

**OPERATION AND MAINTENANCE  
OF THE  
MID-CONNECTICUT RESOURCE  
RECOVERY FACILITY  
AGREEMENT**

**BETWEEN**

**CONNECTICUT RESOURCES RECOVERY  
AUTHORITY**

**AND**

**NAES CORPORATION**



**OPERATION AND MAINTENANCE  
OF THE  
MID-CONNECTICUT RESOURCE RECOVERY FACILITY  
AGREEMENT**

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This **OPERATION AND MAINTENANCE OF THE MID-CONNECTICUT RESOURCE RECOVERY FACILITY AGREEMENT** (this "Agreement") is made and entered into as of [DATE] (the "Effective Date"), by and between Connecticut Resources Recovery Authority ("CRRA"), a body politic and corporate constituting a political subdivision of the State of Connecticut, with a business office at 100 Constitution Plaza, Hartford, Connecticut, and NAES Corporation, a Washington corporation, ("NAES"), with a business office located at 1180 NW Maple Street, Ste. 200, Issaquah, Washington 98103. CRRA and NAES are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

## RECITALS

**WHEREAS**, the capitalized terms used in this Agreement have the meanings ascribed to those terms in Exhibit 1 hereof; and

**WHEREAS**, CRRA was established pursuant to The Connecticut Solid Waste Management Services Act, (the "Act") codified at Chapter 446e of the Connecticut General Statutes, Conn. Gen. Stat. § 22a-257 *et seq.*, for the performance of an essential public and governmental function; specifically, the provision of solid waste management services and the recovery of resources from solid waste; and

**WHEREAS**, under the Act, CRRA has the responsibility and the authority to provide solid waste disposal and resource recovery systems and facilities, and solid waste management services, where necessary and desirable throughout the State of Connecticut; and

**WHEREAS**, CRRA is authorized by the Act to design, acquire, lease, construct, alter, reconstruct, improve, enlarge or extend, own, operate, maintain and finance solid waste facilities, and to make provision for the management of such facilities, the manufacturing, processing and transportation operations necessary to derive recovered resources from solid waste, and the contracting for the sale of such; and

**WHEREAS**, in furtherance of its statutory responsibilities and pursuant to its statutory authority, CRRA created the refuse-derived fuel waste-to-energy facility (as hereinafter defined, the "Facility") owned by CRRA; and

**WHEREAS**, NAES has expertise in the operation and maintenance of electric generating facilities; and

**WHEREAS**, CRRA has determined that the operation and maintenance of the Facility by NAES will provide valuable assistance to CRRA in the performance of CRRA's statutory responsibilities; and

**WHEREAS**, CRRA now wishes to retain NAES for the performance of certain operation and maintenance services at the Facility and the Site, and NAES is willing to perform those services pursuant to the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises, agreements and other actions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1 - PRELIMINARY MATTERS

### 1.1 Incorporation of Recitals

The recitals, the Exhibits and the Schedules to this Agreement are incorporated into the body of this Agreement as a part hereof.

### 1.2 Certain Definitions

Capitalized terms used in this Agreement have the meanings ascribed to such terms herein or in Exhibit 1 hereto.

### 1.3 Rules of Construction

As used in this Agreement, except as otherwise provided or unless the context otherwise requires: (i) the terms defined in this Agreement include the plural as well as the singular; (ii) the words "herein," "hereof" and "hereunder," and words of similar import, refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (iii) references to an "Article," "Section" or other subdivision are to this Agreement except as otherwise stated; (iv) a reference to either gender includes the other gender; (v) words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings unless otherwise specifically provided; and (vi) the words "include" and "including" shall be deemed to be followed by the words "without limitation."

## ARTICLE 2 - PERFORMANCE OF TRANSITION SERVICES

NAES shall perform the Transition Services in Exhibit 2 hereto, in the manner and at the times required by this Article 2.

### 2.1 Performance of WPF Transition Services

The WPF Transition Period shall begin on the day (the "WPF Transition Period Commencement Date") that NAES receives the Notice to Proceed with WPF Transition Services from CRRA, together with the Facility Manuals and any Facility Agreements as are in CRRA's possession. The WPF Transition Period Commencement Date shall be a date selected by CRRA, but shall not be later than August 1, 2011 unless the parties otherwise agree in writing to an alternate date. Upon its receipt of the Notice to Proceed with WPF Transition Services and the preceding documents, NAES shall commence the WPF Transition Services described in Exhibit 2. NAES acknowledges that it can and is willing to begin WPF Transition Services before August 1, 2011 at a mutually agreeable date but within three (3) weeks of written notice from CRRA .

### 2.2 Performance of PBF/EGF Transition Services

The PBF/EGF Transition Period shall begin on the day (the "PBF/EGF Transition Period Commencement Date") that NAES receives the Notice to Proceed with PBF/EGF Transition Services from CRRA. The PBF/EGF Transition Period Commencement Date shall be a date selected by CRRA, but shall not be later than February 1, 2012. Upon its



receipt of the Notice to Proceed with PBF/EGF Transition Services NAES shall commence the PBF/EGF Transition Services described in Exhibit 2.

## **2.3 WPF Transition Plans; PBF/EGF Transition Plans**

### **2.3.1 WPF Transition Plans**

Once NAES concludes its initial assessment of the WPF it will develop, in consultation with CRRA, a mutually acceptable final plan and budget (the "WPF Transition Plan") for WPF Transition Services and the timeline within which NAES shall accomplish same. NAES shall then perform the WPF Transition Services in the manner and at the times stated in the mutually agreed-upon WPF Transition Plan. NAES shall appraise CRRA as necessary with respect to its performance of the WPF Transition Services and shall in any event meet with CRRA at least weekly during the WPF Transition Period at CRRA's business office (or at such other times and places as the Parties may mutually agree) to review NAES's progress with respect to the WPF Transition Services and any changes necessary to the WPF Transition Plan. NAES shall not modify the WPF Transition Plan without CRRA's prior written consent. CRRA shall use reasonable efforts to approve or disapprove any such requested modification within five (5) Business Days following a written request from NAES for the same. CRRA's approval of any such requested modification shall not be unreasonably withheld, provided that CRRA may withhold approval of any requested modification for which adequate supporting information is not supplied by NAES, as determined by CRRA in its sole discretion. NAES shall complete the WPF Transition Services on or before the WPF Transition Period Completion Date. NAES shall use all reasonable efforts to create the following at least 30 days prior to the WPF Transition Period Completion Date: (1) the O&M Manual for WPF O&M Services; and (2) the Administrative Procedures Manual for the entire Facility (including as to the PBF/EGF O&M Services) and all other manuals identified in Exhibit 2 for CRRA's review and approval. NAES shall make any changes to the preceding documents reasonably requested by CRRA and consistent with the schedule in this Section 2.3.1. At least ten (10) Business Days prior to the WPF Transition Period Completion Date, NAES shall provide CRRA with written confirmation that NAES shall complete the WPF Transition Services on or before the WPF Transition Period Completion Date and shall be prepared to assume the WPF O&M Services on that date, together with copies of the completed O&M Manual for WPF O&M Services and the Administrative Procedures Manual for the entire Facility.

### **2.3.2 PBF/EGF Transition Plans**

Once NAES concludes its initial assessment of the PBF/EGF it will develop, in consultation with CRRA, a mutually acceptable final plan and budget (the "PBF/EGF Transition Plan") for PBF/EGF Transition Services and the timeline within which NAES shall accomplish same. NAES shall then perform the PBF/EGF Transition Services in the manner and at the times stated in the mutually agreed-upon PBF/EGF Transition Plan. NAES shall appraise CRRA as

necessary with respect to its performance of the PBF/EGF Transition Services and shall in any event meet with CRRA at least weekly during the PBF/EGF Transition Period at CRRA's business office (or at such other times and places as the Parties may mutually agree) to review NAES's progress with respect to the PBF/EGF Transition Services and any changes necessary to the PBF/EGF Transition Plan. NAES shall not modify the PBF/EGF Transition Plan without CRRA's prior written consent. CRRA shall use reasonable efforts to approve or disapprove any such requested modification within five (5) Business Days following a written request from NAES for the same. CRRA's approval of any such requested modification shall not be unreasonably withheld, provided that CRRA may withhold approval of any requested modification for which adequate supporting information is not supplied by NAES, as determined by CRRA in its sole discretion. NAES shall complete the PBF/EGF Transition Services on or before the PBF/EGF Transition Period Completion Date. NAES shall use all reasonable efforts to create, the O&M Manual for PBF/EGF O&M Services for CRRA's review and approval at least 30 days prior to the PBF/EGF O&M Transition Services Completion Date. NAES shall make any changes to the O&M Manual for PBF/EGF O&M Services reasonably requested by CRRA and consistent with the schedule in this Section 2.3.2. At least ten (10) Business Days before the PBF/EGF Transition Period Completion Date, NAES shall provide CRRA with written confirmation that NAES shall complete the PBF/EGF Transition Services on or before the PBF/EGF Transition Period Completion Date and is prepared to assume the PBF/EGF O&M Services on that date, together with a copy of the completed O&M Manual for PBF/EGF O&M Services. The O&M Manual for PBF/EGF O&M Services, together with the O&M Manual for WPF O&M Services, shall collectively constitute the "O&M Manual."

### 2.3.3 Commercially Reasonable Efforts

NAES shall make commercially reasonable efforts to accomplish as much of the Transition Services for the entire Facility as possible during the WPF Transition Period.

## 2.4 Payment for Transition Services

CRRA shall pay NAES for its performance of the Transition Services at the times and in the amounts set out in Schedule 14.1 hereto.

## ARTICLE 3 - PERFORMANCE OF O&M SERVICES; CRRA RESERVED RIGHTS

### 3.1 Requirement to Perform

NAES shall perform the O&M Services in Exhibit 3 hereto at the times required by this Article 3. CRRA shall pay NAES as provided in Schedule 14.2 hereto, for all O&M Services performed in accordance with this Agreement.

### **3.2 Commencement and Performance of WPF O&M Services**

On and after the WPF Commencement Date and continuing during the Term, NAES shall perform the WPF O&M Services.

### **3.3 Commencement and Performance of PBF/EGF O&M Services**

On and after the PBF/EGF Commencement Date and continuing during the Term, NAES shall perform the PBF/EGF O&M Services.

### **3.4 Authorized Activities**

NAES shall perform only those activities (the "Authorized Activities") necessary to perform the Services or implement any Capital Project and in all events to maximize revenues and minimize expenses consistent with the best interests of CRRA, so as to enable the Facility to properly process Acceptable Solid Waste and recover useful products from the same (and no other activities) in the manner required by this Agreement, subject to the CRRA Reserved Rights.

