

[Redacted as of 11-20-2017]

**O&M SERVICES AGREEMENT**

between

**GAINESVILLE REGIONAL UTILITIES**

and

**NAES CORPORATION**

Dated as of

**November 7, 2017**

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## O&M SERVICES AGREEMENT

This Operation and Maintenance (O&M) SERVICES AGREEMENT (this "Agreement"), dated as of November 7, 2017 (the "Effective Date") is entered by and between the CITY OF GAINESVILLE d/b/a GAINESVILLE REGIONAL UTILITIES ("GRU"), a Florida municipal corporation with offices located at 301 S.E. 4<sup>th</sup> Avenue, Gainesville, Florida 32601, and NAES CORPORATION, a Washington corporation ("NAES"), with offices located at 1180 NW Maple Street, Suite 200, Issaquah, WA 98027, both of which may be referred to individually as "Party" or collectively as "Parties".

### RECITALS

1. GRU will acquire the Facility from Gainesville Renewable Energy Center, LLC on or about November 7, 2017 (the "Closing Date").
2. Pursuant to that Contract for the Operation and Maintenance of a Biomass-Fired Power Production Facility dated as of June 14, 2011, NAES currently provides certain operation, maintenance and management services to the Facility.
3. The June 14, 2011 Agreement will terminate upon the Closing Date.
4. GRU desires to retain NAES for the provision of certain services at the Facility following the Closing Date, and NAES is willing to perform such services under the terms and conditions set forth in 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. Entire 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. This Agreement contains the entire agreement between the Parties with respect to NAES's provision of Services at 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.

1.2. Relationship of the Parties. GRU is retaining NAES as an independent contractor to provide the Services set forth in Appendix A at the Facility in support of GRU's operation of the Facility. Subject to any limitations expressly set forth in this Agreement, as between GRU and NAES, GRU delegates to NAES, and NAES accepts from GRU, the responsibility of providing those Services at the Facility. GRU and NAES agree that the scope of delegation is strictly limited to the

matters set forth in this Agreement. Without limiting the generality of the foregoing, GRU retains the ultimate authority and obligation to determine whether and to what extent the Facility operates, and NAES shall never cause the Facility to generate power except as expressly directed to do so by GRU or any dispatching authority specified by GRU. NAES has no obligation to upgrade or replace Facility systems except as expressly directed by GRU, nor shall it be obligated to employ its own credit to support the Facility.

## ARTICLE II – 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 meanings specified in this Article II. The singular includes the plural, as the context requires. The terms “includes” and “including” mean “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 Operation and Maintenance Practices, and will include reasonable expenditures of money and at least such efforts as NAES would undertake for its own assets, services or maintenance, 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.

“Administrative Fee” has the meaning set forth in Section 7.6.

“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.

“Agreement” means this O&M Services Agreement.

“Applicable Law” means any United States federal, state or local laws, regulations, codes, judgments, orders, Permits or other Governmental Approvals as may be applicable to the Facility, GRU or NAES.

“Bankruptcy” means a situation in which

(i) a Person files a voluntary petition for relief under the federal bankruptcy laws of the United States or of any other country or files any petition, answer, or consent seeking a

reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution, or other similar insolvency relief under any other present or future applicable law for the relief of debtors of the United States or of any other country or of any state, province, or territory thereof;

(ii) a Person seeks, consents, or acquiesces in the entry of an order, judgment, or decree for the appointment of any trustee, receiver, custodian, conservator, liquidator, or similar official of such Person, or of all or any substantial part of such Person's assets (the term "acquiesces", as used in this definition, includes the failure to file a notice of appeal, petition, or motion to appeal, vacate, or discharge any such order, judgment, or decree within the applicable time limit after entry of such order, judgment or decree), and such order, judgment, or decree remains unappealed, unstayed or unvacated for thirty (30) days from the date of entry thereof;

(iii) a court of competent jurisdiction enters an order for relief, judgment, decree or other order approving or granting a petition filed against any Person seeking a reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution, or other similar insolvency relief regarding the Person or all or any substantial part of such Person's assets under any federal bankruptcy law of the United States or any other country or under any other present or future applicable law for the relief of debtors of the United States or of any other country or any state, province, or territory thereof and such order for relief, judgment, decree, or other order, remains unappealed, unstayed, or unvacated for thirty (30) days from the date of entry thereof;

(iv) a Person admits in writing its inability to pay its debts in the ordinary course of business or as the debts mature; or

(v) a Person makes a general assignment of all or any substantial part of such Person's assets 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 Person's business).

**"Budget"** means a budget adopted or amended pursuant to Section 5.3.

**"Business Day"** means any day other than a Saturday, Sunday or other day on which banks, in the place where a Party is required to render performance, are not permitted or required to be closed.

**"Change of Control"** means in one or a series of transactions, (i) the sale of all or substantially all of the membership interests in GRU to a third party buyer, (ii) the direct or indirect sale of all or substantially all of the assets of GRU to a third party buyer, or (iii) a change of control of GRU, in which a third party buyer obtains more than fifty percent (50%) of the voting shares of GRU.

**"Claims"** means any and all claims, assertions, demands, suits, investigations, inquiries, and proceedings, including those that are judicial, administrative or third-party.

**“Confidential Information”** has the meaning set forth in Section 12.1.

**“Dispute”** has the meaning set forth in Section 14.7.

**“Due Date”** means the date specified in this Agreement for payment of the applicable invoices, or, if no date is so specified, the date that is twenty (20) days following the date on which the applicable invoice is received.

**“Effective Date”** has the meaning set forth in the preamble to this Agreement.

**“Emergency”** has the meaning set forth in Section 3.7.

**“Environmental Law”** means any United States 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 or protection of employee health or safety, public health or safety, or 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 or ground water; (iv) the management, manufacture, possession, presence, use, generation, treatment, storage, disposal, 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), including the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act, the Occupational Safety and Health Act, any so-called “Superlien” law, all as now or hereafter amended or supplemented, and any regulations promulgated thereunder, and any other similar federal, state, or local statutes, rules and regulations.

**“Executive Settlement”** has the meaning set forth in Section 14.7.3.

**“Extraordinary Item”** means any purchase order issued by NAES on behalf of GRU in an amount greater than Fifty Thousand Dollars (\$50,000) or, if an annual blanket purchase order, that NAES reasonably anticipates will exceed Fifty Thousand Dollars (\$50,000) during a Year.

**“Facility”** means GRU’s biomass-fired power production facility located in Gainesville, Florida, and includes all electrical or thermal devices and related structures and connections (up to the points of interconnection identified in Appendix D) that are located at the Site and used for the production of power for the benefit of GRU, all as more fully described in Appendix D.

**“Facility Equipment”** has the meaning set forth in Section 13.1.

**“Facility Manuals”** means 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 GRU pursuant to Section 4.4.1.

"Fee" means the sum of [REDACTED] Dollars (\$ [REDACTED] ) per month.

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

"General Manager" has the meaning set forth in Section 5.2.

"Governmental Approval" means any consent, license, approval, exemption, Permit, "no objection certificate" or other authorization of whatever nature that is required to be granted by any Governmental Authority or any third party with respect to the siting, construction, operation, service, and maintenance of the Facility in accordance with this Agreement, or otherwise necessary to enable GRU or NAES to exercise its rights, or observe or perform its obligations, under this Agreement.

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

"Gross Annual Wages/Salaries" is the sum of annual base wages/salary and annual overtime wages.

"GRU" means the first Party named above and includes GRU's successors and permitted assigns hereunder.

"GRU Indemnitees" has the meaning set forth in Section 10.1.

"GRU's Executive" has the meaning set forth in Section 14.7.2.

"GRU Purchase Card Limit" has the meaning set forth in Section 3.2.

"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 Costs" has the meaning set forth in Section 7.3.

“Home Office Personnel” means the employees of NAES who are engaged in the provision of the Services, except for Site Personnel.

“Indemnified Party” means a NAES Indemnitee or an GRU Indemnitee, as applicable.

“Indemnifying Party” means GRU or NAES, as applicable.

“Indemnity Claim” means a request for indemnification pursuant to Article 10.

“Initial Negotiation Period” has the meaning set forth in Section 14.7.2.

