Permit" means any permit, license, consent or approval that is required for the operation or maintenance of the Facility or the performance of any Service and includes Permits required under Environmental Laws.

"Person" means any Party, individual, partnership, corporation, association, limited liability company, business trust, government or political subdivision thereof, governmental agency or other entity.

"PJM" means PJM Interconnection, LLC, its successors and assigns.

"Plan" means a plan adopted pursuant to Section 5.3.

"Plant Manager" has the meaning set forth in Section 5.1.2.

"Pollution and Contamination" means any ground or air pollution caused by NAES in violation of Environmental Law. "Pollution and Contamination" includes Hazardous Materials present on the Site on July 1, 2006 that are not managed by NAES thereafter in accordance with Environmental Law.

"Pre-existing Pollution and Contamination" means (i) ground or air pollution caused by Owner in violation of Environmental Law; or (ii) any Hazardous Material present at the Site on the Takeover Date or brought to the Site thereafter by the Owner.

"Project Manager" has the meaning set forth in Section 5.1.1.

"Prudent Operating and Maintenance Practices" means those practices, methods and acts generally employed in the power generation industry that at the particular time in question, in the exercise of reasonable judgment in light of the facts known at the time the decision in question was being made, would have been expected to accomplish the desired result of such decision consistent with the goals established in a Budget and Plan, and the requirements of Applicable Law. With respect to NAES, Prudent Operating and Maintenance Practices are not limited to the optimum practices, methods or acts to the exclusion of all others, but rather include a spectrum of possible practices, methods or acts commonly employed in the power generation industry, including taking reasonable actions to provide (i) adequate materials, resources and supplies, to the extent within the control of NAES and available to meet Facility needs; (ii) a sufficient number of operators who are available and adequately trained to operate the Facility; and (iii) the timely performance of preventive, routine, and non-routine maintenance and repairs, as exemplified and generally described in Appendix A, subject, in all cases, to the limitations on NAES's authority and duties as set forth in this Agreement.

"Rated Capacity" means the capacity of the Facility, expressed in megawatts for various Site ambient conditions, as the same shall be adjusted for degradation and actual equipment performance, from time to time, by agreement of NAES and Owner in good faith pursuant to protocols in the Administrative Procedures Manual.

"Reimbursable Costs" has the meaning set forth in Section 7.2.

"Services" means all the work to be performed by NAES as described or referenced in Article III and listed in Appendix A.

"Site" means the land on which the Facility is situated, as more fully described in Appendix E.

"Site Personnel" has the meaning set forth in Section 3.6.1.

"Standards of Performance" has the meaning set forth in Section 3.5.

"Term" means the Initial Term together with any Extended Term.

"Termination Payment" has the meaning set forth in Section 8.2.

"Termination Transition Period" has the meaning set forth in Section 8.5.

"U.S. Dollars" or "Dollars" means United States Dollars, the lawful currency of the United States of America.

ARTICLE III - RESPONSIBILITIES OF NAES

NAES will perform the Services listed in Appendix A, in order to operate and maintain the Facility on behalf of Owner. This Article III sets forth the processes, limitations and standards applicable to NAES's performance of the Services.

3.1 Operational Phase. During the Operational Phase, NAES will have day-to-day operational control over the Facility and will perform the Operational Phase Services.

3.2 Procurement.

3.2.1 General. Subject to a Budget and Plan, NAES will procure goods, services, consumables, parts, tools, and equipment as needed from time to time for the operation and maintenance of the Facility consistent with the Administrative Manual Procurement, "AMP 501", as amended and updated. NAES will nominate, subject to Owner's written approval, responsible Persons from among the Site Personnel to sign purchase orders on behalf of Owner; provided, however, that such purchase orders will be signed in the name of Owner, and will be for the exclusive benefit of Owner and the Facility. NAES will negotiate with vendors from standard terms and conditions that are set forth in the Administrative Procedures Manual, including reasonable warranties in favor of Owner. NAES will utilize AMP 501 purchasing procedures except when (i) the cost of conducting a competitive bidding process is likely to outweigh the potential savings it would produce; (ii) the goods, consumables, parts, tools, and equipment are not available from more than one vendor; (iii) purchases are required to respond to an Emergency; or (iv) such other purchasing procedures are likely to result in a price as low or lower than that resulting from competitive bidding. NAES shall consult with Owner, provide a complete explanation and rationale, and disclose all aspects of the transaction whenever, in its opinion exceptions (i), (ii), or (iii) apply. NAES may contract with one or more subcontractors to perform any part, but not all, of the Services, but any such subcontract shall not relieve NAES of any of its obligations under this Agreement or create any relationship between Owner or the subcontractor.

3.2.2 Non-Budgeted Items. Operator will not exceed the overall total spending approved in a Budget without prior written approval from Owner; provided, however, that subject to Section 3.13 hereof, no such approval by Owner is required if, in NAES's reasonable judgment, such purchases are required to address an Emergency.

3.2.3 Extraordinary Items. Notwithstanding that a purchase is contemplated by a Budget, NAES will obtain Owner's written approval prior to procurement of any Extraordinary Item. Owner may elect to directly procure Extraordinary Items.

3.2.4 Contract Administration. NAES will administer routine vendor relations under purchase orders and contracts for service issued by NAES on behalf of Owner. NAES will also perform those day-to-day operational tasks required under the Facility Agreements, as requested by Owner, including communicating fuel supply requirements and reporting power sales in accordance with Owner's written specifications. NAES will not be deemed to have assumed any of Owner's contractual obligations under the Facility Agreements by means of such performance.

3.2.5 Affiliate Contracts. If NAES intends to issue a purchase order to an Affiliate of NAES, the costs of which are Operating Costs, the terms of any such purchase order will be in accordance with normal commercial practice, at arm's length on such terms as would be appropriate if the purchase order had been entered into with a Person other than an Affiliate of NAES. All such purchase orders are subject to prior written approval by Owner.

3.3 Waste Management. In accordance with Applicable Law and subject to Section 3.15 hereof, NAES will collect, store and manage on the Site all wastes (including Hazardous Materials) generated by the operation and maintenance of the Facility. NAES will coordinate with third party waste transportation and disposal providers for the removal of wastes from the Site by such third parties for disposal.

3.4 Rated Capacity. NAES will use its reasonable efforts to operate the Facility at its Rated Capacity without unnecessarily decreasing its useful life or increasing the scheduled maintenance of the Facility, unless otherwise directed by Owner or constrained by Prudent Operating and Maintenance Practices, scheduled maintenance, insufficient fuel, restrictions of operating Permits, a Force Majeure event, a Budget and Plan, or the limitations or condition of the Facility (as degraded from time to time). In discharging its obligations under this Section 3.4, NAES will operate the Facility so as to comply with any applicable dispatch instructions of the PJM or Owner (or any successor of either, or other Person identified by Owner in writing to NAES as being authorized to provide dispatch instructions). In a situation not involving an Emergency, in the event NAES receives conflicting dispatch instructions, NAES will follow the dispatch instructions of Owner; provided, however, in the event of an Emergency, NAES will follow the instructions of PJM. NAES will inform Owner of any Emergency action as soon as reasonably practicable under the circumstances. NAES will give Owner prompt notice of any inability to make deliveries of power or capacity, and of any outages. In case of any interruption, curtailment or reduction in (i) supplies of fuel, or (ii) acceptance of energy or capacity by PJM, or in case of any other constraint being imposed on NAES, NAES will promptly upon such event or upon receipt of notice thereof, notify Owner thereof and of its plan to restore operation and of any plan by the counter-party (where a Facility Agreement is involved) to do so (if NAES has been notified thereof), and will upon removal of the constraint, use its reasonable efforts to restore full Facility operation in accordance with this Section 3.4.

3.5 Standards for Performance of the Services. NAES will perform the Services in all material respects in accordance with the following documents, which will be referred to in this

Agreement as "Standards of Performance": (i) the O&M Manuals, (ii) the contractor, manufacturer and vendor warranties and Facility Manuals provided by Owner to NAES, (iii) the applicable Budget and Plan, (iv) all Applicable Laws, (v) Prudent Operating and Maintenance Practices, (vi) insurer requirements delivered to NAES by Owner in writing, (vii) the requirements in the Facility Agreements (as and to the extent provided to NAES) in accordance with Section 3.8 and (viii) this Agreement. Subject to the other provisions of this Agreement, NAES will perform the Services and other obligations under this Agreement in a manner consistent with Owner's directions. Actions taken (or not taken) by NAES pursuant to Owner's direction will be deemed to be within the Standards of Performance, and NAES will have no liability for acting or refraining to act in accordance with Owner's directions.

3.6 Personnel Matters.

3.6.1 General. NAES will provide and make available as necessary, in accordance with the requirements of the Budget and Plan, all labor and professional, supervisory and managerial personnel required to perform the Services. Such personnel will be qualified for the duties to which they are assigned. All individuals employed by NAES in the performance of the obligations under this Agreement and who are permanently assigned to the Facility (the "Site Personnel") and "Home Office Personnel" will be employees of NAES or its Affiliates, and their working hours, rates of compensation and all other matters relating to their employment will be determined solely by NAES (subject to Owner's approval rights with respect to the Budget and with respect to certain Site Personnel as provided in Sections 3.6.2 and 3.6.3). NAES will retain sole authority, control and responsibility with respect to its employment policy and its employees. No City employee is included in the Site Personnel. NAES will submit for Owner's approval the staffing requirements for the Facility.

3.6.2 Selection of Plant Manager. NAES will submit its selection for Plant Manager to Owner, who will have written approval over NAES's selection of such person.

3.6.3 Replacement of Plant Manager. NAES will inform Owner of its intent to replace the Plant Manager. Prior to employment of the replacement Plant Manager, NAES will obtain Owner's written approval.

3.6.4 Recognition of Union. NAES shall recognize the Union and shall enter into good faith negotiations, taking into account the cost that staffing and operating the Facility has on overall utility rates charged by the Owner, when negotiating a Collective Bargaining Agreement.

3.6.5 Negotiating of a Collective Bargaining Agreement. NAES shall be responsible for the labor agreement, including any extension and/or modification to the existing agreement, however if any such negotiation results in a contingent or ongoing liability to the City upon termination of NAES for any reason including expiration of this Agreement, such obligation will be disclosed to and approved by the Owner prior to acceptance by NAES.

3.7 Inventory. NAES will be responsible for proper maintenance, control and storage of the inventory located at the Facility on the Takeover Date, and of all subsequently procured inventory throughout the Term, and will be responsible, subject to Section 3.2, for purchasing such additional inventory as NAES may determine to be necessary or appropriate from

time to time. NAES is authorized to receive and store materials and supplies on behalf of Owner that Owner directly purchased.