### **3.5 CRRA Reserved Rights**

#### **3.5.1 CRRA Reserved Rights**

CRRA reserves for itself and its representatives, contractors (other than NAES), and others claiming by and through CRRA, and shall at all times during the Term, retain the following rights (the "CRRA Reserved Rights"): (i) the right to use, or to allow any Third Party to access and use the Facility or the Site for any purpose or use that does not interfere with NAES's performance of the Services as permitted hereunder; (ii) the right to contract with any Third Party for any purpose concerning the Facility or the Site, so long as such purpose does not interfere with NAES's performance of the Services as permitted hereunder; (iii) the right to make business and strategic decisions as CRRA deems appropriate from time to time in reference to the operation and maintenance of the Facility or the Site; (iv) the right to review and approve any and all specifications for improvements, repairs, replacements, and subcontractor services necessary in the performance of Services hereunder; and (v) any other power, authority, interest, privilege, license, franchise or other right, thing or activity of any kind or nature; provided that in each case the use or exercise of the same does not interfere with NAES's performance of the Services as permitted hereunder or reduce the availability of the Facility or any part thereof for its intended purpose of processing Acceptable Solid Waste and generating Recovered Products. At all times, CRRA shall retain overall supervision and control of the business, design, operating, management, transportation, marketing, planning and research and development functions to be carried out or to be performed by NAES to the extent required by Applicable Law.

#### **3.5.2 Access Rights**

CRRA and its representatives, contractors (other than NAES) and any other Person claiming by and through CRRA with respect to the use or exercise of any

of the CRRA Reserved Rights, shall have all necessary access rights, and may keep and store at appropriate locations at the Facility and the Site, all necessary vehicles, tools, supplies, equipment and other necessary materials.

### 3.5.3 Documents, Materials, Records and Accounts

CRRA and its representatives, contractors (other than NAES) and any other Person claiming by and through CRRA with respect to the use or exercise of any of the CRRA Reserved Rights shall have access to any documents, materials, and records and accounts relating to Facility or Site operations, for purposes of inspection and review. Upon a reasonable request by CRRA, NAES shall provide any such Person with access to all operating data and operating logs maintained at the Facility. During any inspection or review of the Facility, all Persons granted access pursuant to this Section 3.5.3 shall comply with NAES's safety and security procedures, and shall conduct inspections and reviews in such a manner as to cause minimum interference with NAES's performance of the Services. NAES shall also cooperate with CRRA in the provision of access to the Facility and the Site by public visitors.

### 3.5.4 CRRA Ownership

Subject to the provisions of this Agreement, all real property at the Facility and Site, including all land, buildings, structures, and improvements situated thereon, together with all building materials purchased for inclusion therein, is and will at all times during and after the Term, be owned absolutely by CRRA without further act or deed on the part of any Person. In furtherance of, but without limiting the foregoing, NAES hereby conveys, assigns, transfers and sets over to CRRA (and shall require each Subcontractor and each Capital Project Contractor to convey, assign, transfer and set over to CRRA), any and all such right, title, estate or interest in any such property that is to be owned by CRRA.

NAES agrees that CRRA shall own all equipment, improvements, and any and all work products produced, installed, or procured hereunder by NAES or any subcontractor, including but not limited to manuals, procedures, software and software licenses, instrumentation, tools, spare parts, replacement parts, operating equipment, rolling stock, or other items associated with this work.

### 3.5.5 Reservation of CRRA Reserved Rights

The reservation of the CRRA Reserved Rights shall not: (i) impose any obligation on CRRA to exercise any of the CRRA Reserved Rights; (ii) render CRRA liable to NAES or to any other Person for the failure to do so; or (iii) relieve NAES of any of its obligations under this Agreement.

## ARTICLE 4 - TERM; CONDITION PRECEDENT

### 4.1 Effectiveness; Condition Precedent

This Agreement is effective as of the Effective Date; however, the obligations of the Parties hereunder shall not commence until NAES has received the Notice to Proceed with WPF Transition Services. Notwithstanding the preceding sentence, CRRA shall have the option to terminate this Agreement, and it shall be void and without further force and effect, if on or before July 1, 2011, CRRA has not executed agreements with Third Parties for the annual delivery of at least Seven Hundred Thousand (700,000) Tons of Acceptable Solid Waste to the Facility, for a period lasting until June 30, 2013. NAES shall only be entitled to payment pursuant to the terms of the Agreement for all Transition Services properly performed up to and as of the date of termination, subject to the dispute resolution process in Section 22.5.

### 4.2 Initial Term

NAES shall commence and complete performance of the Transition Services at the times and in the manner required under Article 2 hereof and Exhibit 2 hereto. NAES shall commence the performance of the O&M Services at the times required in Article 3 hereof. The initial term of this Agreement (the "Initial Term") shall end on June 30, 2016.

### 4.3 Extensions

This Agreement may be extended for ten (10) successive one-year periods (each an "Extension") at CRRA's sole option, on the same terms and conditions herein. The first Extension shall begin on July 1, 2016 and shall end on June 30, 2017, the second extension shall begin on July 1, 2017 and end on June 30, 2018, and so forth. Each Extension shall be automatic unless CRRA provides written notice to NAES that CRRA has declined to extend this Agreement, not later than six months prior to the expiration of the Initial Term or the then-current Extension, as applicable. If CRRA at any time declines to extend this Agreement, then no further Extensions shall occur. The final Extension, unless declined by CRRA in the manner contained in this Section 4.3, shall begin on July 1, 2025 and end on June 30, 2026.

## ARTICLE 5 - STANDARDS APPLICABLE TO NAES'S PERFORMANCE OF THE O&M SERVICES; CERTAIN OBLIGATIONS OF NAES

### 5.1 Standards Applicable to Performance of O&M Services

NAES shall perform the Services in the manner required by: (i) this Agreement; (ii) Prudent Operating and Maintenance Practices; (iii) each Budget and Plan approved by CRRA; (iv) the Facility Manuals, O&M Manuals, Administrative Procedures Manual and all other manuals identified in Exhibits 2 and 3; and (v) the Insurance required pursuant to Article 17. Consistent with the preceding sentence, NAES shall use commercially reasonable efforts to maximize the Acceptable Solid Waste processed by and the Recovered Products produced by the Facility.

## **5.2 Review of Sufficiency of Performance Goals**

Beginning on the WPF Commencement Date, CRRA shall inspect the Facility and the Site from time to time to evaluate NAES's compliance with the requirements of Section 5.1 and to evaluate the adequacy of the Performance Goals in achieving the Parties' goals with respect to NAES's performance of this Agreement. Between November 1st and November 30th the Parties shall meet at CRRA's Business Office, and at least annually thereafter during the process to adopt the annual Budget and Plan pursuant to Section 10.1, to review NAES's performance of the O&M Services and to determine whether any changes are necessary to the Performance Goals to achieve the Parties' goals with respect to this Agreement. If any such changes are deemed necessary by the Parties, the Parties shall negotiate and agree on such modifications of the Performance Goals as are necessary to achieve those goals.

## **5.3 Disputes re: Prudent Operating and Maintenance Practices; Performance Goals**

Any disputes concerning NAES's compliance with the Prudent Operating and Maintenance Practices, the Performance Goals or any modification of the Performance Goals shall be adjudicated pursuant to the dispute resolution procedures in Section 22.5.

## **5.4 Facility Conditions**

On and after the WPF Commencement Date and the PBF/EGF Commencement Date as applicable, NAES shall be solely responsible for any and all conditions created as a result of the Services performed at the Facility or the Site by NAES for which it is responsible, subject to the provisions governing insurance, indemnity, and limitation of liability elsewhere in this Agreement. NAES shall not be responsible for conditions created by acts or omissions taken at the direction of CRRA to which NAES has expressed an objection in writing.

## **5.5 Environmental Compliance**

### **5.5.1 Compliance with Environmental Laws**

NAES shall conduct, and shall require any Subcontractor or Capital Project Contractor to conduct all operations at the Facility and the Site in accordance with applicable Environmental Laws and the Environmental Permits. It is understood and agreed that: (i) in the course of performing Services hereunder, neither NAES nor any of its officers, directors, employees, agents, representatives or Affiliates is, has been or will be deemed by CRRA to be, nor will any such Person have responsibility as an operator of the Facility for purposes of applicable Environmental Laws; and (ii) CRRA is now and shall be at all times deemed to be solely responsible, and shall take no position inconsistent with its status as the sole operator of the Facility for purposes of applicable Environmental Laws. CRRA agrees to use its best efforts to take or cause to be taken all actions, to do or cause to be done and to assist and cooperate with NAES in doing all things necessary, proper, or reasonably advisable to establish that CRRA is the operator of the Facility for purposes of

applicable Environmental Laws. Notwithstanding anything to the contrary contained herein NAES shall be responsible for complying with applicable Environmental Laws to the extent it is within NAES's control and ability to comply with same while performing Services.

#### 5.5.2 Facility Operations

Upon receipt by NAES of the Notices to Proceed with the WPF Transition Services and the PBF/EGF Transition Services, NAES shall submit any applications required by any Governmental Authority necessary for NAES to lawfully perform the O&M Services under the Environmental Laws and the Environmental Permits. On and after the WPF Commencement Date and the PBF/EGF Commencement Date, as applicable, NAES shall be responsible for operating the Facility in compliance with all Environmental Permits. In each case in which CRRA, as Facility Owner, is required by Environmental Laws to submit documentation to any Governmental Authority regarding the Environmental Permits or for any other reason, NAES shall cooperate and provide CRRA with any such information requested by CRRA. For routine submittals, NAES shall provide such information in draft form to CRRA not later than fifteen (15) Business Days prior to the date when any such data, form, document or information is required to be submitted to such Governmental Authority pursuant to an Environmental Permit or Environmental Laws. For non-routine submittals, NAES shall endeavor to give CRRA as much time as practicable to review the submittal before submission to Governmental Authority is required.

#### 5.5.3 Changes in Environmental Law

To the extent that any Capital Project is required due to changes in Environmental Laws and/or the renewal of any Environmental Permit, such Capital Project shall proceed as set forth in Section 10.4.

### 5.6 **Hazardous Materials**

#### 5.6.1 List of Hazardous Materials

Upon commencement of the O&M Services, NAES shall provide a list of all Hazardous Materials used by NAES in connection with the performance of the O&M Services and shall notify CRRA if additional Hazardous Materials are brought to the Facility or Site (including by any Subcontractor or Capital Project Contractor). Except for Hazardous Materials so identified to CRRA (which shall include Hazardous Materials transported by others in compliance with Environmental Laws and in connection with NAES's performance hereunder), NAES shall not cause or permit any Hazardous Material to be brought upon, handled, generated, used, manufactured, transported, emitted, released, treated, stored, kept, disposed or used in or about the Facility or the Site by NAES, any Subcontractor or Capital Project Contractor, supplier or any other Person, without the prior written approval of CRRA and in full compliance with

Environmental Laws. The requirements of this section shall not apply to Hazardous Materials delivered to the WPF by waste haulers.