“Labor Costs” has the meaning set forth in Section 7.4.

“Late Payment Rate” means a rate of interest per annum equal to the lesser of (i) two percent (2.0%) above the “prime” reference rate of interest quoted to substantial commercial borrowers on ninety (90) day loans by Wells Fargo Bank or (ii) the maximum rate of interest permitted by Applicable Law.

“Liabilities” means, collectively, any and all Claims, damages, judgments, losses, obligations, liabilities, actions and causes of action, fees (including reasonable attorneys' fees and disbursements), costs (including court costs), expenses, penalties, fines and sanctions.

“NAES” means NAES Corporation and includes NAES’s successors and permitted assigns hereunder.

“NAES Indemnitees” has the meaning set forth in Section 10.2.

“NAES Party” has the meaning set forth in Section 4.9.4.

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

“NAES’s Executive” has the meaning set forth in Section 14.7.2.

“NERC” means the North American Electric Reliability Corporation or any successor thereto.

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

“Operations Director” has the meaning set forth in Section 5.1.1.



“Party” means either GRU or NAES and “Parties” means, collectively, both GRU and NAES, unless the context clearly requires a different construction.

“Permit” means any permit, license, consent, approval or certificate 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.

“Plan” means a plan with respect to the Services adopted or amended pursuant to Section 5.3.

“Plant Manager” has the meaning set forth in Section 5.1.2.

“Preliminary Settlement” has the meaning set forth in Section 14.7.2.

“Prudent Operation 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, the reliability standards of the applicable electric reliability organization (including NERC), and the market rules and protocols of the GRU, as a public utility. With respect to NAES, Prudent Operation 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 a sufficient number of Persons who are available and adequately trained to provide Services at the Facility, and timely perform 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.

“Second Negotiation Period” has the meaning set forth in Section 14.7.3.

“Services” means all the work to be performed by NAES’s Home Office Personnel or Site Personnel as described or referenced in Section 3.1 and set forth in Appendix A.

“Site” means the land on which the Facility is situated, as more fully described in Appendix D.

“Site Costs” has the meaning set forth in Section 7.2.1.

“Site Personnel” mean those individuals employed by NAES in the performance of its obligations under this Agreement and who are permanently assigned to the Facility Site.

“Standards of Performance” means the standards for NAES’s performance of the Services set forth in Section 3.4.

“Term” means the term of this Agreement set forth in Section 8.1, together with any extensions thereunder.

“Termination Payment” has the meaning set forth in Section 8.4.

“Third Party Liability” has the meaning set forth in Section 10.3.2.

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

“Year” means the calendar year. With respect to the Year in which the Takeover Date occurs, a Year will be deemed to begin on the Takeover Date and end on December 31<sup>st</sup> of such Year. If the Agreement terminates, the final Year will be deemed to end on the date that termination occurs.

### ARTICLE III - RESPONSIBILITIES OF NAES

NAES shall perform the Services set forth in Appendix A with its Home Office Personnel and Site Personnel, as applicable, in order to operate and maintain the Facility on behalf of GRU in accordance with this Agreement. This Article III sets forth the processes, limitations and standards applicable to NAES’s performance of the Services.

#### 3.1 Reserved.

3.2 Procurement. NAES will procure materials and services in accordance with GRU’s current policies and procedures, copies of which will be provided to NAES on or before the Effective Date. Subject to the Budget and Plan, all items below Five Thousand Dollars (\$5,000) (the “GRU Purchase Card Limit”) will be procured by NAES using the GRU Purchase Card provided to NAES. Any materials or services above the GRU Purchase Card Limit will require that NAES submit a requisition to GRU, and GRU will be responsible for directly issuing purchase orders for these items.

3.2.1 General. Subject to the Budget and Plan approved by GRU in writing, and consistent with GRU’s current policies and procedures, NAES shall procure goods, services, consumables, parts and equipment as needed from time to time for the operation and maintenance of the Facility. NAES shall nominate, subject to GRU’s written approval, responsible Persons from among the Site Personnel to sign purchase orders for goods and services to be delivered to the Facility, to issue such purchase orders to vendors, and to pay for such purchases

with the GRU Purchase Card. NAES shall sign such purchase orders in the name of GRU. NAES acknowledges that such purchase orders are for the exclusive benefit of GRU and the Facility. NAES shall negotiate with vendors from standard terms and conditions, including reasonable warranties in favor of GRU.

3.2.2 Non-Budgeted Items. Unless approved by GRU in writing, NAES shall manage purchasing within the overall total spending approved by GRU in a Budget. NAES may make non-budgeted purchases without first receiving GRU approval only 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 shall obtain GRU's written approval prior to procurement of any Extraordinary Item. GRU may elect to directly procure Extraordinary Items.

3.2.4 Affiliate Contracts. If NAES intends to issue a purchase order to an Affiliate or specialty service division of NAES, NAES shall first disclose such relationship to GRU. NAES shall only issue such purchase orders following NAES's receipt of written approval from GRU.

3.3 Dispatch. NAES shall comply with any applicable dispatch instructions of GRU (or any successor of either, or other Person identified by GRU in writing to NAES as being authorized to provide dispatch instructions). In the event NAES receives conflicting dispatch instructions, NAES shall follow the dispatch instructions of GRU unless NAES determines, in its reasonable judgment, that so doing would be reasonably likely to be in violation of Applicable Law, in which case it will inform GRU of the potential violation and await further instructions from GRU. NAES will give GRU prompt notice of any inability to make deliveries of power or capacity required and of NAES's plan to restore operation of the Facility. In case of any interruption, curtailment or reduction in (i) supplies of fuel or (ii) acceptance of energy or capacity by GRU, or in case of any other dispatch constraint imposed on the Facility, NAES shall promptly notify GRU and await further instructions from GRU. Upon removal of the constraint, NAES shall use its reasonable efforts to restore the availability of the Facility for dispatch.

3.4 Standards for Performance of the Services. NAES shall perform the Services in accordance with (i) the O&M Manuals, (ii) the Facility Manuals, (iii) the applicable Budget and Plan, (iv) Applicable Laws, (v) Prudent Operation and Maintenance Practices, (vi) insurer requirements delivered to NAES by GRU in writing, and (vii) this Agreement. NAES will perform the Services and other obligations under this Agreement in a manner consistent with this Agreement, or, if provided, GRU's directions. The Parties acknowledge and agree that actions taken (or not taken) by NAES pursuant to GRU's direction shall be deemed to comply with the Standards of Performance, and NAES shall have no liability for acting or refraining to act in accordance with GRU's directions.

3.5 Personnel Matters. NAES shall provide and make available as necessary all such labor, professional, supervisory and managerial personnel as are required to perform the Services. The Site Personnel and Home Office Personnel that perform the Services shall be

qualified (including the possession of appropriate licenses, if necessary) and experienced in the operation and/or maintenance of power generation facilities similar to the Facility and in the duties to which they are assigned and in accordance with Prudent Operation and Maintenance Practices. NAES shall be solely responsible for determining the working hours, rates of compensation and all other matters relating to the employment of Site Personnel and Home Office Personnel. NAES shall retain sole authority, control and responsibility with respect to its employment policy. NAES shall submit for GRU's approval the staffing requirements for the Facility, including Labor Costs. NAES shall submit its selection for Plant Manager to GRU, who will have written approval over NAES's selection of such person. NAES shall inform GRU prior to replacement of its Plant Manager. NAES shall obtain GRU's written approval prior to offering employment to a replacement Plant Manager.

3.6 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 by NAES to perform the Services in accordance with the terms of this Agreement. No liens, liabilities, or encumbrances from the debts or obligations of NAES shall be the responsibility of GRU.

3.7 Emergency Action. In the event of an emergency (as defined using reasonable commercial industry standards in the operations of a biomass-fired power production facility) affecting the safety, health or protection of, or otherwise endangering, any persons or property located at or about the Facility (each such event an "Emergency"), NAES shall take immediate action consistent with Prudent Operation and Maintenance Practices to prevent or mitigate any damage, injury or loss threatened by such Emergency, and shall notify GRU of such Emergency and NAES's response as soon as practical under the circumstances. To the extent NAES deems reasonable in response to an Emergency, NAES may procure goods and services as necessary to respond to an Emergency, the costs of which shall be Site Costs.