3.8 Compliance with Facility Agreements. NAES will abide by the requirements of the Facility Agreements as delivered to NAES, and will otherwise cooperate in good faith with and assist Owner in complying with all material terms contained in such Facility Agreements, in each case to the extent related to the performance of the Services. NAES will incorporate any requirements contained in Facility Agreements, as needed, into the Administrative Procedures Manual. This Section 3.8 will not be deemed to make NAES a party to the Facility Agreements or to impose any obligations on NAES under the Facility Agreements. NAES will not be charged with knowledge of the form or content of any Facility Agreement unless and until it has been provided to NAES by Owner.

3.9 Permits. NAES will obtain Permits required by Applicable Law to be in NAES's name. NAES will supply data and other information to support Owner's efforts to secure and maintain in effect all Permits in Owner's name. All environmental Permits (whether relating to Hazardous Materials or otherwise) will be solely in the name of Owner. NAES will assist Owner in securing renewals or replacements of all environmental Permits by supplying data and information to Owner with regard to the operation and maintenance of the Facility.

3.10 Compliance with Applicable Laws. NAES will comply with all Applicable Laws. NAES will notify Owner immediately upon becoming aware of any actual or potential non-compliance and will cooperate with Owner to remedy such non-compliance. To alert Site Personnel to compliance issues, NAES will insert appropriate procedures in the O&M Manuals, including procedures related to safety and environmental matters, and will conduct regular training sessions on compliance issues for Site Personnel. NAES will conduct all inspections or tests required by Applicable Law.

3.11 Operating Records and Reports. NAES will prepare and maintain in good order at the Site operating logs, records and reports documenting the operation and maintenance of the Facility. Such operating data will include meter, gauge and monitoring readings, maintenance records, fuel records, and other information required for compliance with the Standards of Performance. NAES will also compile and maintain such information, reports and data related to NAES's management of any wastes and Hazardous Materials located at the Site as required to comply with Environmental Laws. All operating data, reports, records, and other information that may be submitted to any Governmental Authority by NAES on behalf of Owner will be transmitted to Owner where possible prior to filing and in any event contemporaneously with such filing. Records and reports shall be maintained at the Facility and no records and reports shall be removed or destroyed without the prior written consent of the Owner.

3.12 No Liens or Encumbrances. NAES will keep and maintain the Facility free and clear of all liens and encumbrances resulting from the personal debts and obligations of NAES or the failure of NAES to perform its duties hereunder in accordance with the Standards of Performance.

3.13 Emergency Action. In the event of an Emergency, NAES will take immediate action to prevent or mitigate any damage, injury or loss threatened by such Emergency. NAES will notify Owner of such Emergency within thirty minutes following the Emergency's onset and will advise Owner about NAES's response thereto. NAES will submit a report to Owner

within 48 hours following the conclusion of the Emergency describing the cause of the Emergency (if known), NAES's response, and any measures recommended by NAES to prevent the Emergency's recurrence. NAES may expend such funds as necessary to respond immediately to an Emergency, but will advise Owner of such expenditures and obtain Owner's approval of any additional expenditures as soon as is reasonably practicable thereafter.

3.14 O&M Manuals. NAES will maintain, review, and submit to Owner for approval recommendations for changes to the O&M Manuals when NAES deems any changes are advisable. If Owner submits to NAES proposed revisions or updates to the O&M Manuals, NAES will, within thirty (30) days of receipt, submit written comments thereon to Owner, and thereafter the Parties will negotiate a final disposition of such proposal. The O&M Manuals will remain in effect for the Term, subject to such revision, amendment or supplementation as may be either (i) required to ensure continued compliance with Applicable Laws or the Standards of Performance, or (ii) agreed in writing by the Parties. NAES will draft, certify and comply with a Spill Prevention, Control, and Countermeasures Plan that is specific to the Facility.

3.15 Incorporated Services. The Services shall be deemed to include supplementary matters either practical or essential to the efficient execution of the Services, whether those supplementary matters are indicated by this Agreement, the Facility Agreements, or otherwise, so long as such supplementary matters are not outside of the scope of Services and would not otherwise materially and adversely affect NAES's obligations under this Agreement.

3.16 Site Procedures; Safety. NAES shall perform all Services in accordance with the Site Procedures, including those relating to safety, security and fire prevention. NAES shall establish and maintain a safety program designed so that the Services will be performed in a safe manner and in accordance with all Applicable Laws governing safety.

3.17 PJM Tariffs/Rules. NAES acknowledges that it is familiar with PJM's tariffs and other PJM system rules relating to the offering of the Facility into the PJM markets. NAES further agrees that its performance of its obligations under this Agreement will comply in all material aspects with these rules, and to exercise the degree of diligence required by Prudent Operating and Maintenance Practices to assure that any data or information provided to the Owner or the Energy Manager as to Facility availability, capacity and operating conditions are accurate at the time made based upon the best information available and the analysis of such information. NAES further agrees to: (i) perform its obligations under this Agreement, including the Services, in a manner to avoid and/or minimize any and all market consequences, sanctions or penalties that may result from the failure of the Facilities (or any portion thereof) to perform; (ii) comply with PJM dispatch instructions to the extent such information is received from Owner or Energy Manager; and (iii) provide Owner, Energy Manager and PJM such information as PJM reasonably requests.

3.18 Environmental Permits.

3.18.1 Air Permit. Owner is responsible for maintaining the air permit for the Facility in accordance with the State of Delaware Title V Air Permitting Program as authorized pursuant to Title V of the Clean Air Act, 42 U.S.C. 7651 et seq. NAES shall collect data, prepare reports and oversee Facility compliance with the air permit.

3.18.2 NPDES Permit. Owner is responsible for maintaining the wastewater discharge permit for the Facility in accordance with the State of Delaware National Pollutant Discharge Elimination System Permitting program as authorized pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. NAES shall collect data, prepare reports and oversee Facility compliance with the wastewater discharge permit.

3.18.3 Environmental Monitoring and Reporting. NAES shall be responsible for all environmental monitoring and reporting in connection with the Facility and the Site as required by Applicable Law, including all Toxic Release Inventory reports and chemical inventory reports required under the Emergency Planning and Community Right-to-Know Act, as codified in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq.

3.19 Environmental Responsibility.

3.19.1 Title to, ownership of, and legal responsibility and liability for, any and all Pollution and Contamination, other than Pre-existing Pollution and Contamination, shall at all times remain with NAES.

3.19.2 NAES will, at NAES's sole expense and risk, take such action as may be required to mitigate and correct the occurrence and effects of Pollution and Contamination. Such actions include arranging for handling, storage, transportation, treatment and disposal of all Pollution and Contamination. NAES will be solely responsible for obtaining a disposal site for Pollution and Contamination. Operator will look to the disposal facility and/or transporter for any responsibility or liability arising from improper disposal or transportation of Pollution and Contamination. Owner will not have or exert any control over NAES in NAES's obligations or responsibilities in the storage, transportation, treatment or disposal of any Pollution and Contamination. NAES will complete and execute any forms or other documents necessary to comply with any law or requirement of any Governmental Authority relating to the generation, storage, handling, treatment, transportation, or disposal of Pollution and Contamination. In the event that Owner executes or completes any such forms, Owner will be, and will be deemed to have acted as, NAES's agent. For the avoidance of doubt, the foregoing liability of NAES does not apply where NAES has managed Hazardous Materials on the Site in compliance with Environmental Law, and delivered such Hazardous Materials to licensed third party providers of transportation and disposal services, in which case title to, ownership of, and legal responsibility for, any and all releases of such Hazardous Materials shall remain with Owner.

3.19.3 NAES will not dispose of any waste or Hazardous Materials on the Site, nor will it bring any waste or Hazardous Materials from any other location for treatment, storage, or disposal on the Site. NAES will be responsible for discharging waste or effluent from the Site in violation of an applicable Permit.

3.19.4 NAES will not cut any trees, conduct any mining operations, remove any sand, gravel or similar substances from the ground, commit waste of any kind, or in any manner substantially change the contour or condition of the Site, except as required for maintenance of the normal right of way and Facility maintenance and operation as contemplated herein.

3.19.5 In the event NAES discovers any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity at the Site, NAES will immediately notify Owner before disturbing such artifacts, relics, remains or objects.

3.19.6 NAES will disclose fully to Owner in writing any operating changes, spills, releases, contamination or other environmental condition that could lead to degradation of the Site or violate any Applicable Law then in effect; any citations or warnings for violations of any Applicable Law; and any other act or omission that could lead to liability under any law or requirement of a Governmental Authority. NAES will inform Owner in writing within 24 hours of the occurrence of any of the foregoing of the measures NAES has undertaken and proposes to take and what other responses to address the situation and prevent its recurrence. Owner may conduct a Phase 1 environmental review during the Term; NAES shall cooperate in such environmental review.

3.19.7 Compliance with Environmental Laws. During the Term of this Agreement, NAES shall cooperate and assist Owner with Owner's acquisition of data and information, and preparation and filing with appropriate Governmental Authorities of any notices, plans, submissions, or other materials and information necessary for compliance with applicable Environmental Laws and the requirements of any Permits related to the Facility. All such environmental reports shall be submitted by, and in the name of, Owner and not NAES. All costs associated therewith, including the costs of any outside consultants, legal services, Governmental Authority charges, sampling and remedial work, shall be paid by Owner as an Operating Cost. Any action taken by NAES pursuant to any such applicable Environmental Law, including proceedings and filings made in connection therewith, shall be undertaken, and any Home Office Costs associated with any such compliance action shall only be incurred, by NAES with Owner's prior consent, unless a Governmental Authority or Applicable Law requires NAES to incur such costs and expenses prior to obtaining such consent.