#### 5.6.2 Characterization of Wastes

NAES shall perform characterization of all wastes generated by or at the Facility or the Site in accordance with the Environmental Laws and shall provide written notice to CRRA as to any Hazardous Materials so generated and requiring transportation, for off-Site treatment and disposal from the Facility or the Site under the Environmental Laws. CRRA shall perform, or shall arrange for the performance by Third Parties of such transportation, treatment and disposal.

### 5.7 **Environmental Conditions**

NAES shall diligently avoid any Discharges of any Hazardous Materials and shall not willfully and intentionally Discharge any Hazardous Material into the Environmental Media. NAES shall immediately respond to any Discharges to the Environmental Media and Remediate the Discharge in accordance with applicable Environmental Laws. NAES shall as soon as possible notify CRRA verbally and in writing of any Discharge of which NAES has knowledge, regardless of whether notification as to such Discharge is required to a Governmental Authority under the Environmental Laws. Except to the extent otherwise provided herein, NAES shall be responsible for all Environmental Conditions caused by the negligence of NAES including all Discharges of any material that occur at the Facility or the Site; excluding any Pre-Existing Contamination but including any increase or exacerbation of Pre-Existing Contamination caused by the negligence of NAES during the Term. NAES shall be responsible for all Environmental Conditions that would not have otherwise occurred were it not for NAES's lack of proper oversight and management of any Subcontractor or any Capital Project Contractor.

### 5.8 **Preparedness and Training**

NAES shall insure that at all times there will be at least one individual on-Site who has been trained in emergency and Discharge response, spill prevention and preparedness. Contact information should be posted at various locations throughout the Facility identifying the individual(s) to be notified and the phone number(s) to use in notifying such individuals in the event of a Discharge.

### 5.9 **Notices**

NAES shall verbally notify CRRA immediately and in writing as soon as practicable, but in any event within seventy-two (72) hours, of NAES's receipt, knowledge or discovery of: (i) the presence of any Hazardous Material on, about, beneath or arising from any portion of the Facility or the Site that creates an obligation under any Environmental Laws; (ii) any enforcement or action (including but not limited to any notices of violation, orders, consent orders, civil or criminal actions) instituted or threatened against NAES, the Facility or the Site by any Governmental Authority pursuant to any Environmental Laws; and (iii) any claim made or threatened by any Person against NAES, the Facility or the Site relating to any form of damage, loss or injury resulting



from or claimed to result from any Environmental Conditions or claims of violations of Environmental Laws.

#### **5.10 Meetings to Review Environmental Compliance**

As deemed necessary by CRRA, CRRA and NAES shall review the status of NAES's compliance with the Environmental Permits and the Environmental Laws, and with the environmental provisions of this Article generally, at the quarterly meetings with CRRA held pursuant to Section 11.2, or at other times as deemed necessary by either Party.

#### **5.11 Site Personnel; Contractors' Employees**

NAES shall offer employment to employees who meet the following criteria: (i) employed at the WPF and PBF/EGF on December 15, 2010; (ii) remain active employees at the WPF and PBF/EGF on the expiration dates of the current agreements between CRRA and the Metropolitan District Commission for the O&M of the WPF which agreement terminates December 30, 2011; and between CRRA and Covanta Energy, Inc. for the O&M of the PBF/EGF which agreement terminates May 31, 2012; and (iii) are actively at work on the WPF Commencement Date or the PBF/EGF Commencement Date, as applicable. For employees hired, transferred or otherwise assigned to work at the WPF and PBF/EGF after December 15, 2010 and who remain actively employed at the WPF and PBF/EGF on the expiration date of the present agreements, as applicable, NAES may offer employment to such employees provided that NAES determines, in its discretion, that the employees are qualified and necessary to operate the Facility. Each offer shall include wage rate or salary at least equal to the employee's then current wage rate or salary. Other terms and conditions of employment offered shall be at the discretion of NAES. NAES shall comply with all Applicable Law with respect to its hiring, training, employing, compensation and/or termination of Site Personnel. All Site Personnel shall be deemed employees of NAES and not of CRRA for all purposes of this Agreement. NAES shall be responsible for all actions of the Site Personnel and for overall compliance by the Site Personnel with Applicable Law. All Site Personnel included in the Budget and whose labor costs are paid by CRRA shall be used exclusively for CRRA's benefit. Without limitation of the foregoing, NAES shall ensure that all Site Personnel, and all employees of any Subcontractor or Capital Project Contractor:

- (a) Receive proper training (including the reporting and handling of emergency situations) and periodic retraining with respect to the performance of the Services;
- (b) Have clothing (including photo identification badges), safety equipment, tools, equipment and any other supplies needed to perform the Services in a safe and efficient manner;
- (c) Are able to communicate both verbally and in writing, in English;
- (d) Have satisfied all requirements of Applicable Law with respect to their eligibility to work in the United States and the State of Connecticut, and with

respect to the obtaining and maintaining of any licenses, permits or other authorizations necessary for their performance of the Services; and

- (e) Shall not bring any firearms or other weapons, illegal drugs or non-prescribed prescription medication, alcoholic beverages or any Hazardous Materials onto the Facility or the Site, unless the same is a requirement of their employment and has been authorized by CRRA.

#### **5.12 CRRA Right to Exclude Certain Individuals**

Without limitation of NAES's overall responsibility for the acts and omissions of all Site Personnel and the other employees referenced in Section 5.11, CRRA reserves the right to exclude any Site Personnel or other such employees from the Facility and the Site which CRRA reasonably believes are a danger to themselves or any other Person, or the Facility or the Site.

#### **5.13 Protection of Persons and Property: Risk of Loss or Damage**

NAES shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement. NAES shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (i) all Site Personnel and any other Persons who may be affected thereby; (ii) all equipment and other materials to be incorporated into the Facility, whether on or off the Site or any Facility component under the care, custody or control of NAES, any Subcontractor or any Capital Project Contractor; and (iii) other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavement, roadways, pipes, security system, fences, poles, structures and utility fixtures.

#### **5.14 Notice of Damage or Theft**

NAES shall immediately upon learning of an incident of theft of materials, supplies or equipment, or upon learning of an incident of damage to Facility equipment or structures, provide CRRA's Facility General Manager and CRRA's Risk Manager with verbal notice of same followed by an incident report. Such incident report shall be in a format acceptable to CRRA, but shall, at a minimum, contain the date and time of the incident (if known) a description of the missing materials, supplies or equipment, or the damage caused, and the party(ies) responsible for such theft or damage.

### **ARTICLE 6 - PROCUREMENT**

#### **6.1 General**

NAES shall nominate from among the Site Personnel, and CRRA shall approve in writing, responsible individuals authorized to sign purchase orders for goods and services to be delivered to the Facility for the performance of the Services, and to issue such purchase orders to Third Party vendors. NAES shall obtain at least three bids from Third Party vendors to obtain the best possible value for CRRA for all goods and services provided to or for the Facility that cost \$5,000 or more. Subject to the provisions of

Section 6.2, NAES shall sign such purchase orders in the name of NAES. CRRA shall be provided notice of and have the option of reviewing and approving all procurement methodologies and proposed procurement documents used to obtain Third Party vendors. The effectiveness of any Subcontract shall be conditioned on CRRA's prior written approval thereof. Any Subcontract shall additionally: (1) require the Subcontractor and Capital Project Contractor to comply with Prudent Operating and Maintenance Practices; (2) include a provision making such Subcontract assignable to CRRA upon a request by CRRA; (3) require that CRRA receive a copy of each notice provided under such Subcontract; (4) contain provisions protective of CRRA's interests therein, as deemed reasonably sufficient by CRRA. Notwithstanding the preceding sentence, NAES agrees that all such purchase orders shall be for the exclusive benefit of CRRA and all such purchase orders shall be made assignable to CRRA. All Third Party vendors shall provide the required insurances before working at the Facility and such Third Party vendors shall name both NAES and CRRA as additional insureds on their general liability policies. All Certificates of Insurance and all renewals thereof, naming CRRA as an additional insured must be provided to CRRA before any Third Party vendor performs any work at the Facility. NAES shall consult with CRRA to determine if performance and/or payment bonds shall be required from a Third Party contractor. NAES shall negotiate with Third Party and Affiliate vendors based on the standard terms and conditions contained in the Administrative Procedures Manual, including reasonable warranties in favor of CRRA, and shall additionally pass through to CRRA any discounts or other favorable purchase terms received by NAES from Affiliates and Third Party vendors as the result of volume purchases or similar actions by NAES for the purpose of obtaining such favorable purchase terms. NAES shall only be responsible for diligent and professional management and oversight of all Third Party vendors with whom it contracts. Additional costs beyond the value of the purchase order incurred by Third Party vendors despite diligent oversight and management by NAES shall be passed through and paid by CRRA to the extent permitted by law, and NAES shall have no responsibility for the same.

## **6.2 Non-Budgeted Items**

Unless approved by CRRA in writing, NAES shall maintain purchasing within the total spending approved in a Budget and shall not exceed such Budget unless otherwise permitted under this Agreement. Without the prior written approval of CRRA, no purchase order shall be issued unless such purchase order is for goods and services covered by the Plan and included in the Budget then in effect. Notwithstanding the preceding sentence, NAES may make non-budgeted purchases without CRRA's prior written approval, if in NAES's reasonable judgment such purchases are required to address an Emergency. In all such cases, NAES shall provide written notice to CRRA of such purchases as soon as possible.

## **6.3 Extraordinary Items**

NAES shall obtain CRRA's written approval prior to NAES's procurement of any Extraordinary Item, whether or not such Extraordinary Item is included in a Budget. In lieu of granting such approval, CRRA may elect to directly procure any Extraordinary Item. The requirements of this Section 6.3 shall not apply to the procurement of any Extraordinary Item necessary to respond to an Emergency.

#### **6.4 Procurement from any Affiliate of NAES**

NAES shall disclose to CRRA its relationship to any Affiliate to which it intends to issue a purchase order hereunder. NAES may issue such purchase order following receipt of written approval from CRRA for the same. CRRA may decline to provide such approval, in which case NAES shall issue such purchase order to a vendor which is not an Affiliate. CRRA shall enjoy all preferred rates provided by Affiliates of NAES and Third Parties related to NAES.

#### **6.5 No Pass-Through of State of Connecticut Taxes to CRRA**

Pursuant to Conn. Gen. Stat. § 22a-270, CRRA is exempt from all State of Connecticut taxes. Therefore, NAES shall not charge, pass through to or otherwise seek payment of any such taxes from CRRA, with respect to goods or services obtained by NAES for the performance of the Services (including under any Subcontract), or the implementation of a Capital Project (including under any Capital Project Contract). NAES shall be provided with a State of Connecticut Department of Revenue CERT-131 issued by CRRA to assist NAES and NAES's Subcontractors in complying with this provision.