#### ARTICLE IV - ITEMS TO BE FURNISHED BY GRU

4.1 General. GRU expressly reserves the exclusive authority to make, and shall make, such business and strategic decisions as it deems appropriate from time to time in reference to the operation and maintenance of the Facility. Upon request from NAES, GRU shall promptly furnish to NAES, at GRU's expense, the information, access, materials, instructions 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. GRU shall provide to NAES copies of all Governmental Approvals with respect to the Facility and technical, operational and other Facility information in GRU's possession that supports NAES's performance of the Services. Subject to the Standards of Performance, NAES will be entitled to rely upon any information provided by GRU in the performance of the Services.

4.3 Access to Facility. GRU shall provide NAES access to the Site, and to persons and data at the Facility.

4.4 Other GRU Supplied Items. GRU shall make available to NAES the following items:

4.4.1 Facility Manuals. GRU shall provide NAES with any updates to the Facility Manuals received from equipment manufacturers.

4.4.2 Fuel; Water; Stand-by Electricity. GRU shall furnish and deliver to the Facility fuel, water and stand-by electricity in amounts sufficient to operate the Facility.

4.4.3 Spare Parts and Supplies. GRU shall provide and furnish to NAES an initial inventory of spare parts and supplies as necessary for NAES to perform the Services and GRU shall fund additional purchases of spare parts and supplies as set forth in a Budget.

4.5 Instructions, Approvals, Budgeting.

4.5.1 Instructions and Approvals. GRU shall provide or cause to be provided to NAES all instructions NAES is required to obtain in accordance with this Agreement. GRU shall not unreasonably withhold approvals required by this Agreement. GRU shall not direct NAES to take any action inconsistent with Applicable Law or that would otherwise adversely affect the safety, health or protection of any persons or property located at or about the Facility.

4.5.2 Budgeting. GRU 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.

4.6 Compliance. GRU shall not direct NAES to take any action inconsistent with Applicable Law or otherwise adversely affecting the safety, health or protection of any persons or property located at or about the Facility.

4.7 Not Used.

4.8 Permits. GRU shall obtain from the appropriate Governmental Authorities all Permits for the ownership, operation and maintenance of the Facility, and shall obtain all such Permits in GRU's name. Unless otherwise agreed by NAES and GRU in a separate writing, GRU shall make any and all applicable functional registrations as required by NERC on behalf of the Facility.

4.9 Environmental Matters.

4.9.1 Compliance with Environmental Laws. During the Term of this Agreement, NAES shall cooperate and assist GRU with GRU'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, GRU 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 GRU as a Site Cost or reimbursed to NAES as a Home Office 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 GRU's prior written consent, unless a Governmental Authority or Applicable Law requires NAES to incur such costs and expenses prior to obtaining such consent.

4.9.2 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 (i) affirmatively and expressly directed in writing to so do by GRU and appropriate funding is made available by GRU, or (ii) 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 a Site Cost subject to subsequent review by GRU.

4.9.3 Reporting. GRU 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.

4.9.4 Facility Operator. NAES and GRU agree (i) in the course of performing Services under this Agreement, neither NAES nor any of its officers, directors, employees, agents, representatives or Affiliates (each, a "NAES Party") is, has been or will be asserted by GRU 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) GRU shall not assert before any environmental protection governmental agencies that any NAES Party is the operator of the Facility for purposes of Environmental Law. GRU 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.

## ARTICLE V - REPRESENTATIVES, BUDGETS AND REPORTS

### 5.1 Representatives of NAES.

5.1.1 NAES Operations Director. Promptly after the Effective Date, NAES shall appoint an individual, the "Operations Director," from among its Home Office Personnel who

shall be authorized to represent NAES with GRU concerning NAES's performance of the Services. The Operations Director shall also coordinate the Home Office Personnel in supporting the Site Personnel. NAES is bound by the written communications, directions, requests and decisions made by its Operations Director on its behalf. NAES shall notify GRU in writing of the identity of its Operations Director, and of any successors. The Operations Director has no authority to modify, amend or terminate this Agreement or, absent written notice by NAES to the contrary, to enter into any other agreement on behalf of NAES other than as provided herein.

5.1.2 NAES Plant Manager. NAES shall appoint an individual, the "Plant Manager," who shall direct and manage NAES's Site Personnel in the performance of the Services. For issues arising out of the day-to-day administration of the Services, the Plant Manager or his designee may communicate directly with GRU. The Plant Manager has no authority to modify, amend or terminate this Agreement or to enter into any other agreement on behalf of NAES other than as provided herein.

5.2 Representatives of GRU. GRU shall appoint an individual (the "General Manager") who shall be authorized and empowered to act for and on behalf of GRU on all matters concerning the operation of the Facility, the day-to-day administration of this Agreement and GRU's obligations hereunder. In all such matters (but excluding any amendments or modifications of this Agreement under Section 14.9), GRU shall be bound by the written communications, directions, requests and decisions made by the General Manager. GRU shall notify NAES in writing upon the appointment of the General Manager, and of any successors. The General Manager has no authority to modify, amend or terminate this Agreement or, absent written notice by GRU to the contrary, to enter into any other agreement on behalf of GRU other than as provided herein.

5.3 Plans and Budgets.

5.3.1 Adoption. As soon as practicable following the Effective Date, GRU and NAES shall use reasonable efforts to agree on the key assumptions that NAES shall use to construct the proposed Budget and Plan with respect to the Services. The key assumptions are fuel costs, an inflation factor for Site Costs and the Facility operating profile (Facility capacity factor and production schedule). NAES shall structure each Budget on a monthly basis and shall project, in detail reasonably acceptable to GRU, all Site Costs, Labor Costs, and Home Office Costs to be expended in the performance of the Services. Each Plan shall state the key assumptions upon which the related Budget is based as well as the implementation plans for the Services, including: (i) anticipated maintenance and repairs, (ii) routine maintenance and overhaul schedules (including planned major maintenance, if any), (iii) procurement, (iv) staffing, personnel and labor activities, including a pool for the employee bonus, (v) administrative activities, (vi) capital improvements, if any, and (vii) other work proposed to be undertaken by NAES. GRU shall review each proposed Budget and Plan within thirty (30) days of submission by NAES (or as soon as possible with respect to the Budget for the initial Year and may, by written request within (sixty) 60 days of submission by NAES, require changes, additions, deletions and modifications thereto. GRU and NAES shall then use reasonable efforts to agree upon a final

Budget and Plan prior to the commencement of the term of this Agreement. The final Budget and Plan shall remain in effect throughout the term of this Agreement, subject to updating, revision and amendment proposed by either Party and consented to in writing by the other Party.

5.3.1.3 Amendments. If either Party becomes aware of facts or circumstances that it believes necessitate a change to a Budget or Plan, that Party shall immediately notify the other Party, specifying the impact upon the Budget and the reasons for the change. The Operations Director or Plant Manager shall then discuss appropriate amendments to the Budget with the General Manager.

5.3.1.4 Failure to Agree. Subject to Section 4.5.2, the Parties acknowledge that it is necessary that GRU retain ultimate authority with respect to expenses incurred for the Facility. Accordingly, NAES shall accept each Budget as finally determined by GRU. To the extent that Owner limits funds for Site Costs and Home Office Costs, NAES is relieved from performance that would incur such costs. A Dispute as to whether a Budget is consistent with Section 4.5.2 shall be handled in accordance with the provision of Section 14.7.

5.3.3 Notification of Variance. If NAES becomes aware that the aggregate of all Site Costs or Home Office Costs exceeds or will exceed the amount provided in the applicable Budget or that the Facility is operating with any significant deviations or discrepancies from the projections contained in the applicable Plan, NAES shall promptly so notify GRU in writing within two (2) Business Days.

5.4 Availability of Operating Data and Records. NAES shall deliver Facility data recorded, prepared or maintained by NAES to GRU: (i) to assist GRU in complying with requirements of Governmental Authorities, and Permits; or (ii) upon any request by GRU.