3.19.8 Corrective Action. Nothing contained herein shall be construed as requiring NAES to take any corrective action with respect to the operation, maintenance, use or condition of the Facility unless (y) affirmatively and expressly directed in writing to so do by Owner and appropriate funding is made available by Owner, or (z) affirmatively and expressly directed to do so by a Governmental Authority, in order to comply with any Environmental Law, in which case the cost of any corrective actions so undertaken shall be deemed an Operating Cost. Owner shall serve as the "Responsible Official" for purposes of Clean Air Act permitting and reporting, as "Designated Representative" for purposes of applicable environmental "Cap and Trade" programs requiring such, including but not limited to Acid Rain Program, Clean Air Interstate Rule or its replacement and Regional Greenhouse Gas Initiative, as applicable, and as corporate responsible official for other environmental programs, permitting and reporting. NAES and Owner agree (i) in the course of performing Services under this Agreement, neither NAES nor any of its officers, directors, employees, agents, representatives or Affiliates (collectively, the "NAES Parties") is, has been or will be asserted by Owner to be, nor will any such Person have responsibility as, in each case before an environmental protection government agency, an "operator" of the Facility for purposes of, and as that term is used in, Environmental Law; and (ii) Owner shall not assert before any environmental protection governmental agencies that a NAES Party is the operator of the Facility for purposes of Environmental Law. Owner agrees to use its commercially reasonable efforts to take or cause to be taken all reasonable actions, to do or cause

to be done and to assist and cooperate with NAES in doing all reasonable things to establish before such environmental governmental protection agencies that no NAES Party is the "operator" of the Facility.

3.20 Income Taxes. Notwithstanding any other provision of this Agreement, NAES shall be responsible for and pay all income taxes and any withholding taxes or other taxes assessed or based upon NAES's corporate existence or income imposed directly or indirectly upon NAES.

3.21 Daily and Monthly Operations Reports. Each day during the Operational Phase, Operation will prepare and deliver an operation report to Owner (in a form approved by Owner) that summarizes the Services performed by NAES during the immediately preceding day. Upon Owner's request, each month during the Operational Phase, NAES will prepare and deliver to Owner an operation report (in a form approved by Owner) summarizing the Services performed by NAES during the immediately preceding month.

ARTICLE IV - ITEMS TO BE FURNISHED BY OWNER

4.1 General. Owner expressly reserves the authority to make, and will make, such business and strategic decisions as it deems appropriate from time to time in reference to the operation and maintenance of the Facility. Owner will furnish to NAES, at Owner's expense, the information, services, materials and other items described in this Article IV. All such items will be made available at such times and in such manner as may be reasonably required for the expeditious and orderly performance of the Services by NAES.

4.2 Information. Owner will provide to NAES copies of all Facility Agreements and any modifications or additional Facility Agreements promptly after execution of Facility Agreements, as well as copies of all technical, operational and other Facility information reasonably available to Owner or in Owner's possession and supportive of NAES's performance of the Services. Subject to the Standards of Performance, NAES will be entitled to rely upon any information provided by Owner or any of the other parties to the Facility Agreements in the performance of the Services.

4.3 Access to Facility. Owner will provide NAES unlimited access to the Facility and the Site as required to provide the Services.

4.4 Other Owner Supplied Items. Owner agrees to make, or cause to make, available to NAES the following items:

4.4.1 Facility Manuals. Owner will provide, or cause to be provided, the master copies of the Facility Manuals to NAES for use in development of the O&M Manuals. Thereafter, Owner will provide any updates to the Facility Manuals received from equipment manufacturers to NAES and NAES shall incorporate them into the O&M Manuals.

4.4.2 Fuel; Water; Stand-by Electricity. Owner will furnish and deliver, or arrange to furnish and deliver, to the Facility fuel, water and stand-by electricity.

4.4.3 Spare Parts and Supplies. Owner will provide and furnish, or cause to be provided and furnished, to NAES an inventory of spare parts and supplies as necessary for NAES to perform the Services and fund additional purchases as set forth in a Budget.

4.4.4 Instructions, Approvals. Owner will provide or cause to be provided to NAES all instructions NAES is required to obtain in accordance with this Agreement. Owner will not unreasonably withhold approvals required by this Agreement. Owner will not direct NAES to take any action inconsistent with Applicable Law or otherwise adversely affecting the safety, health or protection of, or otherwise endangering any persons or property located at or about the Facility.

4.4.5 Budgeting. Owner shall make timely and commercially reasonable budgeting decisions to permit the Facility to operate safely and in accordance with Applicable Law and to permit NAES to perform its obligations hereunder.

4.5 Facility Agreements. Owner will administer (except to the extent certain day-to-day operational tasks have been delegated to NAES under Section 3.2.4) and comply with the Facility Agreements. Owner will provide NAES written notice of any changes to requirements under the Facility Agreements or a copy of any agreement replacing any Facility Agreement.

4.6 Permits. Owner will obtain from the appropriate Governmental Authorities, all Permits for the ownership, operation and maintenance of the Facility other than Permits required by Applicable Law to be in the name of NAES.

ARTICLE V - REPRESENTATIVES, BUDGETS AND REPORTS

5.1 Representatives of NAES.

5.1.1 Project Manager. NAES has appointed a "Project Manager" from its Home Office Personnel who will be authorized to represent NAES with Owner concerning NAES's performance of the Services. The Project Manager will also supervise the Home Office Personnel in supporting the Site Personnel. NAES is bound by the written communications, directions, requests and decisions made by the Project Manager. NAES will notify Owner in writing of the identity of the Project Manager, and of any successors.

5.1.2 Plant Manager. NAES has appointed an individual (the "Plant Manager"), subject to approval of Owner as provided in Section 3.6.2, who will be one of the Site Personnel and who will direct and manage NAES's Site Personnel with full responsibility for the performance of all of the Services. For issues arising out of the day-to-day administration of the Operation Phase Services, the Plant Manager may communicate directly with Owner. Neither the Project Manager nor the Plant Manager has any authority to modify this Agreement.

5.2 Representatives of Owner. On or before the Effective Date, Owner shall appoint (i) an "Energy Manager" who shall be authorized and empowered to act for and on behalf of Owner on matters concerning the dispatch, scheduling, and fuel acquisition related to the administration of this Agreement; and (ii) an "Owner's Representative" who shall be the on-site person for budget, asset and property management (excluding the responsibilities assigned to the Energy Manager),

and Owner's other obligations hereunder. In matters delegated to the Energy Manager or Owner's Representative, Owner shall be bound by the written communications, directions, requests and decisions made by the Energy Manager and Owner's Representative. Owner shall notify NAES in writing upon the appointment of the Energy Manager, Owner's Representative, and their successors.

5.3 Plans and Budgets.

5.3.1 Adoption.

5.3.1.1 Process. On a date no later than the last day of January of every calendar year, NAES will submit to Owner a proposed budget and plan with respect to the Services (the "Budget" and the "Plan"). Each Budget will be structured on a monthly basis and will be a projection, in detail reasonably acceptable to Owner, of all Operating Costs and Reimbursable Costs to be expended in the performance of the Services. Each Plan will state the assumptions upon which the related Budget is based and the implementation plans for the Services, including: (i) anticipated operations and repairs, (ii) routine maintenance and overhaul schedules (including planned major maintenance), (iii) procurement, (iv) staffing, personnel and labor activities, (v) administrative activities, (vi) capital improvements, (vii) other work proposed to be undertaken by NAES, and (viii) a contingency for unplanned projects. Owner will review each proposed Budget and Plan as promptly as possible and may, by written request, require changes, additions, deletions and modifications. Owner and NAES will then meet and use reasonable efforts to agree upon a final Budget and Plan prior to the commencement of the applicable period. Each final Budget and Plan will remain in effect throughout the applicable period, subject to updating, revision and amendment proposed by either Party and consented to in writing by the other Party.

5.3.1.2 Adjustments. If either Party becomes aware of facts or circumstances that it believes necessitate a change to a Budget or Plan, that Party will immediately notify the other Party, specifying the impact upon the Budget and the reasons for the change. The Project Manager, Plant Manager, or his designee will then discuss appropriate changes to such Budget with the Owner's Representative.

5.3.1.3 Failure to Agree. The Parties acknowledge that it is necessary that Owner retain ultimate authority with respect to expenses incurred for operation of the Facility. Accordingly, NAES will accept each Budget as finally determined by Owner. If Owner does not authorize funds as requested by NAES, NAES will be relieved from providing the specific Services that have not been funded, provided that NAES delivers a written report to Owner that describes the reasons why NAES believes each disputed expense that NAES requested to be included in a Budget (or any request for modifications to a Budget pursuant to Section 5.3.1.2) is prudent.

5.3.2 Notification of Variance. NAES will submit a monthly report to Owner comparing the actual Operating Costs and Reimbursable Costs incurred during the current Operating Year with the projected Operating Costs and Reimbursable Costs projected in each line of the Budget. If, at any time during an Operating Year, NAES becomes aware that the aggregate of all Operating Costs or Reimbursable Costs exceeds or will exceed the amount provided in the applicable Budget or that the Facility is operating with any material deviations or discrepancies from the projections contained in the applicable Plan, NAES will promptly so notify

Owner. NAES will make no expenditures that exceed a Budget unless Owner grants prior written approval, except as otherwise permitted in response to an Emergency.

5.4 Availability of Operating Data and Records. NAES will make data prepared and maintained by NAES available to Owner (i) pursuant to requirements in any Facility Agreement or the Administrative Procedures Manual, or (ii) upon any request by Owner, on the Business Day following such request.

5.5 Accounts and Reports. NAES will assist Owner in complying with Owner's reporting requirements with regard to Governmental Authorities or counterparties to Facility Agreements, and will furnish or cause to be furnished to Owner certain reports regarding the Services and the performance of the Facility as defined by Owner and NAES.

5.6 Notices. Upon obtaining actual knowledge thereof, each Party will submit prompt written notice to the other Party of the following, to the extent relating to the Facility or the Services:

(a) Litigation and Permit Lapses. (i) Any litigation, claims, disputes, or actions filed in any way concerning the Facility, the Site, the Facility Agreements or the Services; (ii) any actual refusal to grant, renew or extend, or any action filed with respect to the granting, renewal or extension of, any Permit; (iii) all penalties or notices of violation issued by any Governmental Authority; (iv) any dispute with any Governmental Authority that may have a material adverse effect on the operation and maintenance of the Facility; and (v) with respect to the matters identified in clauses (i), (ii), (iii) or (iv), any threats of such matters, which matters may have a material adverse effect on the ownership, operation or maintenance of the Facility;

(b) Casualty. Any material damage or destruction to the Facility;

(c) Supplier Issues. The Parties shall promptly notify each other in the event of any issues such as non-delivery or nonperformance of any suppliers;

(d) Unscheduled Outages. NAES will notify Owner verbally of any unscheduled outage of all or any portion of the Facility as soon as is as reasonably possible (but in all cases within two hours) following commencement of the outage. Within fifteen days following the conclusion of such unscheduled outage, NAES will submit a report to Owner describing the cause of the outage (if known), NAES's response, and the measures, if any, undertaken by NAES to prevent the outage's recurrence; and,

(e) Community Complaints. The Parties shall promptly notify each other of any complaint received by the surrounding community.