### **ARTICLE 7 - DISPATCH**

#### **7.1 Dispatch**

NAES shall comply with all dispatch instructions of the Public Utility or CRRA (or any other Person identified by CRRA 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 CRRA unless to do so would violate Applicable Law. NAES shall immediately inform CRRA as to any inability to make deliveries of power or capacity required under a Power Purchase Agreement ("PPA"), and shall also advise CRRA of NAES's plan to restore such deliveries. In case of any interruption, curtailment or reduction in acceptance of energy or capacity by any Person under a PPA, or in case of any other dispatch constraint imposed on NAES, NAES shall immediately notify CRRA. Upon removal of such constraint, NAES shall use best efforts to restore the availability of the Facility for dispatch.

### **ARTICLE 8 - OPERATIONS**

#### **8.1 No Liens**

NAES shall keep and maintain the Facility free and clear of all Liens resulting from either NAES's or any Subcontractor's performance of the Services or the failure to perform the Services, or NAES's or any Capital Project Contractor's performance or failure to perform under any Capital Project Contract.

#### **8.2 Personnel Matters**

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. Subject to this Agreement, NAES shall retain authority, control and responsibility with respect to all of its employees and its employment policies.

### **8.3 Representatives of NAES**

#### **8.3.1 Facility Manager**

Within five (5) Business Days after the WPF Transition Period Commencement Date, NAES shall propose for CRRA's approval, not to be unreasonably withheld, the identity of a Facility manager (the "Facility Manager") who shall coordinate with CRRA concerning NAES's performance of the Services, and who shall also oversee the Home Office Personnel's support of Site Personnel.

#### **8.3.2 Plant Manager**

At least 30 days prior to the WPF Commencement Date, NAES shall propose for CRRA's approval, not to be unreasonably withheld, a plant manager (the "Plant Manager") who shall direct and manage the Site Personnel in the performance of the O&M Services. For issues arising out of the day-to-day administration of the Facility, the Plant Manager shall communicate with the CRRA Facility General Manager appointed pursuant to Section 8.3.3. NAES shall inform CRRA prior to the replacement of the Plant Manager as to NAES's intent to do so, and NAES shall obtain CRRA's approval, not to be unreasonably withheld, before designating any replacement Plant Manager. The Plant Manager shall spend the majority of his work hours at the Facility, and NAES shall designate an individual or individuals to perform the duties of the Plant Manager when the Plant Manager is not present at the Facility, and shall provide CRRA with the names of those individuals, so as to ensure the presence at all times at the Facility of an individual able to perform the duties of the Plant Manager.

#### **8.3.3 Representative of CRRA – CRRA Facility General Manager**

CRRA shall appoint for the Facility (and shall notify NAES in the Notice to Proceed with WPF Transition Services as to the identity of) a CRRA general manager (the "CRRA Facility General Manager"), who shall coordinate with NAES concerning the administration of this Agreement. The CRRA Facility General Manager shall be an employee of CRRA. CRRA shall notify NAES in writing as to the appointment of any successor to the CRRA Facility General Manager.

### **8.4 CRRA Directions to NAES**

Subject to the requirements of this Agreement, NAES will perform the Services and its other obligations hereunder according to CRRA Facility General Manager's directions. The Parties agree that actions taken or not taken by NAES pursuant to CRRA Facility General Manager's directions comply with Prudent Operating and Maintenance Practices, and NAES shall incur no liability to CRRA for acting or refraining to act in accordance with CRRA Facility General Manager's directions, except in such cases where to do so would constitute manifest error.

## **8.5 NAES Not a Beneficiary Under the Facility Agreements**

The references herein to the Facility Agreements shall not make NAES a third-party beneficiary to the Facility Agreements or otherwise provide any benefits to NAES under the Facility Agreements.

## **8.6 Emergency Action**

In the event of any occurrence affecting the safety, health or protection of, or otherwise endangering any persons or property located at the Facility or the Site, or having a reasonable probability of resulting in any of the same (an "Emergency"), NAES shall take immediate action to prevent or mitigate any damage, injury or loss threatened by such Emergency, and shall as soon as possible notify the CRRA Facility General Manager and CRRA's Risk Manager verbally of such Emergency and of NAES's response thereto and in writing as soon as practical under the circumstances. To the extent NAES deems reasonable, NAES shall take such actions and expend such funds reasonably necessary to respond to any Emergency.

## **8.7 Weekly Operations Meeting**

Each Monday morning and each Friday morning, NAES's Plant Manager, or his designee, shall meet with CRRA's Facility General Manager, or his designee, to discuss the upcoming week's operation and maintenance activities and to review the past week's performance and activities respectively.

# **ARTICLE 9 - ITEMS TO BE FURNISHED BY CRRA**

## **9.1 General**

Upon a request by NAES, CRRA shall provide to NAES at CRRA's expense, the information and other items described in this Article 9. Such items shall be made available at the times and in the manner reasonably required for the timely and orderly performance of the Services or the implementation of any Capital Project.

## **9.2 Information**

In addition to any Facility Agreements and other documents provided pursuant to Section 2.1, CRRA shall promptly provide to NAES (i) a copy of each new Facility Agreement executed after the WPF Transition Period Commencement Date (including any replacement for an existing Facility Agreement), and (ii) any amendment or other modification of a previously-executed Facility Agreement. CRRA shall also provide NAES with written notice as to the early termination of any Facility Agreement. In addition, CRRA shall promptly provide to NAES copies of such other Facility technical, operational or other information as comes into CRRA's possession, which CRRA reasonably believes will assist NAES in its performance of the Services.

## **9.3 Access to Facility**

NAES shall have access to the Facility and the Site sufficient to perform the Services.

## **9.4 Other CRRA-Supplied Items**

CRRA shall provide the following items to NAES:

### **9.4.1 Utilities**

CRRA shall deliver to NAES water and stand-by electricity, subject to the availability of such items from the respective utilities. CRRA shall have no liability to NAES for any utility's failure to provide water or stand-by electricity.

### **9.4.2 Spare Parts and Supplies**

On and after the WPF Commencement Date, CRRA shall make available to NAES the inventory of spare parts and supplies existing as of that date. As part of the Initial Budget process pursuant to Section 10.1.1, NAES shall procure and CRRA shall fund any additional spare parts and supplies required by NAES to perform the O&M Services for the initial Operating Year. For each Operating Year after the initial Operating Year, NAES shall procure and CRRA shall fund all spare parts and supplies required by NAES to perform the O&M Services for each such Operating Year pursuant to Section 10.1.2.

### **9.4.3 Instructions, Approvals**

Upon request by NAES, CRRA shall provide or cause to be provided to NAES such instructions as can be reasonably provided, to assist NAES in the performance of the Services or the implementation of any Capital Project. CRRA shall timely provide the approvals necessary to perform the Services consistent with Applicable Law and this Agreement. CRRA shall not require NAES to take any action inconsistent with Applicable Law or this Agreement, or which could foreseeably (i) adversely affect the safety or health of any individual, or (ii) cause damage to property located at the Facility or on the Site.

## **9.5 Permits**

CRRA shall obtain and maintain from the appropriate Governmental Authorities all Permits necessary for the ownership, operation and maintenance of the Facility, other than any Permits required by Applicable Law to be in the name of NAES.

## **9.6 Disclaimer**

Except as provided in Section 9.7 below, CRRA has not made and is not now making, and specifically disclaims, any warranties, representations or guaranties of any kind or character, express or implied, oral or written, past, present or future, with respect to the Facility and the Site. CRRA shall not be liable or bound in any manner by any oral or written statements, representations, or information pertaining to the Facility furnished by CRRA, any agent, employee or other representative of CRRA or any other Person, unless set forth or referenced in this Agreement.

## 9.7 Full Knowledge of NAES

Except for the representation that the Facility is capable of being operated in accordance with Applicable Law and Permits, NAES is entering into this Agreement with the full knowledge of CRRA's disclaimer of representations and warranties and without reliance upon any representations or warranties as to the condition of the Facility and Site by CRRA, any agent, employee or other representative of CRRA, or any other Person. NAES has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of CRRA, any agent, employee or other representative of CRRA or any other Person. NAES, to the extent reasonably practicable, shall endeavor to discover, identify and disclose to CRRA any compliance issues with the Facility within 90 days of beginning Services except for those portions of the Facility that cannot be accessed without a cold iron outage. Any compliance issues with those portions of the Facility that cannot be accessed without a cold iron outage or which were not discovered within the initial 90 day period shall be reported to CRRA within two (2) business days of discovery.

## 9.8 Limitation on Use of CRRA Property

NAES shall only use CRRA's vehicles, equipment, or property for those activities authorized and approved by CRRA in writing. Upon completion or termination of this Agreement, NAES shall immediately return all of CRRA's property, vehicles, equipment, tools, parts, or any other CRRA property or items over to CRRA in the same condition said property or items was received by NAES, reasonable wear and tear excepted.

All NAES employees that use a CRRA vehicle on-road shall have their Department of Motor Vehicle annual driver's record subject to review by CRRA. CRRA, in its sole option, may prohibit any NAES employee from using a CRRA vehicle on-road.

## ARTICLE 10 - BUDGET AND PLAN; SUBCONTRACTS; CAPITAL PROJECTS

### 10.1 Budget and Plan

#### 10.1.1 O&M Services for the First Operating Year

CRRA shall prepare as part of its Facility budget adopted for its 2012 fiscal year (effective July 1<sup>st</sup>, 2011), a budget (the "Initial Budget") for the performance of the Services during such year. CRRA shall inform NAES with regard to the Initial Budget. NAES shall use all reasonable efforts to comply with the Initial Budget.

#### 10.1.2 O&M Services for Subsequent Operating Years; Proposed Budget and Proposed Plan

For each Operating Year after the first Operating Year, no later than November 1<sup>st</sup> prior to the beginning of each such Operating Year, CRRA and NAES shall meet to discuss the key assumptions for such Operating Year. The key assumptions shall include the anticipated quantity of Acceptable Solid Waste to



be processed by the Facility, the assumed inflation rate, total Operating Costs and Revenue, the assumed number and classification of Site Personnel, and any Capital Projects to be proposed by NAES. Based on those discussions, NAES shall prepare its proposed budget (a "Proposed Budget") and proposed plan (a "Proposed Plan") for O&M Services during the subject Operating Year. NAES shall structure the Proposed Budget on a Monthly basis and shall project, in detail reasonably acceptable to CRRA, all proposed Operating Costs to be expended in the performance of the O&M Services during the subject Operating Year, including any cost of Home Office Personnel and any reserve for unplanned work. The Proposed Plan shall contain NAES's proposal for the implementation of the subject O&M Services and Performance Goals including: (i) anticipated operations; (ii) routine maintenance, repairs and overhaul schedules (including planned major and minor outages); (iii) procurement; (iv) staffing and personnel activities (including any activities of Home Office Personnel in support of Site Personnel); (v) administrative activities; (vi) any Subcontracts; and (vii) any other activities deemed necessary by NAES. NAES shall deliver the Proposed Budget and Proposed Plan to CRRA no later than 210 Days prior to the beginning of the subject Operating Year. NAES shall also provide sufficient justification and support for any increase in the cost of labor and/or benefits/burden in its proposed budget for CRRA review and approval. CRRA shall also be promptly informed of any potential unionization of NAES's employees at the Facility and CRRA shall be kept apprised of all negotiations with any union and consulted before NAES enters any agreement with a union.