5.5 Litigation and Permit Lapses. Upon obtaining actual knowledge, either Party shall submit prompt written notice within two (2) Business Days to the other Party of the following, to the extent relating to the Facility or the Services: (i) any litigation, claims or actions filed by or with any Governmental Authority; (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 affect the Facility; and (v) with respect to the matters identified in items (i), (ii), (iii) or (iv), any threats of such matters, which matters may affect the Facility.

## ARTICLE VI - LIMITATIONS ON AUTHORITY

6.1 General Limitations. NAES has no authority to make policies or decisions with respect to the overall operation or maintenance of the Facility as a commercial enterprise. GRU shall determine all such matters. Notwithstanding any provision in this Agreement to the contrary, unless previously approved in a Budget and Plan or otherwise approved in writing by GRU, NAES is prohibited from:



6.1.1 Disposal of Assets. Selling, leasing, pledging, mortgaging, encumbering, conveying, or making any license, exchange or other transfer or disposition of the Facility, the Site or any other property or assets of GRU, including any property or assets purchased by NAES, the cost of which is a Site Cost or a Home Office Cost;

6.1.2 Make Expenditures. Making any expenditure or acquiring on a Site Cost or a Home Office Cost basis any goods or services from third parties, except in conformity with the approved Budget or as authorized by GRU's General Manager; provided, however, that in the event of an Emergency, NAES, without approval from GRU, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss in accordance with Section 3.7, subject to review after the actions have been taken;

6.1.3 Other Actions. Taking or agreeing to take any other action or actions that, individually or in the aggregate, materially varies from the applicable Budget and Plan approved by GRU; provided, however, that in the event of an Emergency, NAES, without approval from GRU, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss in accordance with Section 3.7, subject to review after the actions have been taken;

6.1.4 Act Regarding Lawsuits and Settlements. Settling, compromising, assigning, pledging, transferring, releasing or consenting to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by GRU or NAES, the cost of which, in the case of NAES, would be a Site Cost or a Home Office Cost hereunder, or submitting any such claim, dispute or controversy to arbitration or judicial process, or stipulating in respect thereof to a judgment, or consent to the same; provided, however, that such prohibition shall not apply to, nor shall it be construed as a release or waiver of, any of NAES's rights or obligations pursuant to this Agreement; or

6.1.5 Pursue Transactions. Engaging in any other transaction on behalf of GRU not permitted under this Agreement.

## ARTICLE VII - COMPENSATION AND PAYMENT

7.1 General. GRU shall pay NAES, or fund, as applicable, in the manner and at the times specified in this Article VII, all Site Costs, Home Office Costs, Labor Costs, the Fee and the Administrative Fee.

### 7.2 Site Costs Payments.

7.2.1 Definition. "Site Costs" include costs for the following: (i) equipment, material, supplies, consumables, spare parts, replacement components, tools, office equipment and supplies and utilities used at the Facility Site; (ii) special training of Site Personnel conducted on-Site or off-Site and associated travel expenses and living expenses; (iii) third party advisors, consultants, attorneys, accountants and contractors providing work in support of the Services that cannot reasonably be performed by Site Personnel; (iv) Permits; (v) community relations and

labor relations activities, if any; and (vi) any other activity exclusive of those listed in Section 7.3 that NAES performs under this Agreement at the request of GRU for the benefit of the Facility or that is approved in a Budget approved by GRU pursuant to the terms of this Agreement.

7.2.2 GRU Purchase Card. NAES will procure material and services in accordance with GRU current policies and procedures, copies of which will be provided to NAES on or before the Effective Date. All items under the GRU Purchase Card Limit will be procured by NAES with the GRU Purchase Card provided to NAES. Any items over the GRU Purchase Card Limit will require a requisition be submitted by NAES to GRU, and GRU will be responsible for directly issuing purchase orders for these items.

7.3 Home Office Costs. Subject to the applicable Budget approved by GRU, GRU shall reimburse NAES for the following costs (the "Home Office Costs") incurred by NAES in performing the Services: (i) relocation and recruitment expenses for NAES's Site Personnel; (ii) costs incurred in response to an Emergency; (iii) time and expenses for providing Services provided under Appendix A(III) at the applicable rates set forth in Appendix E; (iv) cost of the insurance maintained by NAES in accordance with Section 9.1; (v) third party advisors, consultants, attorneys, accountants and contractors retained and managed by Home Office Personnel in support of the Services; and (vi) any other cost designated by the Parties as a Home Office Cost pursuant to the terms of this Agreement, including Services performed under Appendix A(IV).

7.4 Labor Costs. GRU shall reimburse NAES for the following costs (collectively, "Labor Costs") for Site Personnel: (i) wages and salaries (including short term disability, holidays, or other paid time off in accordance with NAES's policies and procedures); (ii) overtime pay; (iii) employee bonus; (iv) customary or agreed severance payments; (v) worker's compensation premiums; (vi) unemployment insurance, (vii) long term disability insurance, group medical, dental and life insurance, defined contribution retirement plans and other employee benefits; and (viii) payroll taxes imposed on any of the above.

7.5 Fee. Commencing on the Effective Date and thereafter during the Term, Owner shall pay to NAES the Fee. If the Effective Date occurs on a day other than the first day of a calendar month or the termination of the Agreement occurs on a day other than the last day of a calendar month, NAES shall prorate the Fee for such month to reflect the actual number of days in such month that NAES provided Services. Those Services listed in Appendix A(II) are included in the Fee during the Term.

7.6 Administrative Fee. Commencing on the Effective Date and thereafter during the Term, GRU shall pay to NAES [REDACTED] (the "Administrative Fee"). All sales tax, value-added tax, goods and services tax or similar tax (but excluding any tax based upon the net income of NAES, which shall be paid by NAES) arising in connection with the Administrative Fee will be separately stated on the relevant invoice and shall be paid by GRU in accordance with this section. NAES shall be responsible for paying any such taxes to the appropriate taxing authority.

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

7.8 Not Used.

7.9 Invoicing. On or before the 10<sup>th</sup> Day of each month, NAES shall submit an invoice to GRU for the following: (i) the Fee and Administrative Fee for the next following month; (ii) Labor Costs reasonably anticipated to be incurred in the next following month; and (iii) the Home Office Costs incurred by NAES in the preceding month. The invoice shall be accompanied by supporting documentation and a true-up reflecting the amounts actually incurred in Labor Costs during the preceding month, and any resulting adjustment to the Administrative Fee. GRU shall pay the invoice not later than the last calendar day of the same month that NAES submitted the invoice to GRU.

7.10 Audit.

7.10.1 Cost Audit. GRU is entitled to conduct, or cause to be conducted, an audit and review of NAES's records with respect to all Home Office Costs together with any supporting documentation for a period of three (3) years from and after the date of the audited payment. If, pursuant to such audit and review, it is agreed that any amount previously paid by NAES was not properly incurred as a Home Office Cost, NAES shall credit such amount to GRU in the next subsequent Invoice. Any dispute with respect to the findings of an audit conducted pursuant to this Section 7.10 shall be resolved in accordance with the provision of Section 14.7.

7.11.1 Records Audit. NAES shall maintain records sufficient to document completion of the scope of services established by this Agreement. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by GRU. These records shall be kept for a minimum of three (3) years after termination of this Agreement. Records that relate to any litigation, appeals or settlements of claims arising from performance under this Agreement shall be made available until a final disposition has been made of such litigation, appeals, or claims.

## ARTICLE VIII - TERM

8.1 Term. The Term of this Agreement is from and including the Effective Date to the one (1) year anniversary of the Effective Date. During the Term, GRU may terminate this Agreement for its convenience upon sixty (60) days' written notice to NAES. This Agreement is subject to earlier termination pursuant to Sections 8.2 and 8.3.

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 NAES fails to cure within ten (10) days after NAES has received written notice of such default; and (iii) default by NAES in the performance of its obligations under this

Agreement that has a material effect on the functioning of the Facility and that NAES has failed to cure or make substantial progress in the reasonable opinion of Owner towards curing within ninety (90) days of written notice of such failure.