5.7 Scheduled Outage Plan. NAES shall prepare and deliver to Owner by no later than first day of the fourth week of January a scheduled outage plan which sets forth the anticipated Scheduled Outages for the entire or part of the Facility ("Scheduled Outage Plan"). To the extent possible, Scheduled Outages shall be performed during non-peak seasons and comply with PJM Rules.

5.8 Reporting to Governmental Authorities. Unless otherwise directed by Owner or as set forth in Section 3.20, NAES shall prepare and file all reports with Governmental Authorities

as may be required in connection with the management, operation and maintenance of the Facility and the provision of the Services, and shall provide drafts of each such report to Owner for Owner's review and comment, where possible, prior to filing and, in any event, contemporaneously with such filing. Such reports shall be complete and accurate.

ARTICLE VI - LIMITATIONS ON AUTHORITY

6.1 General Limitations. NAES has no authority to make policies or decisions with respect to the overall operation of the Facility as a commercial enterprise; such matters will be determined by Owner. Notwithstanding any provision in this Agreement to the contrary, unless previously approved in a Budget and Plan or otherwise approved in writing by Owner, NAES will not (and will not permit any of its agents or representatives to):

6.1.1 Disposition of Assets. Sell, lease, pledge, mortgage, encumber, convey, or make any license, exchange or other transfer or disposition of the Facility, the Site or any other property or assets of Owner, including any property or assets purchased by NAES, the cost of which is an Operating Cost or a Reimbursable Cost;

6.1.2 Expenditures. Make any expenditure or acquire on an Operating Cost or a Reimbursable Cost basis any goods or services from third parties, except in substantial conformity with a Budget or as authorized by Owner, or consent or agree to do any of the foregoing; provided, however, that in the event of an Emergency, NAES, without approval from Owner, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss in accordance with Section 3.13;

6.1.3 Other Actions. Take or agree to take any other action or actions that, individually or in the aggregate, materially varies from the applicable Budget and Plan; provided, however, that in the event of an Emergency, NAES, without approval from Owner, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss in accordance with Section 3.13;

6.1.4 Lawsuits and Settlements. Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by Owner or NAES, the cost of which, in the case of NAES, would be an Operating Cost or a Reimbursable Cost hereunder, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to the same; or

6.1.5 Prohibited Transactions. Engage in any other transaction on behalf of Owner not permitted under this Agreement.

ARTICLE VII - COMPENSATION AND PAYMENT

7.1 General. As compensation to NAES for the performance of the Services hereunder, Owner will pay NAES, in the manner and at the times specified in this Article 7, all Reimbursable Costs, Operating Costs and the Management Fee, as applicable, all as further described below.

7.2 Reimbursable Costs. Subject to the applicable Budget, Owner will reimburse NAES for the following costs incurred by NAES in performing the Services (the "Reimbursable Costs"): (i) reasonable relocation and recruitment expenses for NAES's Site Personnel; (ii) costs incurred in response to an Emergency; (iii) gross receipts taxes; (iv) insurance maintained by NAES in accordance with Section 9.1, (v) training of Site Personnel to improve operator skills, Facility performance, PJM compliance, and safety conducted on-Site or off-Site and associated travel and living expenses; (vi) third party advisors, consultants, attorneys, accountants and contractors providing work in support of the Services that cannot reasonably be performed by Site Personnel; (vii) Permit fees for Permits required for NAES or Site Personnel to perform Services; (viii) labor relations activities; (ix) Site Personnel wages, salaries, overtime, customary or required severance payments, unemployment and disability insurance, payroll taxes imposed on wages and benefits, worker's compensation costs and holidays, vacations, group medical, dental and life insurance, defined contribution plans and other employee benefits; (x) time and expenses of NAES's Home Office Personnel when providing the services described in Appendix A, Part III ("Extra Work") at the applicable rates set forth in Appendix F; and (xi) any other reasonable cost designated by the Parties as a Reimbursable Cost that is approved in a Budget pursuant to the terms of this Agreement. In no event shall NAES add any mark-up to the Reimbursable Costs.

On or before the tenth (10^{th}) Business Day of each month, NAES will invoice Owner for Reimbursable Costs. All Reimbursable Costs shall be invoiced in arrears except for those defined in Section 7.2(ix), which shall be paid by Owner to NAES in advance of NAES's payments to Site Personnel. The invoice will be supported by receipts or other appropriate documentation. Owner will make payment to NAES of the invoiced amount no later than the Due Date.

7.3 Operating Costs.

7.3.1 Definition. "Operating Costs" include the following: (i) equipment, material, supplies, consumables, spare parts, replacement components, tools, office equipment and supplies and utilities used at the Facility Site; and (ii) any other purchase that NAES makes in accordance with Section 3.2 of this Agreement and that is approved in a Budget pursuant to the terms of this Agreement.

7.3.2 Payment Process. NAES shall receive, review, and confirm vendor invoices, then transmit them to Owner for direct payment by Owner to vendor. NAES shall transmit such invoices in a timely manner sufficient to enable Owner to make such payments when due. Owner shall permit NAES's Site Personnel limited access into Owner's accounting system (HTE) or provide NAES with accounts of payments made, sufficient to support NAES's ability to manage the budget for the Facility and to conduct budget variance analysis.

7.4 Disputes. Should Owner contest the validity, reasonableness or accuracy of any NAES invoice, Owner shall notify NAES in writing within ten days after receipt of such invoice,

explaining in detail the reasons for its contest. If Owner disputes only part of a statement submitted to it for payment, then it shall pay to NAES the undisputed portion of such statement in accordance with Sections 7.2 and 7.3.2 and notify NAES in writing of the amount disputed in accordance with Section 14.7. All such disputes shall be resolved pursuant to Section 14.7.

7.5 Cost Audit. No payment made pursuant to the foregoing provisions shall be considered as approval or acceptance of an invoice, and Owner shall remain entitled to conduct a subsequent audit and review of NAES's records with respect to all Reimbursable Costs together with any supporting documentation for a period of two (2) years from and after the date of the applicable payment. If, pursuant to such audit and review, it is agreed that any amount previously paid by NAES was not properly incurred as a Reimbursable Cost, NAES will credit such amount to Owner in the next subsequent invoice.

7.6 Management Fee. As compensation to NAES for the performance of the Operational Phase Services, Owner shall pay to NAES the Management Fee, which shall include the routine Home Office Personnel services described in Appendix A, Part II. The Management Fee shall be paid in monthly installments of one-twelfth (1/12) of such fee. On or before the tenth (10^{th}) Business Day of each month following the Effective Date, NAES shall submit monthly invoices to Owner for payment of the Management Fee. Owner shall pay the Management Fee no later than the Due Date for the applicable invoice. In the event that any of the units located in the Facility other than Units 1 and 2 are declared to be no longer commercially operational after 2018, the Parties will negotiate in good faith a reduction in the Management Fee to reflect the reduced level of Services.

7.7 Performance Adjustment. During each Operating Year, the Management Fee is subject to adjustment if NAES fails to meet the performance goals for the Facility defined in Appendix B. NAES will submit its calculation of the Performance Adjustment, if any, to Owner no later than February 1 following the Operating Year for which the payment is calculated together with a statement showing the change in the amount due to be paid in the March invoice.

7.8 Late Payment. To the extent Owner or NAES fails to pay any amount required to be paid under this Agreement by the Due Date, the unpaid amount will accrue interest each day at the Late Payment Rate from the Due Date until such amount (plus accrued interest) is paid in full.

ARTICLE VIII - TERM

8.1 Term. This Agreement is effective on the Effective Date and continues in effect through June 30, 2020 (the "Expiration Date"). The period beginning on the Effective Date and ending on the Expiration Date is the Initial Term. The Initial Term shall extend in increments of additional one year terms (each an "Extended Term") until a Party notifies the other Party in writing no later than (i) in the case of notice from NAES to Owner, twelve (12) months prior to the Expiration Date (or the end of an Extended Term, as the case may be); or (ii) in the case of notice from Owner to NAES, six (6) months prior to the Expiration Date (or the end of an Extended Term, as the case may be), that this Agreement will not be extended.

8.2 Termination by Owner. Owner is permitted to terminate this Agreement if any of the following events occur: (i) Bankruptcy of NAES, (ii) payment default by NAES (other than a disputed payment) that is not cured within ten (10) days after NAES has received notice of such default, (iii) default by NAES in performance of its obligations under this Agreement that has a material effect on operation of the Facility, provided, however, that NAES has up to sixty (60) days after notice to cure the default or make substantial progress (in the reasonable opinion of Owner) towards curing the default (but in no event to exceed ninety (90) days) or (iv) NAES incurs the maximum liability under Section 11.2.2 for two (2) consecutive Operating Years. Within thirty (30) days after the date of termination, Owner will pay NAES for Services rendered by NAES through the termination date, including all Reimbursable Costs, and the Management Fee, as applicable, and the Bonus, if any, earned through the date of termination but not paid (collectively, all such amounts due NAES upon any termination are the "Termination Payment").

8.3 Termination by NAES. NAES is permitted to terminate this Agreement if any of the following events occur: (i) payment default by Owner (other than a disputed payment) that is not cured within ten (10) days after the Due Date for any invoice, or otherwise within thirty (30) days after due hereunder; provided, however, that Owner has received notice of such default, (ii) Bankruptcy of Owner, (iii) a sale or transfer of the Facility (other than any sale- leaseback transaction undertaken as part of Owner's procurement of financing or the sale of the Facility to any Affiliate of Owner or any other Person that, in either case, (x) has comparable creditworthiness to Owner and (y) agrees in writing to be bound by all of the terms and provisions hereof for the express benefit of NAES), or (iv) default by Owner of any other obligation under this Agreement that has a material effect on NAES's ability to perform the Services; provided, however, that Owner shall have up to sixty (60) days to cure or make substantial progress (in the reasonable opinion of NAES) towards curing such other default. In the event of a termination by NAES under this Section 8.3, Owner shall pay to NAES the Termination Payment.

8.4 Transfer of Facility Custody. Upon expiration or termination of this Agreement, NAES will leave all Facility documents and records, tools, supplies, spare parts, safety equipment, O&M Manuals, and any other items furnished on an Operating Cost or a Reimbursable Cost basis at the Facility, all of which will remain the property of Owner without additional charge. NAES will execute all documents and take all other reasonable steps as may be reasonably requested by Owner to assign to and vest in Owner all rights, benefits, interests and title in connection with third party contracts, if any, NAES executed in its own name for the benefit of the Facility; provided, however, that Owner assumes all liabilities arising under such contracts after the date of assignment.