#### 10.1.3 Performance Goals

Each Operating Year during the budget process, CRRA and NAES shall establish performance goals ("Performance Goals") for the upcoming Operating Year. Such provisions and related calculations are contained in Schedule 14.3 – Incentive Based Compensation and Site Personnel Incentive Pay Pool Calculation. The Performance Goals established for each Operating Year shall be memorialized in a letter agreement between the Parties and made a part of the upcoming Operating Year's Budget.

#### 10.1.4 CRRA Adoption of Budget and Plan

CRRA shall review the Proposed Budget and Proposed Plan. After consultation with NAES and subject to Section 10.3 hereof, CRRA shall make or add such changes, additions, limits, deletions or other modifications to such Proposed Budget and Proposed Plan that CRRA deems necessary in its sole discretion. CRRA shall adopt a Budget and Plan (as so modified) for the subject Operating Year as part of its adoption of its overall Facility budget for CRRA's contiguous fiscal year. CRRA shall provide NAES with the budget ("Budget") and plan ("Plan") as so adopted, at least 90 Days prior to the subject Operating Year. Each Budget and Plan so adopted shall remain in effect throughout the subject Operating Year, unless modified as permitted hereunder.

## **10.2 Subcontracts**

### **10.2.1 Proposal of Subcontract**

NAES shall identify in each Proposed Budget and Proposed Plan the O&M Services to be performed by a Subcontractor during the subject Operating Year. Such proposal shall include a detailed description of the O&M Services which NAES is proposing for performance by a Subcontractor.

### **10.2.2 CRRA Review of Proposed Subcontract**

As part of its review of the Proposed Plan and Proposed Budget, CRRA shall evaluate the appropriateness of engaging a Subcontractor as proposed by NAES.

### **10.2.3 Disclosure of Relationship to Any Affiliate**

NAES shall disclose to CRRA its relationship to any Affiliate with which it proposes to execute a Subcontract. After its review of the proposed Subcontract pursuant to Section 6.1, CRRA may decline to approve the Subcontract, in which case NAES shall propose a replacement Subcontract with a Person that is not an Affiliate.

## **10.3 NAES-Proposed Capital Projects**

### **10.3.1 Proposal of Capital Project**

NAES shall submit with its Proposed Budget and Proposed Plan, any proposal for a Capital Project to be implemented by NAES, or by a Third Party (a "Capital Project Contractor") pursuant to a contract (a "Capital Project Contract") between NAES and the Capital Project Contractor. Such proposal shall include: (i) a detailed description of the proposed Capital Project; and (ii) the reason(s) for NAES's proposal of such Capital Project, including any benefits resulting from such Capital Project or any consequences if such Capital Project is not implemented.

### **10.3.2 Disclosure of Relationship to Any Affiliate**

NAES shall disclose to CRRA its relationship to any Affiliate with which it proposes to execute a NAES-proposed Capital Project. After its review of the proposed Subcontract pursuant to Section 6.1, CRRA may decline to approve the Subcontract, in which case NAES shall propose a replacement Subcontract with a Person that is not an Affiliate.

### **10.3.3 CRRA Review of Proposed Capital Projects**

CRRA shall review any NAES-proposed Capital Project simultaneous to its review of the Proposed Plan and Proposed Budget. After such review, CRRA may: (1) approve such Capital Project; (2) require the modification of such Capital Project as a condition of its approval of such Capital Project; or (3) reject such Capital Project. If CRRA rejects a NAES-proposed Capital Project, CRRA may decline to pursue such Capital Project or CRRA may itself put the

proposed Capital Project out to bid and award a separate contract between CRRA and a Third Party for the implementation of the subject Capital Project.

#### **10.4 CRRA-Proposed Capital Projects**

CRRA may determine at any time that it is necessary to implement a Capital Project. In such event, CRRA may direct NAES to: (1) prepare a proposal for the implementation of such Capital Project; or (2) put such Capital Project out to bid. If CRRA directs NAES to prepare a proposal for a Capital Project or to put such Capital Project out to bid, CRRA may elect any of its options available under Section 10.3.3 with respect to such Capital Project. Alternatively, CRRA may itself put such Capital Project out to bid and may award a contract between CRRA and a Third Party for the implementation of such Capital Project, without any obligation to first offer such Capital Project to NAES.

#### **10.5 CRRA Not Responsible for Certain Costs and Expenses**

CRRA shall not be responsible for and NAES shall not include in any invoice, bill or other request for reimbursement, or any Proposed Budget, any cost or expense incurred by NAES resulting from or related to: (i) any breach by NAES of this Agreement, including any costs to discharge a Lien for which NAES is responsible; (ii) any violation by NAES of Applicable Law, including any fine or other penalty imposed by any Governmental Authority as the result of NAES's failure to comply with any Permit requirement; or (iii) NAES's indemnification obligations pursuant to Article 18.

### **ARTICLE 11 - VARIANCES FROM BUDGET; QUARTERLY REVIEW OF PERFORMANCE UNDER PLAN AND BUDGET**

#### **11.1 Notification as to Variance from Budget or Plan**

If during any Operating Year either Party becomes aware that (i) the aggregate Operating Costs for such Operating Year have exceeded or shall likely exceed the applicable Budget amounts for such Operating Costs, (ii) the Facility is operating at a deviation from the projections contained in the applicable Plan, or (iii) any other unforeseen circumstances have arisen which may require an adjustment to a Budget or Plan, then that Party shall promptly notify the other Party. CRRA and NAES shall cooperate in good faith to identify potential reductions in Operating Costs or increases in Facility throughput of Acceptable Solid Waste or Revenues (or both). NAES shall use commercially reasonable efforts to implement any such actions mutually agreed upon by CRRA and NAES to address any scenario within the purview of this Section 11.1.

#### **11.2 Quarterly Review of NAES Performance**

CRRA and NAES shall meet at least quarterly at CRRA's Business Office to review NAES's compliance with the Budget and Plan, the performance of any Subcontractor under a Subcontract, and any related matters. NAES shall cooperate with CRRA with respect to such review and shall implement measures to correct any deficiencies identified by CRRA.

## ARTICLE 12 - NAES PROVISION OF INFORMATION

### 12.1 Facility Information; NAES Provision of Facility Information

NAES shall maintain information received from any Person, or recorded, prepared or otherwise generated by it that is necessary for the performance of the Services or the implementation of any Capital Project, or which is necessary for NAES or CRRA as applicable, to comply with Applicable Law, any Facility Agreement, or to conduct any other Facility business, including Facility planning (collectively, "Facility Information"). NAES shall provide CRRA with specified Facility Information within three (3) Business Days after a written request by CRRA for such Facility Information. Without limitation of the preceding sentence, NAES shall make all Facility Information available during regular business hours for CRRA's inspection, and CRRA shall be entitled to make copies of any such records. NAES agrees that all Facility Information is the property of CRRA, and further agrees to turn over all Facility Information to CRRA upon the expiration or termination of this Agreement.

### 12.2 Updates of NAES Documents

NAES shall promptly provide CRRA with copies of any amendments or any other changes to the O&M Manuals and the Administrative Procedures Manual.

### 12.3 Litigation and Permit Lapses

Upon the receipt of written notification as to any of the following relating to the Facility, the Site, the Services or any Capital Project, each Party shall provide verbal notice immediately and, within three Business Days provide written notice to the other Party of the same: (i) any litigation, action or other claim filed by or with any Governmental Authority; (ii) any refusal to grant, renew or extend (or any action filed with respect to the granting, renewal or extension of) any Permit; (iii) any notice of violation, fine or other penalty issued by any Governmental Authority; (iv) any other dispute with any Governmental Authority which could reasonably be expected to affect the operation or maintenance of the Facility or the Site; or (v) any litigation, action or other claim filed by any Third Party other than a Governmental Authority which could reasonably be expected to affect the operation or maintenance of the Facility or the Site. In addition to its obligation to the other Party after the receipt of written notification as to the matters identified in clauses (i), (ii), (iii), (iv) or (v), each Party shall provide verbal notice immediately and, within three Business Days also provide written notice to the other Party as to the receipt of any oral or written communications concerning such matters, which the receiving Party reasonably believes may affect the Facility, the Site, the Services or any Capital Project.

### 12.4 Reports; CMMS

NAES shall provide CRRA with a daily, monthly and annual report (a "Daily Report," "Monthly Report," or "Annual Report," as applicable; collectively "Reports") containing such operating parameters, including steam flows and gross electric output ("Operating Parameters"), as CRRA deems necessary to evaluate and monitor Facility performance on an ongoing basis. NAES shall input and maintain the Operating Parameters in a shared

database accessible by, and acceptable to CRRA, and shall provide the Reports in both electronic and hard copy formats acceptable to CRRA. In addition, NAES shall implement and maintain a Computerized Maintenance Management System ("CMMS") for the Facility in a format acceptable to CRRA, which collects and stores information in a convertible format. The CMMS shall be accessible at all times by the CRRA Facility General Manager and other key CRRA Personnel as are designated by CRRA from time to time.

### **12.5 Monthly Deviation Report**

On or before the tenth day of each Month, NAES shall provide CRRA with a monthly report (a "Monthly Deviation Report") in a form acceptable to CRRA, as to any deviations in (i) Operating Costs from the applicable Budget amounts, and (ii) projections from the applicable Plan, for the preceding Month.

### **12.6 Special Reports**

NAES shall provide to CRRA such special reports of unusual or significant unplanned operating events as soon as reasonably possible.

## **ARTICLE 13 - LIMITATIONS ON NAES AUTHORITY**

### **13.1 Limitation on NAES Authority over Budget and Plan**

CRRA retains ultimate authority over all expenses incurred with respect to the Facility or the Site, including all expenses incurred in the performance of the Services or the implementation of any Capital Project. Accordingly, NAES shall accept each Budget and Plan as approved by CRRA, and shall additionally implement any Capital Project or perform any Capital Project Contract in the manner approved by CRRA. To the extent that CRRA does not approve, or otherwise limits funds for specific Operating Costs, NAES shall be relieved from the obligation to perform only the specific Services which would have incurred such Operating Costs. NAES may at any time deliver a written report to CRRA containing NAES's reasons for believing that any disallowed Operating Cost is prudent; however, CRRA shall incur no obligation as the result of its acceptance of any such report.

### **13.2 General Limitation on NAES Authority**

NAES has no authority to make policies or decisions with respect to the overall operation of the Facility as an ongoing enterprise, and agrees that CRRA shall determine all such matters. Therefore, no provision in this Agreement shall be deemed to permit, and NAES shall take no action to do any of the following, unless specifically authorized and directed to do so by CRRA:

#### **13.2.1 Dispose of Assets**

Sell, lease, pledge, mortgage, encumber, convey, or make any license, exchange or other transfer or disposition of the Facility, the Site or any other property or assets of CRRA, including any property or assets purchased by NAES of which the cost is an Operating Cost or a cost related to a Capital Project.