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 Draw Request; (ii) Bankruptcy of Owner; (iii) default by Owner of any other obligation under this Agreement that has a material effect on NAES's ability to perform the Services and that Owner has failed to cure or make substantial progress in the reasonable opinion of NAES towards curing within ninety (90) days of written notice of such failure; (iv) a Change of Control, upon sixty (60) days' written notice to Owner, if a third party buyer of all or substantially all of Owner's membership interest or assets does not have comparable creditworthiness to Owner; or (v) actions or omissions by Owner that, in the reasonable opinion of NAES, have a negative effect on the capability of the Facility to meet the requirements of the Project Agreements and Permits. In lieu of termination, NAES may suspend the Services or take such other action as it deems reasonable to mitigate its risks pending cure by Owner.

8.4 Termination Payment. As soon as practicable after all cost information is gathered following termination of this Agreement, NAES shall invoice Owner for Services rendered by NAES through the termination date, including all Home Office Costs, Labor Costs, the Fee and the Administrative Fee, and (ii) an amount equal to its reasonable demobilization costs (collectively, the "Termination Payment"). Owner shall pay the invoice for the Termination Payment no later than the Due Date.

8.5 Transfer of Facility Custody. Upon expiration or termination of this Agreement, NAES shall leave at the Facility all Facility Manuals and records, tools, supplies, spare parts, safety equipment, and O&M Manuals. NAES shall execute all documents and take all other steps as may be reasonably requested by GRU to assign to and vest in GRU all rights, benefits, warranties, interests and title in connection with any contracts NAES executed, and which GRU approved, in its own name for the benefit of the Facility. If GRU does not accept assignment from NAES of any such contract, GRU will pay to NAES all cancellation or other costs associated with the early termination of such contract. GRU assumes all liabilities and benefits arising under such contracts once assigned to GRU.

## ARTICLE IX – INSURANCE

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

9.1.1 Workers Compensation. Workers compensation insurance covering NAES's employees as required by Applicable Law and employers 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 Third Party Liability Coverage. NAES shall provide and maintain an excess liability policy with a per occurrence and annual limit of Thirty-Five Million Dollars (\$35,000,000) and a deductible no greater than Five Hundred Thousand Dollars (\$500,000). Such policy shall also provide coverage in excess of the insurance described in Section 9.1.1 (employers' liability) and 9.1.2.

9.2 GRU Insurance. GRU shall throughout the Term maintain the insurance set forth below:

9.2.1 Property. Property insurance, including boiler and machinery insurance, and business interruption insurance, in amounts determined in GRU's sole discretion. GRU acknowledges that in order to reduce overall contract costs, GRU will be responsible for insuring against damage to its property caused by the actions or inactions of NAES, regardless of cause or fault, and that NAES has no obligation to obtain similar coverage. For all claims with respect to GRU's property, regardless of cause or fault, the insurance provided by GRU shall be primary and non-contributory to any other insurance or self-insurance required to be provided by NAES (except for willful misconduct and gross negligence). NAES shall have no obligation whatsoever to insure the Facility Site or GRU's property.

9.2.2 Workers Compensation. Workers compensation insurance covering GRU's employees as required by law and employers 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 GRU with limits of \$1,000,000 per occurrence, and collision/comprehensive coverage in amounts deemed appropriate by GRU.

9.2.5 Additional Coverage. Umbrella or excess liability insurance in excess of the insurance described in Sections 9.2.2(employers liability), 9.2.3 and 9.2.4 will be carried with limits of not less than \$5,000,000 per occurrence/annual aggregate.

9.3 Waiver of Subrogation; Additional Insured. GRU shall cause its insurers to waive any rights of subrogation against NAES and its Affiliates together with their respective officers, directors and employees. GRU shall make each such Person an additional insured with respect to all liability policies procured by GRU pursuant to this Agreement (other than workers compensation policies) to the extent of GRU's indemnification obligations hereunder. NAES shall cause its insurers to waive any rights of subrogation against GRU and its respective officers, directors, Affiliates and employees. NAES shall make each such Person an additional insured with

respect to all liability policies procured by NAES pursuant to this Agreement (other than workers compensation policies) to the extent of NAES's indemnification obligations hereunder.

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

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, GRU 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 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 GRU or NAES or any additional insured, and that all provisions, except the policy limits, shall 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 GRU pursuant to Section 9.2 and no recourse for payment of any premium against GRU 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 thirty (30) 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 shall furnish the other Party with certificates evidencing that the required insurance is in effect.

9.6 **Deductibles.** Each Party shall be solely responsible for the payment of all deductibles on insurance policies obtained by such Party pursuant to this Agreement.

## ARTICLE X – INDEMNIFICATION

10.1 **NAES Indemnification.** Subject to the limitations of liability in Sections 11.1 and 11.2, NAES shall indemnify and hold harmless Owner and its Affiliates, and their respective officers, directors, employees, agents and representatives (collectively, the "**Owner Indemnitees**"), from and against, and no Owner Indemnitee shall be responsible for, any and all 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 negligence, willful misconduct, willful violation of any Applicable Law or willful 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 Home Office Costs.

10.2 **Owner Indemnification.** Subject to the limitations of liability in Sections 11.1 and 11.2, Owner shall indemnify and hold harmless NAES and its Affiliates, and their respective officers, directors, employees, agents and representatives (collectively, the “NAES Indemnitees”), from and against, and no NAES Indemnitee shall have responsibility 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 negligence, willful misconduct or willful violation of any Applicable Law or willful breach of any representation, warranty or covenant in this Agreement.

10.3 **Indemnification Provisions.** The following provisions shall apply to any Indemnity Claim:

10.3.1. **Notice.** Promptly after becoming aware of an Indemnity Claim (but in no event later than forty-five (45) Days thereafter), the Indemnified Party shall provide to the Indemnifying Party notice of the Indemnity Claim specifying (to the extent that such information is available):

- (a) the factual basis for the Indemnity Claim and the amount of the Indemnity Claim or, if an amount is not then determinable, and, if an estimate is feasible in the circumstances, an estimate of the amount of the Indemnity Claim;
- (b) a reasonably detailed description of the basis for its potential claim for indemnification with respect to such Indemnity Claim; and
- (c) a complete copy of all notices, pleadings and other papers related to such Indemnity Claim that have been received by the Indemnified Party prior to the date such notice is provided to the Indemnifying Party;

Failure to comply with the provisions of this Section 10.3 shall not void or waive any Indemnity Claim.

10.3.2 **Settlement.** If an Indemnity Claim relates to an alleged liability to a third party (a “Third Party Liability”), including any Governmental Authority, the Indemnified Party shall not, except as contemplated by Section 10.3.4 settle, compromise or pay any Third Party Liability as to which the Indemnified Party proposes to assert an Indemnity Claim, except with the prior consent of Indemnifying Party.

10.3.3 **Acceptance of Indemnity Claim.** If Indemnifying Party first admits the Indemnified Party’s right to receive indemnification for the Third Party Liability, the following procedures shall apply:

- (a) The Indemnifying Party shall have the right to assume the conduct and

control of the defense of or any negotiations in connection with the compromise or settlement of any proceeding in respect of the Third Party Liability; provided, that the Indemnified Party shall have the right and shall be given the opportunity to: (i) participate in the defense of such proceeding, subject to Indemnifying Party's control; (ii) consult with Indemnifying Party in the settlement of the Third Party Liability and the conduct of the proceeding (including consultation with Indemnifying Party's counsel); and (iii) retain, at the Indemnified Party's sole cost and expense, its own counsel to monitor the progress and status of the Indemnity Claim; provided further, however, that if the Indemnified Party reasonably concludes (A) that there exists a material conflict of interest between the Indemnifying Party and such Indemnified Party in the conduct of the defense of such claim, or (B) the Indemnifying Party shall not have employed counsel to assume the defense of such claim within a reasonable time after notice of the commencement thereof or shall not be pursuing the defense of such claim with due diligence or in good faith, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and participate in the defense, at Indemnifying Party's sole cost and expense.