8.5 Services Upon Termination. Upon notice of termination of this Agreement by either NAES or Owner, provided that Owner has not defaulted on any payment obligations of this Agreement, Owner has the right to specify a period of transition (the "Termination Transition Period") during which NAES will (i) continue to operate the Facility in accordance with this Agreement, (ii) cooperate with Owner in planning and implementing a transition to any replacement NAES, and (iii) use its reasonable efforts to minimize disruption of Facility operations in connection with such activities. Owner will compensate NAES in accordance with this Agreement during the Termination Transition Period. NAES will permit the new operator to hire or to contract with the non-managerial Site Personnel that the new operator desires to retain at the Facility. To facilitate employee transfer, NAES will permit the new operator to interview non-

managerial Site Personnel in a manner and at times that do not interfere with NAES's responsibility to perform the Services.

ARTICLE IX - INSURANCE

9.1 NAES Insurance. NAES will maintain throughout the Term the insurance set forth below:

9.1.1 Workers Compensation. Workers compensation insurance covering NAES's employees as required by Applicable Law and employer's liability insurance with a limit of $1,000,000 per occurrence/annual aggregate.

9.1.2 Automobile Liability. Automobile bodily injury, including coverage for automobiles owned or hired by NAES with limits of not less than $1,000,000 per occurrence.

9.1.3 Commercial General Liability. Commercial general liability insurance with limits of not less than $1,000,000 per occurrence/annual aggregate.

9.1.4 Excess Coverage. Excess liability insurance covering liability in excess of the insurance described in Sections 9.1.1 (employers liability), 9.1.2 and 9.1.3. The policy will have a limit of $35,000,000 per occurrence/annual aggregate.

9.2 Owner Insurance. Owner will, prior to the date that notice to proceed is issued, and throughout the Term hereof, secure and pay for and maintain or will cause to be secured and maintained in effect during the operation of the Facility the following insurance:

9.2.1 Property. Property insurance, including boiler and machinery insurance, and business interruption insurance, in amounts determined in Owner's sole discretion.

9.2.2 Workers Compensation. Workers Compensation insurance covering Owner's employees as required by law and employer's liability insurance with a limit of $1,000,000 per occurrence/annual aggregate.

9.2.3 Commercial General Liability. Commercial general liability insurance with limits of not less than $1,000,000 per occurrence/annual aggregate.

9.2.4 Automobile Insurance. Automobile liability insurance covering automobiles owned or hired by Owner with limits of $1,000,000 per occurrence, and collision/comprehensive coverage in amounts deemed appropriate by Owner.

9.2.5 Additional Coverage. Umbrella or excess liability insurance in excess of the insurance described in Sections 9.2.2(employer's liability), 9.2.3 and 9.2.4 will be carried with limits determined in Owner's sole discretion.

9.3 Waiver of Subrogation; Additional Insured. Owner agrees to waive any rights of subrogation of its insurers against NAES and its Affiliates together with their respective officers, directors, Affiliates and employees and each such Person will be an additional insured with respect to all liability policies procured by Owner pursuant to this Agreement (other than workers

compensation policies). NAES agrees to waive any rights of subrogation of its insurers against Owner and Lenders together with their respective officers, directors, Affiliates and employees and each such Person will be an additional insured with respect to all liability policies procured by NAES pursuant to this Agreement (other than workers compensation policies). For the avoidance of doubt, the Parties intend that each Party will have the maximum protection available to that Party from the insurance policies owned by the other Party.

9.4 Form and Content. All insurance policies with respect to insurance maintained by either Owner or NAES pursuant to this Article IX will:

9.4.1 Insurer Rating. Be placed with insurance companies that have a Best's rating of at least A-VII or with companies that are otherwise reasonably acceptable to Lenders, Owner and NAES;

9.4.2 Claims-Made Form. If written on a claims made policy form, be maintained with a retroactive date that is prior to the Effective Date for a period of at least two (2) years following the last Operating Year in which such policy provides coverage under the terms of this Agreement;

9.4.3 Primary Coverage. State that such policy (other than an excess policy) is primary with respect to any other insurance coverage available to Owner or NAES or any additional insured, and that all provisions, except the policy limits, will operate in the same manner as if there were a separate policy covering such insured under each such policy;

9.4.4 Non-Recourse Premiums. Grant no recourse for payment of any premium against NAES or any additional insured for insurance required to be furnished by Owner pursuant to Section 9.2 and no recourse for payment of any premium against Owner or any additional insured for insurance required to be furnished by NAES pursuant to Section 9.1; and

9.4.5 Cancellation Notice. Provide that the insurer give ninety (90) days prior written notice of cancellation of such policies unless cancellation is for non-payment of premiums, in which case a minimum of ten (10) days' notice must be provided.

9.5 Certificates. Each Party will furnish the other Party with certificates evidencing that the required insurance is in effect.

9.6 Deductibles. Each Party is liable for the payment of all deductibles on insurance policies obtained by such Party pursuant to this Agreement, and, in the event of a claim under a policy described in Section 9.1 or 9.2, each Party will look solely to its policies for compensation. Owner will approve the deductibles under all policies provided by NAES under Section 9.1.

ARTICLE X - INDEMNIFICATION

10.1 NAES Indemnification. NAES will indemnify and hold harmless Owner and its Affiliates, and their respective officers, directors, employees, agents and representatives (the "Owner Indemnitees") from and against, and no Owner Indemnitee will be responsible

hereunder for, any and all claims, assertions, demands, suits, damages, judgments, losses, obligations, liabilities, actions and causes of action, fees (including reasonable attorneys' fees and disbursements), costs (including court costs), expenses, investigations, inquiries, administrative proceedings, penalties, fines and sanctions (collectively, "Liabilities") sustained or suffered by any Owner Indemnitee in connection with injury or death to third parties or loss of or damage to the property of third parties, to the extent caused by NAES's negligent acts or omissions, willful misconduct, violation of any Applicable Law or breach of any representation, warranty or covenant in this Agreement. Any Liabilities paid by NAES pursuant to its indemnity obligation under this Section 10.1 are not Reimbursable Costs.

10.2 Owner Indemnification. Owner will indemnify and hold harmless NAES and its Affiliates, and their respective officers, directors, employees, agents and representatives (the "NAES Indemnitees"), from and against, and no NAES Indemnitee will have responsibility hereunder for, any and all Liabilities sustained or suffered by any NAES Indemnitee in connection with injury or death to third parties or loss of or damage to property of third parties, to the extent caused by Owner's negligent acts or omissions, willful misconduct, violation of any Applicable Law or breach of any representation, warranty or covenant in this Agreement.

10.3 Violations of Applicable Law. NAES shall be responsible for the cost and payment of all fines and penalties assessed against Owner or the Facilities that result from NAES's operation of the Facilities or performance of Services in violation of any Permits or Applicable Law except (i) for opacity violations under the air Permit not caused by operator error, or inadequate maintenance, (ii) to the extent such fines and penalties levied against Owner or the Facilities result from NAES's compliance with a written instruction or direction from Owner. NAES hereby irrevocably indemnifies, and agrees to defend and hold harmless, Owner, its employees, agents and Affiliates from and against all claims, suits, actions, losses, liabilities and damages, including all fines, costs, expenses, and attorneys' fees arising from or related to any failure of NAES to comply with any Permit or Applicable Law (other than with respect to the exceptions set forth above).

ARTICLE XI - LIABILITIES OF THE PARTIES

11.1 Limitations of Liability. Notwithstanding any provision in this Agreement to the contrary, neither the Parties nor any of their respective members or shareholders, officers, directors, agents, representatives or employees are liable for consequential or indirect loss or damage, including loss of profit, cost of capital, loss of goodwill, increased operating costs or any special or incidental damages. The Parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability and limitations of liability expressed in this Agreement will survive termination or expiration of this Agreement, and apply in all circumstances, whether in contract, equity, tort or otherwise, regardless of the fault, negligence (in whole or in part), strict liability, breach of contract or breach of warranty of the Party indemnified, released or whose liabilities are limited, and shall extend to the partners, principals, directors, officers and employees, agents and Affiliates of such Party, and the partners, principals, directors, officers, and employees of such Affiliates.

11.2 NAES's Total Aggregate Liability. Notwithstanding anything to the contrary in this Agreement, the total aggregate liability of NAES to Owner for all Liabilities arising out of any events occurring or claims made in connection with the performance of the Services under this Agreement in any Operating Year, is Four Hundred Fifty Thousand Dollars ($450,000), provided, however, that this limitation does not apply to any third party indemnity obligation of NAES arising under Section 10.1. This limitation applies to indemnity obligations arising under Section 10.3 provided that the payment of a claim under a policy purchased by NAES pursuant to Section 9.1 shall not be counted toward computing NAES's total aggregate liability for the Operating Year. It is expressly understood and agreed that (i) the aggregate liability limitation expressed in this Section 11.2 is separate from, and is not to be construed as limiting, the limits of insurance and coverage described in Article IX. Any deductible amounts paid in any Operating Year by NAES under Section 9.6, or under the insurance policies NAES is required to maintain in Section 9.1, count toward computing NAES's total aggregate liability for such Operating Year.

11.3 No Warranties or Guarantees. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OR GUARANTEES TO THE OTHER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND BOTH PARTIES DISCLAIM AND WAIVE ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11.4 Exclusive Remedies. The remedies under this Agreement in respect of or in consequence of (i) any breach of contract, (ii) any negligent act or omission, (iii) death or personal injury, or (iv) loss of or damage to any property, are to the exclusion of any other remedy that either Party may have against the other under Applicable Law or otherwise.

ARTICLE XII - CONFIDENTIALITY

12. 1 General. During the Term, and for three (3) years after the termination of this Agreement, each Party will hold in confidence any Confidential Information supplied by the other Party. The term "Confidential Information" means with respect to each Party, all written or oral information of a proprietary, intellectual or similar nature, relating to a Party's business, projects, operations, activities or affairs, whether of a technical or financial nature or otherwise (including environmental assessment reports, financial information, business plans and proposals, ideas, concepts, trade secrets, know-how, processes, pricing of services or products, and other technical or business information, whether concerning this Agreement, each Party's respective businesses or otherwise) that has not been publicly disclosed and that the receiving Party acquires directly or indirectly from the disclosing Party. Each receiving Party further agrees, to the extent requested by the disclosing Party, to require its contractors, vendors, suppliers and employees, agents or prospective purchasers to enter into appropriate nondisclosure agreements relative to any Confidential Information, prior to the receipt thereof; provided, however, that the receiving Party may make necessary disclosures to third parties directly engaged in the operation, ownership or financing of the Facility if such third parties agree to receive and hold such Confidential Information in confidence. The Parties acknowledge that this Agreement is governed

by the Delaware Freedom of Information Act and that Confidential Information is subject to being disclosed, unless specifically exempt from disclosure under such Act.