### 13.2.2 Make Expenditures

Make any expenditure or acquire on an Operating Cost basis any goods or services from Third Parties, except in conformity with a Budget or as otherwise authorized by CRRA; provided, however, that in the event of an actual or threatened Emergency, NAES, without approval from CRRA, may make such reasonable expenditures as are necessary to prevent or mitigate such Emergency.

### 13.2.3 Take Other Actions

Take or agree to take any other action or actions that individually or in the aggregate, materially varies from the applicable Budget and Plan; provided, however, that in the event of an actual or threatened Emergency, NAES, without approval from CRRA, may take all reasonable actions to prevent or mitigate such Emergency.

### 13.2.4 Act Regarding Lawsuits and Settlements

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

### 13.2.5 Pursue Transactions

Engage in any transaction on behalf of CRRA not authorized by this Agreement.

## ARTICLE 14 - COMPENSATION; PAYMENT

### 14.1 **NAES Article 2 Compensation – Transition Services**

NAES Article 2 Compensation for Transition Services is contained in Schedule 14.1 attached hereto and is incorporated into this Agreement.

### 14.2 **NAES Article 3 Compensation – O&M Services**

NAES Article 3 Compensation for O&M Services is contained in Schedule 14.2 attached hereto and is incorporated into this Agreement.

### 14.3 **NAES Incentive Based Compensation and Site Personnel Incentive Pay Pool Calculation**

NAES Incentive Based Compensation and Site Personnel Incentive Pay Pool Calculation are contained in Schedule 14.3 attached hereto and are incorporated into this Agreement.

### 14.4 **Operating Account**

Operating Account provisions are contained in Schedule 14:4 attached hereto and are incorporated into this Agreement.

## ARTICLE 15 - EVENTS OF DEFAULT; REMEDIES

### 15.1 NAES Events of Default

Each of the following events shall constitute an “NAES Event of Default”:

- (a) Any representation or warranty made by NAES herein, or in any certificate or other document executed and delivered by NAES on or after the Effective Date in connection herewith, is untrue in any material respect on the Effective Date or on or after the WPF O&M Transition Services Commencement Date, as applicable;
- (b) NAES (i) fails to obtain or maintain as applicable any Permit required by Applicable Law to be held in the name of NAES; or (ii) otherwise fails to comply with any order, injunction, decree, directive, interpretation or pronouncement of or by any Governmental Authority (including the failure to timely pay any fine or other monetary penalty), and such failure continues for thirty (30) Days after written notice of the same from CRRA; provided that any such failure by NAES which (i) is the subject of a good-faith appeal or other such adjudication by NAES (until such time as all such adjudications have been finely resolved), or (ii) has no material impact on CRRA, NAES, the Facility, the Site or NAES’s ability to perform the Services, shall not be a NAES Event of Default.
- (c) NAES becomes Bankrupt;
- (d) A Lien has been made against all or any part of the Facility or the Site (or any interest in either) as the result of any encumbrance created, incurred, assumed or suffered to exist by NAES or any Person claiming through it, and such Lien has not been vacated, removed or stayed by court order, bonding or otherwise within thirty (30) days after written notice from CRRA as to the existence of such Lien;
- (e) NAES is in default of any obligation, including a payment obligation to a Third Party, and such default impairs or has a reasonable probability of impairing NAES’s ability to perform the Services; and such failure continues for thirty (30) Days after written notice of the same from CRRA;
- (f) NAES persistently or repeatedly materially fails to perform any of the Services in the manner required by this Agreement, including any failure to perform O&M Services in a manner consistent with Prudent Operating and Maintenance Practice, having earlier been notified under Section 15.2 of such failure or a similar failure;
- (g) NAES fails to conform any Subcontract or Capital Project Contract to any CRRA requirement concerning the same; and such failure continues for thirty (30) Days after written notice of the same from CRRA;

- (h) NAES is in breach of any CRRA-approved Subcontract or Capital Project Contract, and such breach continues for thirty (30) days after written notice from CRRA as to such breach; or
- (i) NAES otherwise materially fails to perform or observe any obligation, covenant or condition required under this Agreement, and such failure continues for thirty (30) days after written notice from CRRA as to the same.

## **15.2 CRRA Notice as to NAES Event of Default; Cure Period as to Certain NAES Events of Default**

CRRA shall provide written notice to NAES of any NAES Event of Default. For any NAES Event of Default under Section 15.1(b), 15.1(d), 15.1(e), 15.1(g); 15.1(h) or 15(i) for which a cure period (the “NAES Cure Period”) is provided, if the subject NAES Event of Default is not reasonably susceptible to cure within NAES Cure Period, and provided that NAES has taken appropriate steps to cure such NAES Event of Default (and shall in fact cure such NAES Event of Default within a reasonable time), then NAES shall have satisfied the requirements for the cure of such NAES Event of Default, as CRRA shall determine within reasonable commercial discretion.

## **15.3 CRRA Remedies After Uncured NAES Event of Default**

Upon the occurrence of any one or more NAES Event(s) of Default and NAES’s failure to cure, as applicable, any NAES Event(s) of Default for which a NAES Cure Period or any longer period is permitted pursuant to Section 15.2, then CRRA may exercise any one or all of the following remedies, either cumulatively, successively or alternatively:

### **15.3.1 Termination of this Agreement**

CRRA may upon written notice to NAES (the “CRRA Termination Notice”), terminate this Agreement; such termination to be effective on the Termination Date specified in such notice, which Termination Date shall be no less than six Months and no greater than eighteen Months after the date of the CRRA Termination Notice.

### **15.3.2 Payment**

If any NAES Event of Default is by reason of the failure to pay any monies (including to any third Party), CRRA, without obligation to do so or the obligation to pay additional monies after a partial payment, may make partial or full payment on behalf of NAES of such monies, and all amounts so paid by CRRA shall be due from NAES within three (3) Business Days after a CRRA demand therefore. No CRRA payment pursuant to this Section 15.3.2 shall affect CRRA’s rights against NAES by reason of NAES Event of Default necessitating such payment.

### **15.3.3 CRRA Cure**

CRRA may cure, without obligation to so cure (or after having commenced or attempted to so cure, without obligation to continue such action), any NAES



Event of Default; provided that (A) CRRA shall not incur any liability to NAES for any CRRA act or omission during the course of curing or attempting to cure any NAES Event of Default, and (B) CRRA's cure of any NAES Event of Default shall not affect CRRA's rights against NAES by reason of such NAES Event of Default.

#### 15.3.4 Other Remedies

CRRA may pursue such other legal or equitable remedies and exercise such other rights or powers available to CRRA in its sole and absolute discretion, including self-help.

### 15.4 **CRRA Events of Default**

Each of the following events shall constitute a "CRRA Event of Default":

- (a) Any material representation or warranty made by CRRA herein, or in any certificate or other document executed and delivered by CRRA on the Effective Date in connection herewith, is untrue in any material respect on the Effective Date or on the WPF Transition Period Commencement Date, as applicable;
- (b) CRRA shall (i) fail to obtain or maintain as applicable any Permit required by Applicable Law; or (ii) otherwise fail to comply with any order, injunction, decree, directive, interpretation or pronouncement of or by any Governmental Authority (including the failure to timely pay any fine or other monetary penalty); provided that any such failure by CRRA which (i) is the subject of a good-faith appeal or other such adjudication by CRRA (until such time as all such adjudications have been finely resolved), or (ii) has no material impact on CRRA, NAES, the Facility, the Site or NAES's ability to perform the Services, shall not be a CRRA Event of Default;
- (c) CRRA shall fail to make any payment due and payable to NAES (other than a disputed payment); or
- (d) CRRA shall otherwise materially fail to perform or observe any material obligation, covenant or condition required pursuant to this Agreement.

### 15.5 **NAES Notice as to CRRA Event of Default; Cure Period**

NAES shall provide written notice to CRRA of any CRRA Event of Default. CRRA shall have thirty days from the date of receipt of such notice (the "CRRA Cure Period") to cure such CRRA Event of Default, provided that (i) if the subject CRRA Event of Default is not reasonably susceptible to cure within the CRRA Cure Period, and (ii) CRRA has taken appropriate steps to cure such CRRA Event of Default (and shall in fact cure such CRRA Event of Default within a reasonable time), then CRRA shall have satisfied the requirements for cure of such CRRA Event of Default.

## **15.6 NAES Remedies After Uncured CRRA Event of Default**

Upon the occurrence of any one or more CRRA Event(s) of Default and CRRA's failure to cure such CRRA Event(s) of Default within the CRRA Cure Period or any additional period permitted pursuant to Section 15.5 hereof, then NAES may upon written notice to CRRA (the "NAES Termination Notice"), terminate this Agreement, effective on the date specified in such notice, which Termination Date shall be no less than six Months and no greater than eighteen Months after the date of NAES Termination Notice, provided however that NAES may terminate this Agreement immediately after the applicable cure period in the event of a CRRA Event of Default for an undisputed payment under Section 15.4(c); provided further that NAES may suspend services immediately if CRRA's direct actions or omissions render NAES unable to operate the Facility in accordance with the Permits or Applicable Law.

## **15.7 Termination Payment**

Within thirty (30) days after the Termination Date, CRRA shall pay NAES all undisputed amounts due and payable for O&M Services properly performed by NAES up to and including the Termination Date. Collectively and net of any amounts due to CRRA, all amounts due to NAES after the termination of this Agreement are the "Termination Payment." NAES shall not receive and CRRA shall make no payment for anticipated or actual lost profits by NAES resulting from the termination of this Agreement.

## **15.8 Obligations of NAES Upon Notice of Termination**

After either its receipt of a CRRA Termination Notice or its transmittal of a NAES Termination Notice, NAES: (i) shall not begin work on any non-commenced Capital Project; (ii) shall complete prior to the Termination Date any Capital Project begun prior to the receipt or transmittal of such notice or, if any such Capital Project cannot be completed prior to the Termination Date, NAES shall deliver or cause any Capital Project Contractor to deliver such Capital Project to CRRA on the Termination Date in a condition such that the Capital Project shall not deteriorate until CRRA or a New Contractor has the opportunity to complete such Capital Project; (iii) shall cease the performance of the Services, other than those Services necessary for the continued operation of the Facility and the Site, and to keep the Facility and the Site in good working order and condition; (iv) shall perform any actions requested by CRRA pursuant to Section 16.4; and (v) generally conduct its operations at the Facility and the Site such that CRRA or a New Contractor may commence the performance of the Services on the Termination Date without disruption.

## **15.9 Limitation on Remedies**

The remedies under this Agreement for: (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 for items (i) – (iv) herein that either Party may have against the other under law.