(b) The Indemnified Party shall cooperate with Indemnifying Party in relation to the Third Party Liability, shall keep Indemnifying Party fully advised with respect thereto, shall provide Indemnifying Party with copies of all reasonably relevant documentation as it becomes available, shall provide Indemnifying Party with reasonable access to all records and files pertinent to the defense of the Third Party Liability and shall meet with, and cause its officers, directors and employees reasonably necessary to carry out the defense or negotiations regarding such Third Party Liability to meet with, the attorneys and other representatives of Indemnifying Party at all reasonable times to discuss the Third Party Liability.

(c) No compromise or settlement of such Third Party Liability may be affected by Indemnifying Party without the Indemnified Party's consent. Such consent shall not be unreasonably withheld, provided (i) there is no finding or admission of any violation of Applicable Law, (ii) such compromise or settlement does not involve the entry by the Indemnified Party of a consent order or similar agreement with any Governmental Authority, and (iii) the sole relief provided is monetary damages that are paid in full by Indemnifying Party.

10.3.4 Rejection of Indemnity Claim. If Indemnifying Party does not admit the Indemnified Party's right to indemnification or declines to assume the conduct and control of the defense or settlement of, or any proceeding relating to, the Third Party Liability, then the following provisions shall apply:

(a) the Indemnified Party, at its discretion, shall conduct and, control the defense or settlement of the proceeding relating to the Third Party Liability and may defend or settle the Third Party Liability on any terms the Indemnified Party, acting reasonably and in good faith, considers advisable; and



(b) Any dispute as to whether or not the Indemnified Party's right to indemnification applies, and the amount of the Indemnity Claim (as it may have been compromised or settled by the Indemnified Party, or determined in a proceeding, pending resolution of such dispute) shall be resolved in accordance with the Dispute resolution procedures set forth in Article 14.

10.4 Survival of Indemnity Obligations. The indemnities set forth in this Article 10 shall survive the termination or expiration of this Agreement for a period of one (1) year following said termination or expiration. All Indemnity Claim notices must be delivered to the applicable Party prior to the expiration of such period. If an Indemnity Claim notice is timely delivered pursuant to this clause, the indemnifying period with respect to all claims identified in such Indemnity Claim notice, including the indemnity obligation of the Parties with respect to such Indemnity Claim, shall extend through the final, non-appealable resolution of such Indemnity Claims.

#### ARTICLE XI - LIABILITIES OF THE PARTIES

11.1 Limitations of Liability. Notwithstanding any provision in this Agreement that may be susceptible to contrary interpretation, neither of the Parties nor any GRU Indemnitees or NAES Indemnitees shall be liable for consequential or indirect loss or damage, including loss of profit, cost of capital, loss of goodwill, increased Site 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 shall survive termination or expiration of this Agreement, and shall 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 GRU Indemnitees and NAES Indemnitees.

11.2 Further Limitation of NAES's Liability. Notwithstanding any provision in this Agreement that may be susceptible to contrary interpretation, NAES's liability hereunder shall further be limited as follows:

11.2.1 NAES's Total Aggregate Liability. 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 Year, is [REDACTED].

11.2.2 Latent Defects. In no event shall NAES be liable under this Agreement for any loss or damage whatsoever arising from NAES's failure to discover latent defects or defects inherent in the design of the Facility, its equipment, and systems.

11.3 Further Limitation on NAES's Liability. Notwithstanding anything else to the contrary in this Agreement, NAES shall not be in breach of this Agreement, and GRU shall release,

defend, indemnify and hold harmless the NAES Indemnitees from Liabilities to the extent the result of:

- (a) any act or omission of NAES that is committed or omitted, as the case may be, solely upon the direction of GRU and without the concurrence of NAES;
- (b) equipment or system failure or design deficiency, unless such failure or deficiency was caused by NAES's failure to operate and maintain the Facility in accordance with this Agreement;
- (c) a Force Majeure event;
- (d) Owner's disapproval of NAES's reasonable request for expenditures with respect to the Facility or the Services;
- (e) Owner's failure to agree on a reasonable revision to the Budget and Plan reasonably requested by NAES in light of changed circumstances;
- (f) NAES's suspension of the performance of all or any portion of the Services in accordance with this Agreement; or
- (g) a material breach of this Agreement by Owner.

11.4 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.

11.5 Exclusive Remedies. The remedies available to Owner or NAES 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 Party under Applicable Law.

## ARTICLE XII – DISCLOSURE AND CONFIDENTIALITY

### 12.1 DISCLOSURE AND CONFIDENTIALITY.

"Confidential Information" includes, to the extent such information is defined pursuant to Sections 119.07 and 812.081, Florida Statutes, as trade secrets, confidential, or otherwise exempt from the Florida Public Records Law. "Confidential Information" that is marked as "confidential" upon receipt, may include, but not limited to, certain information about GRU's operations, specifications, formulas, codes, software, hardware, intellectual

properties, and other confidential and proprietary information belonging to GRU, Work Product (as defined below) or technical documentation, prepared, developed, or obtained by GRU, Contractor, or any of GRU's or Contractor's agents, representatives, or employees.

"Work Product" may include creative work which may lead to programs, intellectual properties, computer software, computer programs, codes, text, hypertext, designs, and/or any other work products associated with or arising directly out of the performance of the Work.

## 12.2 PUBLIC RECORDS.

If NAES is either a "contractor" as defined in Section 119.0701(1)(a), Florida Statutes, or an "agency" as defined in Section 119.011(2), Florida Statutes, NAES shall:

(a) Keep and maintain all public records, as defined in Section 119.011(12), Florida Statutes, that ordinarily and necessarily would be required by GRU;

(b) Provide the public with access to public records on the same terms and conditions that GRU would provide the records and at a cost that does not exceed the cost provided by law;

(c) Ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

(d) Meet all requirements for retaining public records and transfer to GRU, at no cost, all public records in possession of NAES upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to GRU in a format that is compatible with the information technology systems of GRU.

**IN THE EVENT THAT NAES HAS QUESTIONS REGARDING FLORIDA'S PUBLIC RECORDS LAW, CHAPTER 119 OF THE FLORIDA STATUTES, OR IF NAES HAS QUESTIONS RELATED TO NAES'S OBLIGATION TO PROVIDE PUBLIC RECORDS, NAES SHOULD CONTACT THE GRU PURCHASING REPRESENTATIVE USING THE CONTACT INFORMATION PROVIDED IN THIS AGREEMENT. CONTACT THE PURCHASING DEPARTMENT AT (352) 393-1240, OR EMAIL [PURCHASING@GRU.COM](mailto:PURCHASING@GRU.COM).**

## ARTICLE XIII - TITLE, DOCUMENTS AND DATA

13.1 Materials and Equipment. NAES shall ensure that title to all materials, including but not limited to, equipment, supplies, consumables, spare parts and all other items purchased or obtained by NAES on a Site Cost or Home Office Cost basis ("Facility Equipment") passes directly from the vendor or supplier to, and vests in, GRU. NAES has no title or other claim to

such items. GRU shall retain title to all wastes (including Hazardous Materials) generated by NAES's performance of the Services.

13.2 Documents. All O&M Manuals, operational data, Facility drawings, NAES reports and records (both paper and electronic) created by NAES in connection with performance of the Services are the property of GRU. All such documents, together with any materials and documents furnished to NAES by GRU 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 (the "NAES Proprietary Information"), NAES retains the unrestricted and irrevocable right to use or dispose of such NAES Proprietary Information as NAES deems fit. Notwithstanding the foregoing, 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. GRU or NAES shall not assign, in whole or in part, any right or obligation pursuant to this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

14.2 Not Used.

14.3 Access. GRU and its agents and representatives shall 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 GRU, and its agents and representatives, NAES shall provide such Persons with access to all data and logs NAES maintains regarding its provision of Services at the Facility. During any inspection or review of the Facility, GRU and its agents and representatives shall comply with all of NAES's safety and security procedures, and shall conduct inspections and reviews in such a manner as to cause minimum interference with NAES's activities. NAES also shall cooperate with GRU in allowing other visitors access to the Facility.