12.2 Exceptions. The provisions of this Article XII do not apply to information within one or more of the following categories:

12.2.1 Public Domain. Information that was in the public domain prior to the receiving Party's receipt or that subsequently becomes part of the public domain by publication or otherwise, except by the receiving Party's wrongful act, or

12.2.2 Prior Receipt. Information that the receiving Party can demonstrate was in its possession prior to receipt thereof from the disclosing Party, or

12.2.3 Third Party Delivery. Information received from a third party having no obligation of secrecy with respect thereof.

12.3 Required Disclosure. Any receiving Party required by law, rule, regulation, subpoena or order, or in the course of administrative or judicial proceedings, to disclose Confidential Information that is otherwise required to be maintained in confidence pursuant to this Article XII, may make disclosure notwithstanding the provisions of this Article XII; provided, however, that the receiving Party, immediately upon learning of the requirement, notifies the disclosing Party of the requirement and the terms thereof and cooperates to the maximum extent practicable to minimize the disclosure of Confidential Information. Any receiving Party disclosing Confidential Information pursuant to this Section 12.3 must use reasonable efforts, at the disclosing Party's cost, to obtain proprietary or confidential treatment of Confidential Information by the third party to whom the information will be disclosed, and to the extent such remedies are available, must use reasonable efforts to seek protective orders limiting the dissemination and use of Confidential Information. Moreover, this Agreement does not alter the rights of any Party to object to the rule, regulation, order or proceedings requiring the disclosure.

ARTICLE XIII - TITLE, DOCUMENTS AND DATA

13.1 Materials and Equipment. Title to all materials, equipment, supplies, consumables, spare parts and other items purchased or obtained by NAES on an Operating Cost or Reimbursable Cost basis passes directly from the vendor or supplier thereof to, and vests in, Owner. NAES has no title or other claim to such items; provided, however, that transfer of title in no way affects NAES's obligations set forth in this Agreement.

13.2 Documents. All O&M Manuals, operational data, Facility drawings, NAES reports and Operating Account records (including, for all documents, both paper and electronic records) prepared or developed by NAES's Site Personnel in connection with performance of the Services become the property of Owner when prepared. All such documents, together with any materials and documents furnished to NAES by Owner, will remain at the Facility upon expiration or termination of this Agreement; provided, however, that NAES may retain for its records copies of documents prepared by NAES.

13.3 Proprietary Information. Where materials or documents prepared or developed by NAES or its Affiliates, or their respective employees, representatives or contractors, contain proprietary or technical information, systems, techniques or know-how previously developed by them or acquired by them from third parties ("NAES Proprietary Information"), NAES retains the unrestricted and irrevocable right to use or dispose of such NAES Proprietary Information as NAES deems fit; provided, however, that Owner has an irrevocable license to use such NAES Proprietary Information to the extent necessary for Owner's operation or maintenance of the Facility at no additional cost to Owner.

ARTICLE XIV - MISCELLANEOUS PROVISIONS

14.1 Assignment. This Agreement is not assignable by a Party without the prior written consent of the other Party, which consent will not be unreasonably withheld, except that this Agreement may be collaterally assigned by Owner without such consent to Lender in connection with Lender's financing of the Facility, and may be assigned by any Party to such Party's Affiliates; provided, however, that any assignment pursuant to this Section 14.1 will not relieve the assigning Party of any of its obligations under this Agreement that arose prior to the date of such assignment. NAES agrees to negotiate in good faith any consent to assignment and such other reasonable documents in connection with an assignment to Lender as Lender may request, provided, however, that all of NAES's costs in connection therewith shall be Reimbursable Costs hereunder (including the fees and disbursements of NAES's attorneys). This Agreement will be binding upon and will inure to the benefit of the successors and permitted assigns of the Parties.

14.2 [Reserved]

14.3 Access.

14.3.1 Owner's Access. Owner and Lenders and their agents and representatives will have access to the Facility, all Facility operations and any documents, materials and records and accounts relating to the Facility operations for purposes of inspection and review. Upon the reasonable request of Owner, and its agents and representatives, NAES will provide such Persons with access to all operating data and operating logs maintained at the Facility.

14.3.2 Compliance with NAES's Procedures. During any inspection or review of the Facility pursuant to Section 14.3.1, Owner and Lenders and their agents and representatives must comply with all of NAES's safety and security procedures and conduct inspections and reviews in such a manner as to cause minimum interference with NAES's activities. NAES also will cooperate with Owner in allowing other visitors access to the Facility.

14.4 Subcontractors. Subcontracting of the Services will not relieve NAES of its duties, liabilities or obligations to Owner. Owner has the right, in its sole discretion, to approve the retention of any subcontractors.

14.5 Not for Benefit of Third Parties. Except as otherwise expressly provided in Sections 9.3 and 14.4 (with respect to the additional insured status of Persons) and Articles X, XI, XII and XIII, and Section 14.1, this Agreement and each and every provision hereof are for the

exclusive benefit of the Parties that executed this Agreement and not for the benefit of any third party.

14.6 Force Majeure.

14.6.1 Events Constituting Force Majeure. A "Force Majeure Event" is any event that (a) restricts or prevents performance under this Agreement, (b) is not reasonably within the control of the Party affected or caused by the default or negligence of the affected Party and (c) cannot be overcome or avoided by the exercise of due care. Force Majeure Events include failure of a Party to perform due to drought, flood, earthquake, storm, fire, lightning, epidemic, war, terrorism, acts of Governmental Authorities, civil disturbances, sabotage, work stoppages (i.e., strikes), accident or curtailment of supply, unavailability of construction materials or replacement equipment beyond the affected Party's control, inability to obtain and maintain Permits from any Governmental Authority for the Facility, restraint by court order, and changes in Applicable Law that affect performance under this Agreement. Except for the obligation of each Party to make payments of amounts owed to the other Party, each Party is excused from performance and will not be considered to be in default in respect to any obligation if performance cannot occur due to a Force Majeure Event. Neither Party will be relieved of its obligations under this Agreement solely because of increased costs or other adverse economic consequences that may be incurred through the performance of such obligations.

14.6.2 Notice. If a Party's ability to perform its obligations under this Agreement is affected by a Force Majeure Event, the Party claiming such inability must (i) promptly notify the other Party of the Force Majeure Event and its cause and confirm the same in writing within five (5) Business Days of its discovery, (ii) promptly supply such available information about the Force Majeure Event and its cause as may be reasonably requested by the other Party and (iii) initiate efforts to remove the cause of the Force Majeure Event or to lessen its effect. Strikes and lockouts are Force Majeure Events and settlement thereof is wholly within the discretion of the Party whose employees are on strike or locked out.

14.6.3 Scope. The suspension of performance arising from a Force Majeure Event will be of no greater scope and no longer duration than that which is necessary. The excused Party will use its reasonable efforts to remedy its inability to perform.

14.7 Dispute Resolution.

14.7.1 Any dispute concerning interpretation or clarification of this Agreement, or the acceptable performance thereof by NAES ("Dispute"), shall be immediately submitted in writing to Owner for resolution. All determinations, instructions, and clarifications of Owner shall be final and conclusive, unless NAES files with Owner within 14 days after Owner notifies Operator of any such determination, instruction, or clarification, a written protest, stating clearly and in detail the basis thereof. Owner shall respond to such protest within 30 days of its receipt.

14.7.2 In the event that use of the procedures set forth in Section 14.7.1 does not lead to satisfactory resolution of the Dispute, either Party may send a Notice of Dispute to the other Party and request a conference for resolution of such dispute. Within three days after delivery of such notice, each Party shall nominate a senior officer of its management to meet at the Facilities, or at any other mutually agreed location, to resolve the dispute, which conference shall be convened

within ten days after exchange of such nominations unless the parties mutually agree to another date. In the event the parties are unable to resolve the dispute through the procedures set forth in this Section 14.7.2, either Party shall have the right to pursue the remedies in accordance with the procedures set forth in Section 14.7.3.

14.7.3 Any controversy or claim arising out of or relating to this Agreement or the breach thereof, which cannot be resolved amicably, shall be settled by arbitration. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award of the arbitrators shall be final, and a judgment may be entered upon it by any court having jurisdiction. A Party desiring to invoke this arbitration provision shall serve written notice upon the other of its intention to do so. Within 15 days of the date of such notice, each Party shall serve upon the other the name of one individual, knowledgeable in matters pertaining to the performance of this Agreement and to the subject matter of the dispute to serve as an arbitrator. If either Party fails to select an arbitrator and notify the other Party of that selection within such 15 day period the other Party may request the American Arbitration Association to select the arbitrator. The two arbitrators so selected shall select a third arbitrator within 15 days after the selection of the two arbitrators or, if the two arbitrators cannot agree upon a third arbitrator, the American Arbitration Association shall select the third arbitrator. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then prevailing, and shall be conducted in Dover, Delaware, unless the Parties agree otherwise. Discovery shall be made available in accordance with the procedures set forth in the Federal Rules of Civil Procedure, but to a degree limited by the arbitrators as they deem appropriate to render the proceedings economical, efficient, expeditious and fair. Interest at the Late Payment Rate shall be added to any monetary award for sums found to have been due under this Agreement. Except as otherwise specified by the arbitrators each Party shall bear its own costs of the arbitration.

14.7.4 During the pendency of any Dispute, the Parties will continue to perform the obligations imposed upon them under this Agreement to the fullest extent possible, without prejudice to their respective positions in dispute

14.8 Amendments. No amendments or modifications of this Agreement are valid unless in writing and signed by duly authorized representatives of the Parties.

14.9 Survival. Notwithstanding any provisions to the contrary, the obligations set forth in Articles VII (with respect to payments), X and XII, Sections 8.2 and 8.3 (with respect to the obligation to pay the Termination Payment), Sections 14.7 and the limitations on liabilities set forth in Article XI will survive, in full force, the expiration or termination of this Agreement.

14.10 No Waiver. No delay, waiver or omission by Owner or NAES to exercise any right or power arising from any breach or default by Owner or NAES with respect to any of the terms, provisions or covenants of this Agreement will be construed to be a waiver by Owner or NAES of any subsequent breach or default of the same or other terms, provisions or covenants on the part of Owner or NAES.