## **ARTICLE 16 - EXPIRATION OR TERMINATION; TRANSITION**

### **16.1 Survival of Certain Provisions**

Upon the expiration or earlier termination of this Agreement, all rights and obligations shall be null and void so that neither Party shall have any further rights or obligations to the other Party; provided, however, that the following provisions shall survive the expiration or earlier termination of this Agreement: (a) any and all indemnity and payment, and Remediation obligations of NAES or CRRA arising hereunder and under Applicable Law together with applicable limitations of liability, (b) CRRA's remedies following a NAES Event of Default and NAES's remedies following a CRRA Event of Default, (c) the provisions of this Article 16; and (d) any other provision hereof which expressly survives the expiration or earlier termination of this Agreement.

### **16.2 Transfer of Custody**

Upon the expiration or termination of this Agreement, NAES shall vacate the Facility and the Site, and shall turn over to CRRA all Facility documents and records (including the O&M Manuals, the Administrative Procedures Manual, all other manuals prepared for the Facility and the information described in Section 12.4), tools, supplies, spare parts and other materials, safety equipment, and any other items paid for by CRRA as Operating Costs; all of which shall remain the property of CRRA without additional compensation to NAES. In addition, on request of CRRA, NAES shall execute all documents and take all other reasonable steps necessary to assign to and vest in CRRA all rights, benefits, interests and title in connection with any Site Personnel collective bargaining agreement, Subcontract or any Capital Project Contract. CRRA shall accept assignment from NAES of any Third Party vendor agreement (excluding any Site Personnel collective bargaining agreement) that is not terminable at the Termination Date. If CRRA does not accept such assignment, it shall pay to NAES all cancellation or other costs associated with the early termination of such Third Party vendor agreement. To the extent permitted by Applicable Law, CRRA shall only assume liability arising under any such Subcontract or Capital Project Contract, for events for which it is responsible and occurring after the assumption by CRRA of such employment agreement, Subcontract or Capital Project Contract.

### **16.3 Certain Obligations Concerning Site Personnel and Home Office Personnel**

NAES shall be solely responsible for complying with all Applicable Law relating to the cessation of its operations at the Facility and the Site with respect to Site Personnel and Home Office Personnel, and (as between CRRA and NAES) with respect to the employees of any Subcontractor or Capital Project Contractor. Without limiting the generality of the preceding sentence, NAES shall timely provide all required notices and other information required under Applicable Law to Site Personnel and Home Office Personnel. Additionally, NAES shall be solely responsible for salary, severance, health benefits, pension benefits, workers compensation, fines, penalties and all other monies due and owed as the result of NAES's compliance or non-compliance with such Applicable Law.

## **16.4 Transition**

In connection with the transition from NAES to a new Person or Persons (individually or collectively a "New Contractor"), NAES, after its receipt or transmittal of any termination notice pursuant to Section 15.3.1, and continuing for a period of one year following the expiration or termination of this Agreement, shall reasonably cooperate with CRRA and any New Contractor to ensure an orderly transition to the performance of the Services by the New Contractor. CRRA shall reimburse NAES for all reasonable expenses incurred by NAES with respect to such cooperation. Such cooperation shall include as applicable:

- (a) The provision of access to the Facility and the Site to a New Contractor at reasonable times upon reasonable prior notice;
- (b) The cataloguing with CRRA of all tools, supplies, spare parts and other materials, safety equipment and other materials related to the subject matter hereof and located at the Facility or the Site. With respect to any materials located at the Facility or the Site owned by NAES (as agreed to by CRRA), if NAES does not remove any such materials within ten days after the expiration or termination of this Agreement, such materials shall be deemed abandoned by NAES and may either be retained by CRRA as its property without the execution of any further instrument or the payment of any consideration therefore, or may be disposed of by CRRA without recourse to CRRA; and
- (c) The furnishing to CRRA upon written request of a list of all Site Personnel, together with information including their job titles, job descriptions, length of employment at the Facility or the Site, and level of salary and benefits. NAES shall permit CRRA or a New Contractor to hire those Site Personnel whom the CRRA or New Contractor desires to retain. To facilitate employee transfer, NAES shall permit CRRA and the New Contractor to interview Site Personnel without obligation to hire the same, in a manner and at times that do not interfere with NAES's responsibility to perform the Services.

## **16.5 NAES Failure to Cooperate**

If NAES fails to cooperate with CRRA or a New Contractor as required pursuant to Section 16.4 hereof, CRRA shall so notify NAES in writing, which notice shall include CRRA's basis to claim such failure to cooperate. If NAES fails to cure such non-compliance within ten days following receipt of such notice, then NAES shall pay to CRRA upon demand, all of CRRA's costs and expenses arising from such failure.

## **ARTICLE 17 - INSURANCE**

### **17.1 NAES Insurance**

At all times during the Term, NAES shall procure and maintain for the benefit of CRRA and NAES, insurance against claims for injuries to persons or damages to property which

may arise from or in connection with the Services hereunder performed by NAES and its agents, employees, and any Subcontractor or Capital Project Contractor.

## **17.2 Minimum Scope of Insurance**

Coverage shall be at least as broad as:

- (a) Commercial General Liability written on an Occurrence policy form.
- (b) Automobile Liability insurance Combined Single Limit.
- (c) Workers' Compensation insurance as required by the State of Connecticut.
- (d) Employers' Liability insurance.
- (e) Excess Liability insurance.
- (f) Pollution Liability insurance.

## **17.3 Minimum Limits of Insurance**

NAES shall maintain limits no less than the following:

- (a) General Liability:
  - \$1,000,000 Each Occurrence
  - \$2,000,000 General Aggregate Per Location
  - \$2,000,000 Products-Completed Operations Aggregate
  - \$1,000,000 Personal and Advertising Injury
- (b) Automobile Liability:
  - \$1,000,000 per accident for bodily injury and property damage. Include Owned, Hired, and Non-Owned Auto Liability.
- (c) Workers' Compensation:
  - Statutory Limits.
- (d) Employers' Liability:
  - \$1,000,000 Each Accident
  - \$1,000,000 Disease-Policy Limit
  - \$1,000,000 Disease-Each Employee
- (e) Excess:
  - \$35,000,000 Claims-made excess policy in excess of the General Liability, Automobile Liability, and Employers Liability policies, with coverage at least as broad as provided in such underlying policies. In addition, such policy shall not exclude liability to third parties to this Agreement for gradual or abrupt and accidental pollution exposure.

(f) **Pollution Liability:**

\$1,000,000 Each Occurrence covering NAES' operations at the Facility and the Site. Coverage form shall provide that it responds to any releases caused by NAES' daily operations and any exacerbation of existing conditions at the Site by NAES. Policy shall be specific to the Facility and the Site and deductible shall be no greater than \$250,000 per claim.

**17.4 Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by CRRA.

**17.5 Other Insurance Provisions**

All of NAES's policies shall contain or be endorsed to contain the following provisions:

- (a) NAES shall cause its insurers to waive any rights of subrogation against CRRA, together with its officers, directors, employees, representatives, agents, successors and assigns, and 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). For the avoidance of doubt, the Parties intend that CRRA shall have the maximum protection available to that Party from the insurance policies owned by NAES. CRRA shall be included as additional insured on all liability insurance, including General Liability, Excess Liability, Automobile Liability and Pollution Liability. The General Liability Additional Insured endorsement must include "on-going operations" and "completed operations" coverage for the additional insured. NAES shall provide CRRA with a copy of the applicable Certificate of Insurance confirming CRRA's status as an Additional Insured on an annual basis such that CRRA at all times has written confirmation of the insurance provided and in-place.
- (b) Coverage shall not be cancelled, materially changed, or non-renewed without at least 30 days prior written notice to CRRA. To the extent possible such notice shall be provided by NAES's Insurer. If not, NAES shall directly assume this notification responsibility.
- (c) All insurance must apply to the subject matter of this Agreement only and be primary, and no contributions shall be permitted from any insurance or self-insurance of CRRA.
- (d) NAES waives, and shall require its insurers to waive by endorsement, all subrogation rights against CRRA and its directors, employees, representatives, agents, successors and assigns, for losses and damages incurred under insurance policies required by any Subcontract or Capital Project Contract.
- (e) CRRA shall not, because of accepting, rejecting, approving, or receiving any certificate of insurance required hereunder, incur any liability for (i) the

existence, non-existence, form or legal sufficiency of the insurance described on such certificate, (ii) the solvency of any insurer, or (iii) the payment of losses.

#### **17.6 Acceptability of Insurance**

NAES's insurance companies shall be rated A-VII or better by A.M. Best. Insurance carriers shall be lawfully authorized to do business in the jurisdiction where the Services are being performed, unless otherwise approved by CRRA.

#### **17.7 Verification of Coverage**

No Services shall be performed by or for NAES until a certificate of insurance is submitted to CRRA that complies with all requirements of this Article 17, and CRRA has approved such certificate in writing.

#### **17.8 Subcontractors; Capital Project Contractors**

NAES shall include any Subcontractor or Capital Project Contractor as an insured under NAES's policies or shall furnish separate certificates and endorsements for each Subcontractor or Capital Project Contractor. CRRA shall be provided notice of and have the option of reviewing and approving all proposed insurance coverages for Subcontractors and Capital Project Contractors.

#### **17.9 CRRA Insurance**

CRRA shall provide and maintain reasonable and customary property insurance covering the Facility. CRRA shall waive and shall require its insurers to waive all subrogation rights against NAES and its directors, employees, representatives, agents, successors, assigns, and subcontractors for losses and damages incurred and paid under such policies.

### **ARTICLE 18 - INDEMNIFICATION**

#### **18.1 Indemnification by NAES**

NAES at its sole cost and expense shall indemnify, defend and hold harmless CRRA and its directors, officers, employees, servants, representatives, agents, successors and assigns (collectively, the "CRRA Indemnified Parties") from and against any and all liabilities, penalties, fines, violations, sanctions, damages, losses, settlements, orders, decrees, liens, debts, charges, executions, interest, personal injuries, costs and expenses, including attorneys' and other professionals' fees and court costs (collectively, "Costs") arising directly or indirectly in connection with any and all Third Party (including employees of NAES and CRRA) suits, claims, actions and causes of action, fees, damages, administrative proceedings, losses, obligations, penalties, assertions, judgments, inquiries, demands, investigations and proceedings pending or threatened, whether mature, unmaturing, contingent, known or unknown, at law or in equity, in any forum (collectively, "Claims") arising directly or indirectly from: (i) any misrepresentation or breach of any representation or warranty herein by NAES; (ii) acts of negligent commission or omission by NAES with respect to the performance of its obligations hereunder; (iii) any other breach of this Agreement by NAES; (iv) any act of negligent

commission or omission by NAES with respect to oversight and management of any Subcontractor or Capital Project Contractor; and (v) any Environmental Condition caused by NAES, or NAES's negligent oversight and management of any Subcontractor or any Capital Project Contractor. Without limitation of the preceding sentence, NAES shall not be required to indemnify, defend and hold harmless any CRRA Indemnified Party for any Costs or Claim due to the proven willful misconduct or negligence of any CRRA Indemnified Party, and the CRRA Indemnified Party whose willful misconduct or negligence is adjudged to have caused such Costs or Claim will reimburse NAES for its expenses in defending any Claim as required above. NAES shall use counsel reasonably acceptable to CRRA in performing its obligations under this Article 18. NAES's obligations to indemnify, defend and hold harmless the CRRA Indemnified Parties against any Claim, includes any Claim arising from any breach by NAES of any confidentiality obligations with respect to any part of or all of the RFP, or any claimed infringement by NAES of any Person's intellectual property rights or other proprietary rights. Notwithstanding the requirements of this Article 18, but subject to Section 5.6 hereof, NAES's obligations under this Article 18 shall not extend to any liability for Costs or other Claims related to any Pre-Existing Contamination existing on or prior to the WPF Commencement Date or the PBF/EGF Commencement Date, as applicable, or allocated in whole or in part by any Governmental Authority to periods prior to either of those date(s), as applicable. The requirements of this Section 18.1 are for the protection of the CRRA Indemnified Parties only and shall not establish, of themselves, any liability to any Third Party.