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

14.5 Not for Benefit of Third Parties. Except where a contrary intention is expressly stated, 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 No Party to this Agreement shall be liable for any default or delay in the performance of its obligations under this Agreement due to an act of God or other event to the extent that: (a) the non-performing Party is without fault in causing such default or delay; and (b) such default or delay could not have been prevented by reasonable precautions. Such causes include, but are not limited to: acts of civil or military authority (including but not limited to courts of administrative agencies); acts of God; war; terrorist attacks; riot; insurrection; inability of GRU to secure any Governmental Approval; validation or sale of bonds; inability of GRU to obtain any required Permits, licenses or zoning; blockades; embargoes; sabotage; epidemics; fires; hurricanes, tornados, floods; or strikes (each, a "Force Majeure Event"). In the event of any delay resulting from such causes, the time for performance of each of the Parties hereunder shall be extended for a period of time reasonably necessary to overcome the effect of such delay. Any negotiated delivery dates established during or after a Force Majeure event will always be discussed and negotiated if additional delays are expected.

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 shall (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 reasonably may be requested by the other Party and (iii) initiate efforts to remove the cause of the Force Majeure Event or to lessen its effect.

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

14.7 Disputes. All claims, controversies or disputes arising out of or relating to or in connection with this Agreement (including any claim, controversy or dispute concerning the validity of this Agreement) arising under this Agreement between the Parties (each a "Dispute") shall be resolved in accordance with the Dispute resolution procedures as set forth in this Section 14.7.

14.7.1 Notice of Dispute. A Party asserting the existence of a Dispute shall deliver a written Dispute notice to the other Party, describing the nature and substance of the Dispute and proposing a resolution of the Dispute. In the case of a Dispute asserted by GRU, the Dispute notice shall be delivered to the Operations Director. In the case of a Dispute asserted by NAES, the Dispute notice shall be delivered to the General Manager.

14.7.2 Initial Negotiation. The Parties shall first attempt in good faith to resolve the Dispute through negotiations between (i) the Operations Director and (ii) the General Manager during the ten (10) Business Days following delivery of the Dispute notice (including any agreed extension, the "Initial Negotiation Period"). Upon the written agreement of Operations Director and the General Manager, the Initial Negotiation Period may be extended up to an additional ten (10) Business Days. If such negotiations result in an agreement in principle among the negotiators to settle the Dispute, they shall cause a written settlement agreement to be prepared (a "Preliminary Settlement"). Within the Initial Negotiation Period, such Preliminary Settlement shall be signed, dated and submitted for review and approval by an authorized executive officer of NAES ("NAES's Executive") and an executive officer of GRU ("GRU's Executive"), who shall, if in agreement with the Preliminary Settlement, endorse their signatures within ten (10) Business Days after the end of the Initial Negotiation Period, whereupon the Dispute shall be deemed settled, and not subject to further Dispute resolution.

14.7.3 Executive Negotiation. If a Preliminary Settlement is not achieved at the conclusion of the Initial Negotiation Period, or the Preliminary Settlement is unacceptable to NAES's Executive or GRU's Executive, the Parties shall then attempt in good faith to resolve the Dispute through negotiations between NAES's Executive and GRU's Executive during the ten (10) Business Days (the "Second Negotiation Period") following the earlier of (x) the date of the Preliminary Settlement or (y) the end of the Initial Negotiation Period, as the case may be, before pursuing any further means of Dispute resolution. Upon the written agreement of NAES's Executive and GRU's Executive, the Second Negotiation Period may be extended up to an additional ten (10) Business Days. If such negotiations result in an agreement in principle among the negotiators to settle the Dispute, they shall cause a written settlement agreement to be prepared, signed and dated within the Second Negotiation Period (the "Executive Settlement"), whereupon the Dispute shall be deemed settled, and not subject to further Dispute resolution.

14.7.4 Forum, Fees and Costs. If an Executive Settlement is not achieved at the conclusion of the Second Negotiation Period, any Dispute arising out of or relating to this Agreement, or the breach thereof, either Party may bring an action in a court of competent jurisdiction. In any judicial action brought by a Party to resolve a Dispute under this Agreement, the predominantly prevailing Party shall be entitled to an award of compensation from the other Party for all costs and expenses, including attorneys' fees and any costs incurred. The term "predominantly prevailing" shall mean (i) in the case of the claimant, that it shall have received an award of at least 75% of the amount claimed in the court action; or (ii) in the case of a defendant, that the award to the claimant shall have been no more than 25% of amount claimed in the court action. If there is no predominantly prevailing Party, there shall be no award of costs and expenses.

14.7.6 Confidential Settlement Context. All negotiations, discussions, offers, counteroffers, data exchanges, proposed agreements and other communications between the Parties in connection with negotiations or other Dispute resolution procedures shall be Confidential Information. Without limiting the preceding sentence, all such communications shall be deemed to be in the context of attempting to settle a disputed claim and shall not be

construed as an admission or agreement as to the liability of any Party, nor be admitted in evidence in any related arbitration, litigation or other adversary proceeding.

14.7.7 Limitations on Disputes. The delivery of a Dispute notice suspends the running of any statute of limitations applicable to the Dispute until fourteen (14) Business Days after the conclusion of the Second Negotiation Period. Except as suspended by the preceding sentence, the time period during which a Party may assert a Dispute shall run for 365 consecutive days following the termination of this Agreement, and the Parties shall be barred from asserting a Dispute thereafter.

14.7.8 Exception for Injunctive Relief. Notwithstanding the provisions set forth above in this Section 14.7, the requirement to submit Disputes to negotiation shall not apply if, and to the extent, that there exists an imminent threat of irreparable injury to a Party and that Party seeks and obtains a temporary restraining order or preliminary injunction in an expedited court proceeding in response to such threat.

#### 14.8 Alternative Dispute Resolution.

14.8.1 In the event a Dispute arises out of or relates to this Agreement, or the breach thereof, and such Dispute cannot be settled through the process described in Sections 14.7.2 and 14.7.3, the Parties shall try in good faith to settle the Dispute by mediation administered by the American Arbitration Association (“AAA”) under its Commercial Mediation Rules before resorting to arbitration, litigation, or some other dispute resolution procedure.

14.8.2 If the Dispute requires arbitration, which both parties must agree in writing, the Dispute will be submitted to and finally resolved by arbitration under the Rules of the AAA. The location of the arbitration will be Alachua County, Florida. The decision of the arbitrator will be final and binding upon both Parties, and neither Party will seek recourse to a law court or other authority to appeal for revisions of the decision.

14.9 Amendments. No amendments or modifications of this Agreement are valid unless in writing and signed by duly authorized representatives of the Parties. No course of dealing shall be deemed a waiver of rights or a modification of this Agreement.

14.10 Survival. Notwithstanding any provisions to the contrary, the obligations set forth in Article VII and Article VIII (with respect to payments), Article X and Article XII, Section 14.7 and the limitations on liabilities set forth in Article XI will survive, in full force, the expiration or termination of this Agreement.

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

14.12 Notices.

Any written notice required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt, and shall 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 facsimile, email, courier service or first class registered or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the following address, or at the most recent address specified by written notice given in the manner provided in this Section 14.12.

If to GRU:       Utilities Purchasing  
                      301 SE 4<sup>th</sup> Avenue  
                      Gainseville, Florida 32601  
                      Email: [purchasing@gru.com](mailto:purchasing@gru.com)  
                      Fax:   [         ]

If to NAES:       NAES Corporation  
                      1180 NW Maple St., Suite 200  
                      Issaquah, WA 98027  
                      Attn: General Counsel  
                      Email: [norm.escover@naes.com](mailto:norm.escover@naes.com)  
                      Fax:   (425) 270-6398

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

14.13.1 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.

14.13.2 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.

14.13.3 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).



14.13.4 No Conflict. Neither the execution or delivery of this Agreement, the performance by such Party of its obligations in connection with the transactions contemplated hereby, nor the fulfillment of the terms and conditions hereof, conflicts with or violates any provision of its constituting documents.

14.13.5 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.

14.13.6 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.

14.13.7 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.

14.14 Additional Representation and Warranty by NAES. NAES further represents and warrants to GRU that it has substantial expertise and experience in the provision of services to power generation facilities and it is fully qualified to provide such services at the Facility in accordance with the terms of this Agreement.

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

14.16 Compliance with Laws and Regulations. All City, County, State and Federal laws, regulations and/or ordinances shall be strictly observed. NAES is responsible for taking all precautions necessary to protect life and property.