14.11 Notices. Any written notice required or permitted under this Agreement will be deemed to have been duly given on the date of receipt, and will be either delivered personally to the Party to whom notice is given, or mailed to the Party to whom notice is to be given, by email,

facsimile, courier service or first class registered or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the address provided in Appendix D, or at the most recent address specified by written notice given to the other Parties in the manner provided in this Section 14.11.

14.12 Representations and Warranties. Each Party represents and warrants to the other Party that, as of the date hereof:

14.12.1 Existence. It is duly organized and validly existing under the laws of the state of its organization and has all requisite power and authority to own its property and assets and conduct its business as presently conducted or proposed to be conducted under this Agreement.

14.12.2 Authority. It has the power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

14.12.3 Validity. It has taken all necessary action to authorize its execution, delivery and performance of this Agreement, and this Agreement constitutes the valid, legal and binding obligation of such Party enforceable against it in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or similar laws affecting the rights of creditors or by general equitable principles (whether considered in a proceeding in equity or at law).

14.12.4 No Conflict. None of the execution or delivery of this Agreement, the performance by such Party of its obligations in connection with the transactions contemplated hereby, or the fulfillment of the terms and conditions hereof, conflicts with or violates any provision of its constituting documents.

14.12.5 No Consent. No consent or approval (including any Permit that such warranting Party is required to obtain) is required from any third party (including any Governmental Authority) for either the valid execution and delivery of this Agreement, or the performance by such Party of its obligations under this Agreement, except such as have been duly obtained or will be obtained in the ordinary course of business.

14.12.6 No Breach. None of the execution or delivery of this Agreement, the performance by such Party of its obligations in connection with the transactions contemplated hereby, or the fulfillment of the terms and conditions hereof either conflicts with, violates or results in a breach of, any Applicable Law currently in effect, or conflicts with, violates or results in a breach of, or constitutes a default under or results in the imposition or creation of, any lien or encumbrance under any agreement or instrument to which it is a party or by which it or any of its properties or assets are bound.

14.12.7 No Material Claims. It is not a party to any legal, administrative, arbitral or other proceeding, investigation or controversy pending or threatened that would adversely affect such Party's ability to perform its obligations under this Agreement.

14.13 Additional Representation and Warranty by NAES. NAES further represents and warrants to Owner, as of the date hereof, that it has substantial expertise and experience in the

operation and maintenance of power generation facilities and it is fully qualified to operate and maintain the Facility in accordance with the terms of this Agreement.

14.14 Counterparts. The Parties may execute this Agreement in counterparts that, when signed by each of the Parties, constitute one and the same instrument; and, thereafter, each counterpart will be deemed an original instrument as against any Party who has signed it.

14.15 Governing Law. This Agreement is governed by and to be construed in accordance with the laws of the State of Delaware, exclusive of the conflicts of laws provisions thereof.

14.16 Captions, Exhibits and Appendices. Titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof. All exhibits and appendices attached hereto are considered a part hereof as though fully set forth herein.

14.17 Severability. If any provision of this Agreement, or the application of any such provision to any Person or circumstance, is held invalid by any court or other forum of competent jurisdiction, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner materially adverse to a Party. Upon any such determination of invalidity, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that this Agreement is consummated as originally contemplated to the greatest extent possible.

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

CITY OF DOVER, DELAWARE, Owner

By: _____
Name: Scott D. Koenig
Title: City Manager

NAES CORPORATION

By: _____
Name: Robert E. Fishman
Title: President & CEO

APPENDIX A – SCOPE OF SERVICES

The Services include all activities reasonably necessary to accomplish the following tasks.

I. SITE PERSONNEL: OPERATIONAL PERIOD SERVICES

A. Routine Services
   1. Consistent with Owner-approved Budget and Plan, provide Facility Services to optimize electrical power generation and facility preservation.
   2. Assign work to either Site Personnel or vendors as cost-effective and appropriate based on guidance from Owner. Normally, Site Personnel conduct preventive maintenance and actions requiring a high degree of Facility knowledge and vendors perform tasks needing equipment or expertise that are not cost-effective to maintain at the Facility (e.g., code welding, safety valve testing, specialized calibrations, stack testing). Vendors also perform tasks that make sense to minimize outage time and costs.

B. Program Implementation
   1. Implement NAES programs, policies, and procedures developed and issued as part of the Transition Period Services.
   2. Implement Facility's existing operations and maintenance procedures, chemistry procedures, and environmental compliance processes, unless otherwise directed by Owner.
   3. In conjunction with Project Manager, implement NAES's assessment program.

C. Routine, Preventive and Predictive Maintenance
   1. Perform routine and preventive maintenance actions on all Facility systems and equipment in accordance with vendor instructions and the Plan.
   2. Service Checks. Conduct frequent visual equipment inspections and log significant parameters such as pressures, temperatures, and flow rates. Trend and analyze this information as appropriate.
   3. Routine and Fixed Interval Maintenance. Using the CMMS database, identify all preventive maintenance requirements. Schedule and assign routine maintenance during Facility operation, planned outages, and forced or unscheduled outages
   4. Perform predictive maintenance to identify potential equipment failures or oversee performance by third parties, as appropriate in light of Owner-approved staffing levels and capabilities of Site Personnel.

D. Major Maintenance and Repairs
   1. In coordination with and support of the Facility Agreements and generation plan, arrange for scheduled inspections and overhauls on major equipment.
   2. Retain vendors on behalf of Owner for unscheduled major repairs as required; manage and oversee all repairs and modifications.

E. Facility Outages

   1. Develop and implement a five year outage schedule. Within the CMMS, identify all

maintenance that requires a Facility outage or equipment to be taken out of service.

2. To the extent consistent with Facility Agreements and Owner direction, manage all Facility outages (planned, unscheduled, forced) to minimize outage duration, impact on production and cost.
3. Develop and implement a detailed schedule to track all outage work and testing, including corrective maintenance actions, vendor work and scheduled preventive maintenance. Obtain Owner approval of the schedule. Conduct preparations to support this plan, including ordering and receiving all required spare parts.

F. Facility Administration

1. Budgeting. Prepare annual Budgets and Plan and submit them for Owner approval. Manage operations to comply with each Budget and Plan. Generate budget variance reports, as required.
2. Payroll. Collect and review timesheets for accuracy. Enter timesheets into payroll system and submit them to NAES Home Office Personnel for processing.
3. Procurement. Implement the procurement procedure to maintain an effective and efficient purchasing system. Procure, as agent for Owner, all materials, equipment, chemicals, supplies, services, parts, and other miscellaneous items required for the provision of the Services. Contract using terms and conditions approved by Owner in advance. Utilize the CMMS and H T E system, as appropriate, in all stages of procurement.
4. Accounts Payable. Ensure all vendor invoices and Site Personnel expense reimbursement forms have supporting documents and enter them into accounting system. Make timely payments for all invoices that are not directly paid by Owner.
5. Inventory Control. Implement a cost-effective inventory control system designed to ensure that spare parts, materials, and supplies are properly stored and accounted for and that adequate supplies are available at all times to support the provision of the Services.
6. Personnel Matters.
    i. In coordination with Home Office Personnel and in compliance with NAES human resources policies and procedures, execute required human resources processes and address employee matters as they arise.
    ii. In coordination with the Home Office Personnel, acquire and retain qualified Site Personnel to maintain the staffing levels and skill mix required for successful long-term provision of the Services.
7. Arrange for janitorial, garbage pickup, landscape services, snow removal (if needed), extermination services, and maintain all access roads, office buildings, and other structures in good repair at all times.
8. Reports. Prepare and submit to Owner operation and maintenance service reports as requested relative to performance, maintenance and repair status, Facility operating data, and any other information reasonably requested by Owner.
9. Environmental Data and Reporting. Collect Facility environmental data, including required air and water/waste water monitoring data and permit compliance information, and prepare draft environmental reports for Owner review. Submit reports to appropriate Governmental Authority. Obtain professional environmental support for environmental reports that are new, complex, non-routine (such as state or federal requests or event-triggered reports), or beyond the capabilities of current

Site Personnel, as necessary to satisfy permit and regulatory reporting requirements.

10. Environmental Plans. Implement permit or regulatory required environmental plans, such as spill prevention plans, Stormwater Pollution Prevention Plans, CEMS QA/QC plans, Greenhouse Gas Monitoring Plans or Accidental Release Prevention/Risk Management Plans, as applicable. Obtain professional environmental support for environmental plan development, modification, renewal or implementation as necessary to satisfy permit and regulatory requirements.
11. Waste and Hazardous Materials. Manage hazardous materials and wastes on site in accordance with applicable regulations. Coordinate waste disposal in accordance with Agreement.
12. General Environmental Management. Review information, materials, programs and tools provided by Home Office Personnel environmental group for applicability to the site and implement, as applicable and required, requesting assistance as needed to supplement Site Personnel experience and resources.
13. Security. Implement or arrange for implementation of security measures in accordance with the Owner-approved Facility security plan.
14. Drawings/Manuals Maintenance. Maintain the Facility library and update Facility manuals and vendor service manuals. Update (or arrange for updating) Facility drawings to reflect changes to the as-built configuration. In addition to document management, maintain physical Facility configuration control.
15. Community Relations. In coordination with the Owner, conduct a community relations program to establish the Facility and its Site Personnel as "good citizens" in the local community.

G. Training. Implement a continuing program of training designed to orient new Site Personnel, refresh/cross-train existing Site Personnel, qualify/re-qualify Site Personnel, and keep all Site Personnel aware of Owner-approved Facility safety requirements and emergency procedures.

H. Assistance to Owner. Provide assistance to Owner, as reasonably requested with the execution of Owner's duties relative to operation of the Facility. This task includes such activities as the preparation and coordination of warranty claims and Permit renewals, interacting with Owner's management and personnel, and interfacing with the local community and authorities.

II. HOME OFFICE OPERATIONAL PERIOD SERVICES INCLUDED IN FEE

A. Monitoring of Regulatory Compliance
   1. Safety
      i. Monitoring regulatory developments in safety, and provision of periodic updates to Site Personnel.
      ii. Maintenance of safety statistics and communication of lessons learned.
      iii. At least one annual NAES-initiated visit to the Facility to perform safety assessment.
      iv. Develop and make available to the Site Personnel standard tools, templates and general safety guidance materials, such as training templates, guidance on implementing programs and updated safety procedures.
   2. Environmental
      i. Develop and make available to the Site Personnel standard tools, templates and general O&M guidance materials, such as management checklists for

federal programs, training templates for federal programs, and guidance on implementing federal programs.

ii. Monitor regulatory developments in federal environmental law as it pertains to power plant operations and compliance, and provide periodic updates to Site Personnel.

iii. Conduct one annual NAES-initiated visit to the Facility to perform an environmental program assessment, the scope of which is established by NAES.

3. Reliability Compliance

i. Monitoring regulatory developments in reliability compliance, and provision of periodic program updates and communications regarding these compliance matters to Site Personnel.

B. Monitoring of Site Personnel and Facility Performance

1. Oversee Site Personnel training and qualification activities, by updating training program as appropriate, overseeing its implementation, and coordinating for web-based and other training mechanisms.
2. Quality assessment and management of Site Personnel performance and their implementation of Facility programs.
3. Oversee program implementation by Site Personnel by implementing the assessment manual in conjunction with the Plant Manager and by making NAES-initiated Site visits.
4. Review reports prepared by Site Personnel.
5. Outage plan review and guidance.
6. Tracking of performance indicators and evaluating Facility performance against the NAES fleet.

C. Human Resource Functions in Support of Site Personnel

1. Assist Site Personnel in employee management activities by performing the following activities:

i. Recruiting candidates for employment and arranging interviews

ii. Preparing and extending offers of employment

iii. Administering of the pre-employment screening and relocation process

iv. Conducting Site Personnel employee orientation and benefits enrollment

v. Administering of pay and benefits policies and programs.

vi. Consulting regarding employee performance management, disciplinary action and termination

vii. Participating in the Site Personnel complaint and problem resolution process

viii. Provision of responses to Site Personnel questions regarding human resources

2. Developing, maintaining, and communicating human resource policies and procedures.
3. Monitoring changes to employment regulations

D. Accounting, Procurement, and Insurance

1. Participate in annual Budget and Plan development process.
2. Perform payroll processing services, other than that performed by Site Personnel; assistance to Site Personnel in usage of payroll software and responses to Site Personnel payroll questions.
3. Site Personnel expense report processing
4. Review of NAES invoices for accuracy and validity

5. Facility participation in preferred vendor pricing initiative managed by Home Office Personnel.
6. Provision of responses to Site Personnel questions regarding accounting (including payroll and MAS support, if applicable), legal, CMMS, and procurement.
7. Administer worker's compensation program; handle worker's compensation claims.
8. Maintain and renew blanket NAES insurance policies as required under Section 9.1.

E. NAES Fleet Integration
1. Coordinate transmission of know-how/lessons learned among NAES facilities, via email, webinars and regular conference calls among plant managers.
2. Development and coordination of O&M conferences, conference calls, and webinars;
3. Maintenance of web-based NAES portal and incident and injury reporting program.

III. HOME OFFICE PERSONNEL SERVICES PERFORMED ON HOURLY RATE PLUS EXPENSES BASIS

A. Advisable changes, updates or additions to Facility operation and maintenance manuals, system descriptions, or drawings, including the following:
1. Safety consulting or audits of safety practices.
2. On-site outage support
3. On-site assistance for regulatory visits
4. Assistance with regulatory programs, such as VPP or STAR
5. On-site project safety support, requested by Owner

B. Input of Facility data into Facility information systems, including, but not limited to, population and manipulation of CMMS data.

C. CMMS training

D. Non-routine human resources Home Office Personnel Services, including the following:
a. Negotiation and assumption of union labor contracts
b. Development and implementation of special benefit plans or arrangements, including coordination with outside professional services
c. Labor arbitration case management
d. Union election activities and campaigns
e. Labor union consulting, bargaining and grievance procedures
f. Attendance at owner-requested Site Personnel transition meetings, development and implementation of employee retention and severance plans, performance of Owner-requested Site Personnel evaluations

E. Temporary fill-in for Site Personnel by Home Office Personnel

F. Obtain, maintain and renew insurance policies specific to the Facility or Site and required of NAES under Section 9.1.

G. On-site Outage support

H. On-site Project Management support, as requested by Owner

I. Site Physical Inventory Support by Home Office Personnel

J. Legal Support to Facility operations necessitated by occurrences outside NAES's control, including, but not limited to, claims made against Owner in which NAES is not a party.

K. Environmental support for compiling and reviewing environmental reports and plans under Appendix A, I (F)(9) and (10); customization and population of NAES standard tools and

templates; monitoring state environmental law and state regulatory tracking, analysis and guidance; review, guidance and direct support on environmental projects and issues related to operations; and general day-to-day compliance support.

L. Customized research and analysis

IV. NAES SERVICES PERFORMED AT NEGOTIATED RATES

A. Environmental consulting, auditing, permitting, developing customized training material or delivering training, environmental plan development or modification (such as Spill Prevention Control and Countermeasure Plans, Stormwater Pollution Prevention Plans or Risk Management Plans), specialized Continuous Emissions Monitoring consulting, legacy or pre-existing issues support or Owner business support such as due diligence, asset sale, or strategic regulatory or permitting analysis.
B. NERC consulting, NERC program licensing, audit preparation, audit support, or functional registration with NERC on behalf of the Facility.
C. Engineering or other support for plant emergencies, operational events, capital projects or other Facility improvement initiatives.
D. Direct placement and temporary staffing services performed by NAES's staffing services division.
E. Debit Card Account management services
F. Maintenance services performed by NAES subsidiaries or turbine services division.
G. CMMS consulting, including development or modification of processes and products outside of the CMMS features available before the Effective Date, including customization of the user interface or program functionality; development of customized reporting or customized integration solutions.

City of Dover

Matrix for Calculating Section 7.7 Performance Adjustments

Factor	Weight	Measure	No Adjustment	Full Adjustment	Adjustment Methodology
Commercial Unavailabiity	**35.00%**	**Commercial Unavailability (CU)**	less than 2%	10%	
					CU Calculation: CU={(FO_{U1}+ E_{U1})*(17MW) + (FO_{U2}+E_{U2})*(17MW) + FO_{U3}+E_{U3})*(102MW) + (FO_{U11}+E_{U11})*(39MW)} / 8760 hours * (175MW)
Capacity	**25.00%**	**Demonstrated PJM Dependable Capacity**	All tests passed	No tests passed	The adjustment is weighted by size of the unit subject to the test.
					"Passed" means Plant Capabilities for all Dover units, Appendix C
Safety Performance	**15.00%**	**Required Safety Training Complete**	98%	90%	
			98%	90%	Equal weights
		Required NAES Housekeeping Inspections	98%	90%	
			0	4	
		Required NAES Safety Observations			
Communications	**5.00%**	**Plant Manager meets with City Representative monthly and keeps Representative informed of CIP budget changes**			
			Subjective	Subjective	Operator keeps Owner Rep informed monthly of plant issues
					Operator provides monthly updates in CIP budget changes
	100.00%				

Results that fall between No Adjustment and Full Adjustment will be calculated on a straight-line interpolation.

APPENDIX C - FACILITY DESCRIPTION AND SPECIFICATIONS

Thermal Energy Customer:	NA
Public Utility:	City of Dover Electric Utility
Gas Supplier:	Chesapeake Utilities
Fuel Oil Supplier:	TBD
Equipment:	McKee Run Station Units 1 and 2 are Westinghouse turbines/generators nameplate rated at 16 MW each supplied by B&W boilers at 850 psi, 900 degree Fahrenheit boiler (1962), scheduled for retirement on May 31, 2017; McKee Run Station Unit 3 is a GE steam sealed D-1 configuration reheat unit with a 106.9 MW turbine generator supplied from a 1,800 psi, 1000 degree Fahrenheit boiler (1975). All McKee Run units operate on #2 oil or natural gas.
Plant Capabilities:	McKee Run Units 1 and 2: 17 MW (summer & winter) (to be retired by May 31, 2017; McKee Run Unit 3: 102 MW (summer & winter); VanSant Unit 11: 46 MW (summer and winter) in 2015 (to be corrected upon completion testing and commissioning).
Points of Interconnection:	Substation 1, 12.5 kV Bus number 1 (this is the 12.5 generator bus for McKee Run Units 1 and 2); the 69 kV bushing terminals of the generator step-up transformers for McKee Run Unit 3 and VanSant Unit 11; the source side of 230 kV motor operated disconnect switches AT1-H1 and AT2-H1.

APPENDIX D - NOTICES

To the Owner:

City Manager
15 Loockerman Plaza
Dover DE 19903
Fax: 302-736-7002
Telephone: 302-736-7005

With a copy to:

Director of Electric Utility
860 Buttner Place
Dover, DE 19904
Fax No.: 302-736-7081
Telephone: 302-736-7070

To NAES:

NAES Corporation
1180 NW Maple Street, Suite 200
Issaquah, Washington 98027
Attention: General Counsel
Fax No.: 425-270-6398
Telephone No: 425-961-4700

APPENDIX F – HOME OFFICE PERSONNEL RATES

The following hourly billing rates apply to Home Office Personnel time for Extra Work set forth in Appendix A, Part III. These rates are valid through December 31, 2015. Rates for subsequent years will be disclosed to Owner prior to becoming effective.

POSITION	Extra Work Rate for Home Office Personnel under Section 7.2(x)
OPERATIONS	
Sr. Vice President	$ 341
Division Director	$ 218
Director, Safety	$ 187
Senior Proj. Mgr.	$ 166
Project Mgr. II	$ 149
Project Mgr. – Safety	$ 149
Project Mgr. I	$ 134
Project Engr.	$ 122
TECHNICAL SERVICES	
General Manager	$ 228
Director, Environmental Services	$ 187
Sr. Environmental Mgr.	$ 166
Sr. Environmental Specialist	$ 149
Environmental Specialist	$ 134
Director, Engineering	$ 187
Chief Engineer	$ 180
Senior Engineer	$ 163
Engineer II	$ 149
Engineer I	$ 134
CMMS Analyst	$ 113
Sr. Operations Analyst	$ 108
Operations Analyst	$ 96
QA/QC	
VP, QA	$ 245
QA/QC Manager	$ 146
QA/QC Consultant	$ 160

ACCOUNTING	
Sr. Finance Manager	$ 166
Senior Accountant/Int'l Accountant	$ 110
Accountant	$ 91
HUMAN RESOURCES	
VP, HR	$ 262
Sr, Manager/Global HR	$ 187
HR Employee Relations Mgr.	$ 166
HR Mgr.	$ 149
HR Specialist	$ 91
HR Representative	$ 79
MISC. SUPPORT	
Senior Business Development Manager	$ 192
Marketing/Proposal Manager	$ 134
Sr. Marketing Engineer	$ 113
IS Mgr/Business Application Mgr	$ 149
Sr. IS Support	$ 113
IS Support	$ 79
Mktg Engineer/Support Specialist	$ 96
Technical Support Specialist	$ 96
Administrative Assistant	$ 72