14.17 Governing Law, Venue, Attorney's Fees, and Waiver of Right to Jury Trial. This Agreement shall be construed pursuant to the laws of Florida and may not be construed more strictly against one party than against the other. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in Alachua County Florida; (2) each Party shall bear its own attorneys' fees and expenses, including any appeals; and (3) for civil proceedings, the Parties hereby waive the right to jury trial.

14.18 Sovereign Immunity. Nothing in this Contract shall be interpreted as a waiver of GRU's sovereign immunity as granted pursuant to Section 768.28 Florida Statutes.

14.19 Interpretation. 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. This Agreement was jointly drafted and negotiated by the Parties. In the event of a Dispute, the Agreement shall not be construed against either Party based upon its drafting.

14.20 Severability. If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.

*[Remainder of page intentionally left blank; signature pages follow]*

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.

**GAINESVILLE REGIONAL UTILITIES**

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

**NAES CORPORATION**

By: \_\_\_\_\_  
Name: Thomas J. Bartolomei  
Title: Sr. Vice President & COO

## **APPENDIX A – SCOPE OF SERVICES**

### **I. SITE PERSONNEL SERVICES**

#### **A. Routine Services**

1. Consistent with GRU-approved Budget and Plan, provide Facility Services to optimize electrical power generation.
2. Assign work to either Site Personnel or vendors as cost-effective and appropriate based on guidance from GRU. 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 Facility's existing operations and maintenance procedures, chemistry procedures, NERC compliance processes, and environmental compliance processes, unless otherwise directed by GRU.
2. In conjunction with Operations Director, implement NAES's assessment program utilizing the assessment manual.

#### **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 GRU-approved staffing levels and capabilities of Site Personnel.

#### **D. Major Maintenance and Repairs**

1. In coordination with and support of the generation plan, arrange for scheduled inspections and overhauls on major equipment.
2. Retain vendors on behalf of GRU 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.
1. 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 GRU 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 GRU 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 GRU 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 GRU, 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 GRU in advance. Utilize the CMMS 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 with the GRU Purchase Card that are not directly paid by GRU. Ensure monthly reconciliations of credit card purchases are submitted to GRU.
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 GRU operation and maintenance service reports as requested relative to performance, maintenance and repair status, Facility operating data, and any other information reasonably requested by GRU.
  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 GRU review. 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 GRU-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 GRU, 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 GRU-approved Facility safety requirements and emergency procedures.

- H. Assistance to GRU. Provide assistance to GRU, as reasonably requested and funded, and within the capabilities of Site Personnel, with the execution of GRU'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 GRU's management and personnel, supporting permit renewals, and interfacing with the local community and authorities.

## **II. HOME OFFICE 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.
- ii. Arranging quarterly NERC calls segmented by NERC region and inviting Site Personnel and GRU personnel to attend.

- 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 under Appendix A, II(B) 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 under Appendix A, II(F)(8)
  - 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 under Appendix A, (II)(F)(5), 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
  - 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 under Appendix A(II)(F)(2); 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 MAS support, if applicable), 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. Implementation of advisable changes, updates or additions to Facility operation and maintenance manuals, system descriptions, or drawings.
- B. Safety consulting or audits of safety practices.
- C. On-site outage support
- D. On-site assistance for regulatory visits
- E. Assistance with regulatory programs, such as VPP or STAR
- F. On-site project safety support, requested by GRU
- G. Input of Facility data into Facility information systems, including but not limited to population and manipulation of CMMS data.
- H. CMMS training
- I. Non-routine human resources Home Office Personnel Services, including the following:
  - i. Negotiation and assumption of union labor contracts
  - ii. Development and implementation of special benefit plans or arrangements, including coordination with outside professional services
  - iii. Labor arbitration case management
  - iv. Union election activities and campaigns
  - v. GRU consultation services regarding employee matters contained in purchase and sale agreements or other related documents
  - vi. Attendance at GRU-requested Site Personnel transition meetings, development and implementation of employee retention and severance plans, performance of GRU-requested Site Personnel evaluations
- J. Temporary fill-in for Site Personnel by Home Office Personnel
- K. Obtain, maintain and renew insurance policies specific to the Facility or Site and required of NAES under Section 9.1.
- L. On-site outage support
- M. On-site project management support, as requested by GRU

- N. Site Physical Inventory Support
- O. Legal Support to Facility operations necessitated by occurrences outside NAES's control, including, but not limited to, GRU Affiliate bankruptcy and claims made against GRU in which NAES is not a party.
- P. Environmental support for compiling and reviewing environmental reports and plans under Appendix A, II (F)(9) and (10); customization and population of NAES standard tools and templates; 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.

#### **IV. NAES SERVICES PERFORMED AT NEGOTIATED RATES**

- A. Environmental consulting, program development, 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 GRU 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. Asset management functions
- E. Direct placement and temporary staffing services performed by NAES's staffing services division.
- F. Debit Card Account management services
- G. Maintenance services performed by NAES subsidiaries or turbine services division.
- H. CMMS consulting, including development of modification of processes and products outside of the CMMS features available before the Takeover Date, including customization of the user interface or program functionality; development of customized reporting or customized integration solutions.

**APPENDIX B – RESERVED**

**APPENDIX C - RESERVED**

**APPENDIX D - FACILITY DESCRIPTION AND SPECIFICATIONS**

Facility Site:  
Gas Supplier:  
Fuel Oil Supplier:  
Equipment:  
Facility Capabilities:  
Points of Interconnection:

**APPENDIX E – HOME OFFICE PERSONNEL RATES**

The following hourly billing rates apply to Home Office Personnel time reimbursable under Section 7.3. These rates are valid through December 31, 2017. Rates for subsequent Years will be disclosed to GRU prior to becoming effective.

<b>POSITION</b>	<b>Home Office Personnel under Section 7.3(iii)</b>
<b>PLANT OPERATIONS</b>	
Sr. Vice President	████
Vice President	████
General Manager	████
Sr. Operations Director	████
Operations Director	████
Director, Fleet Service	████
Fleet Service Manager	████
Client Service Manager	████
Director, Operational Excellence	████
Sr. Program Manager	████
Program Manager	████
Director, Safety Operations	████
Sr. Safety Manager	████
Safety Manager	████
<b>NAES SOLUTIONS</b>	
General Manager	████
Director	████
<b>Engineering Services:</b>	
Director, Engineering	████
Chief Engineer	████
Sr. Project Manager	████
Senior Engineer	████
Engineer II	████
Engineer	████
<b>Technical Services:</b>	
Manager, Technical Services	████
Project Manager	████
Project Engineer	████
Software Dev. Engineer	████
CMMS Analyst	████

<b>POSITION</b>	<b>Home Office Personnel under Section 7.3(iii)</b>
Sr. Operations Analyst	█
Operations Analyst	█
<b>Environmental Services:</b>	
Director, Environmental Services	█
Sr. Environmental Manager	█
Sr. Environmental Specialist	█
Environmental Specialist	█
<b>NERC Services:</b>	
Director NERC Services	█
Manager NERC Services	█
NERC Project Manager	█
NERC Sr. Reliability Specialist	█
NERC Reliability Specialist	█
<b>QA/QC</b>	
VP, QA	█
QA/QC Manager	█
<b>FINANCE</b>	
Sr. Finance Manager	█
International Accounting Manager	█
Sr. Accountant / Int'l Accountant	█
Accountant	█
<b>HUMAN RESOURCES</b>	
VP, HR	█
Director HR	█
NAES Canada HR Manager	█
HR Employee Relations Mgr.	█
HR Mgr.	█
HR Specialist/Generalist	█
HR Associate	█
<b>MISC. SUPPORT</b>	█
Sr. Business Development Mgr.	█
Marketing/Proposal Manager	█
Sr. Marketing Engr.	█
Director, IT Services	█
IT Manager/Business Application Manager	█
Sr. IT Support	█

POSITION	Home Office Personnel under Section 7.3(iii)
IT Support	[REDACTED]
Marketing Engineer/Marketing Analyst	[REDACTED]
Technical Support Specialist	[REDACTED]
Executive Assistant	[REDACTED]
Administrative Assistant	[REDACTED]