## **18.2 Indemnification by CRRA**

To the extent it is allowed to do so by law and subject to the limitation of liability in Section 18.7, CRRA shall indemnify and hold harmless NAES and its 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 claims, damages, judgments, losses, obligations, liabilities, actions and causes of action, fees (including reasonable attorney's fees and disbursements), costs (including court costs) expenses penalties, fines and sanctions 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 proven to be caused by CRRA's negligence, willful misconduct or willful violation of any Applicable Law or willful breach of any material representation, warranty or covenant in this Agreement. Without limitation of the preceding sentence, CRRA shall not be required to indemnify, defend and hold harmless any NAES Indemnitees for any Costs or Claim due to Willful Misconduct or negligence of any NAES Indemnitees, and the NAES Indemnitees whose Willful Misconduct or negligence is adjudged to have caused such Costs or Claim will reimburse CRRA for its expenses in defending any Claim as required above.

## **18.3 Property Damage**

In the event of a claim under a CRRA insurance policy for damage to the Facility that is attributable to NAES's negligence, NAES shall be liable for the payment of any deductible; provided that the claim exceeds the deductible amount for that policy and provided further that NAES's liability herein shall be limited to twice the annual fixed fee



as this fee is determined in Schedule 14.2. Without limitation of NAES's indemnification obligations pursuant to Section 18.1 hereof, NAES shall indemnify and reimburse CRRA for any and all damage to real or personal property of CRRA caused by Grossly Negligent acts of commission or omission by NAES, Recklessness, Willful Misconduct, willful violation of any Applicable Law or NAES's Grossly Negligent oversight and management of any Subcontractor or any Capital Project Contractor. CRRA shall give prompt notice to NAES of any damage resulting from such acts requiring such reimbursement.

#### **18.4 Attorney's fees**

No CRRA Indemnified Parties shall be responsible for any cost for which NAES is responsible under sections 18.1 and 18.3. CRRA shall be entitled to collect from NAES all attorney's fees and costs incurred to enforce any of NAES's indemnification obligations under this Agreement.

#### **18.5 Survival**

The indemnities contained in this Article 18 shall survive the transactions contemplated hereby and the expiration or earlier termination of this Agreement and shall not be affected in any way by the presence or absence of insurance, or by the failure or refusal by any insurance carrier to perform any obligation on its part to be performed under any insurance policies maintained by NAES pursuant to Article 17 hereof.

#### **18.6 Governmental Actions**

During the Term of this Agreement NAES shall cooperate and assist CRRA with CRRA's acquisition of data and other information for the preparation and filing with appropriate Governmental Authorities of any notice, plan, submission, or other document necessary for compliance with applicable Environmental Laws and the requirements of any Permit. All such documents shall be submitted by and in the name of CRRA and not NAES, unless otherwise required by Applicable Law. All costs associated therewith, including the costs of any outside consultants, legal fees, fees to Governmental Authorities, sampling and Remedial work shall be paid by CRRA or reimbursed to NAES as an Operating Cost, unless such costs are subject to NAES's indemnity obligations pursuant to Section 18.1. Any action by NAES pursuant to any Environmental Law (including any proceeding and filings made in connection therewith) or the payment by NAES of any costs thereof, shall only be made with CRRA's prior written consent, unless a Governmental Authority or Applicable Law requires NAES to take such action or incur such costs prior to obtaining such consent. Nothing in this Section 18.6 shall require NAES to take any Remedial action unless NAES is affirmatively and expressly directed in writing to so do by CRRA, or as ordered by a Governmental Authority as permitted by this Section 18.6, in order to comply with any Environmental Law or as necessary to respond to any Emergency.

#### **18.7 Limitation of Liability**

Excluding NAES's liability for payment of amounts for which NAES is liable pursuant to Section 18.1 for injury to or death of Third Parties (including employees of NAES and

CRRA) and damage to property of Third Parties, and any damages or liability arising from NAES's Gross Negligence (including NAES's Grossly Negligent oversight and management of any Subcontractor or any Capital Project Contractor), Recklessness or Willful Misconduct, NAES's total liability to CRRA on all claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from this Agreement or from the performance or breach thereof, or from any Services covered by or furnished during the term of this Agreement, shall in no case exceed during any Operating Year, twice the annual fixed fee as this fee is determined in Schedule 14.2, plus all insurance proceeds received or receivable with respect to the relevant loss or damages.

Notwithstanding anything to the contrary contained in this Agreement, but excluding CRRA's payment obligations under Article 14 for undisputed amounts due and payable for O&M Services properly performed by NAES and CRRA's liability for payments in connection with injury or death to third parties or loss of or damage to property of third parties under section 18.2, CRRA's total liability to NAES on all claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from this Agreement or from the performance or breach thereof, or from any Services covered by or furnished during the term of this Agreement, shall in no case exceed during any Operating Year, the total of twice NAES's annual fixed fee as this fee is determined in Schedule 14.2, plus all insurance proceeds received or receivable with respect to the relevant loss or damages.

In no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, shall either Party (or its members, employees, directors) be liable to the other for loss of profit or revenues, loss of use of the Facility or any associated equipment, cost of capital, or replacement power, cost of substitute equipment, facilities or services, downtime costs, claims of customers for such damages, or for any special, consequential, incidental, indirect or exemplary damages.

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.

## **ARTICLE 19 - REPRESENTATIONS AND WARRANTIES**

### **19.1 Certain Representations and Warranties of NAES**

NAES hereby represents and warrants to CRRA that as of the Effective Date:

- (a) NAES is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington. NAES is qualified to do business in the State of Connecticut. NAES's Connecticut taxpayer identification number is 37382751-001.

- (b) The execution and delivery of this Agreement by NAES and its performance hereunder (i) has been duly authorized by all requisite action, (ii) will not require any approval by any Governmental Authority and (iii) will not violate any provision of Applicable Law or any indenture, agreement or other instrument to which NAES is a party or by which NAES is bound, or be in conflict with, result in a breach of, or constitute a default thereunder or a Lien on any property of NAES.
- (c) This Agreement constitutes the legal, valid and binding obligation of NAES and is enforceable against NAES in accordance with its terms.
- (d) All documents, information and materials provided to CRRA by or on behalf of NAES (including the RFP Response) were on the date provided, true and correct in all material respects.
- (e) There is no action, suit or proceeding involving NAES, or no existing events or circumstances that could, individually or collectively, reasonably be expected to materially adversely affect NAES's businesses, operations, assets, properties, or financial stability, or the ability of NAES to perform fully its obligations under and as contemplated by this Agreement.
- (f) There is no claim, action, suit, arbitration, mediation or proceeding at law or in equity, or before or by any Governmental Authority that is pending against NAES that could reasonably be expected to have a material adverse effect (i) on the transactions contemplated by this Agreement; (ii) the validity or enforceability of this Agreement; or (iii) NAES's ability to perform fully the Services.
- (g) This Agreement has been entered into by NAES without fraud or collusion by NAES.
- (h) This Agreement has been entered into by NAES following its own independent investigation, examination and due diligence with respect to the subject matter hereof without any representation or warranty (whether express or implied, in fact or in law) by or on behalf of CRRA except as otherwise specifically provided herein.
- (i) NAES has filed all federal, state and local tax returns which it is required to file, if any. NAES has paid or caused to be paid to the respective taxing authorities all taxes as shown on such returns or on any assessments received by it to the extent that such taxes have become due, or has filed a sales tax security bond with respect to same. NAES knows of no proposed material tax assessment against NAES, and NAES is not obligated by any other agreement, tax treaty, instrument or otherwise to contribute to the payment of taxes owed by any other Person. All material tax liabilities are adequately provided for or reserved against, on the books of NAES.
- (j) NAES has (i) paid all applicable workers' compensation and second injury fund assessments concerning all previous work done by NAES in the State of

Connecticut, if any; (ii) paid all applicable unemployment compensation contributions concerning all previous work done in the State of Connecticut, if any; and (iii) has not been cited for non-compliance with or violations of the Occupational Health and Safety Administration regulations.

- (k) NAES has substantial expertise and experience in the operation and maintenance of power generation facilities and it is fully qualified to operate and maintain the Facility and the Site in accordance with the terms of this Agreement.

## **19.2 Certain Representations and Warranties of CRRA**

CRRA hereby represents and warrants to NAES that as of the Effective Date:

- (a) CRRA has the full power and authority to execute and deliver this Agreement, and perform any and all of its obligations hereunder.
- (b) The execution and delivery of this Agreement by CRRA and its performance hereunder (i) have been duly authorized by all requisite action, (ii) will not require any Governmental Approval, and (iii) will not violate any provision of Applicable Law or any indenture, agreement or other instrument to which CRRA is a party or by which CRRA is bound, or be in conflict with, result in a breach of, or constitute a default thereunder or a Lien on any property of CRRA.
- (c) This Agreement constitutes the legal, valid and binding obligation of CRRA and is enforceable against CRRA in accordance with its terms.
- (d) There is no action, suit or proceeding at law or in equity, or before or by any Governmental Authority pending against CRRA, or against or with respect to the Facility or the Site that could reasonably be expected to have a material adverse effect on: (i) the transactions contemplated by this Agreement; (ii) the validity or enforceability of this Agreement; or (iii) CRRA's ability to perform its obligations under and as contemplated by this Agreement other than what has been previously provided to NAES.

## **ARTICLE 20 - TITLE, DOCUMENTS AND DATA**

### **20.1 Materials and Equipment**

NAES shall ensure that title to all materials, equipment, supplies, consumables, spare parts and other items purchased or obtained by NAES hereunder passes directly from any Third Party to CRRA and vests in CRRA. NAES has no title or other claim to any such item other than the right to use such item in the performance of the Services or the implementation of any Capital Project.

### **20.2 Documents**

The O&M Manuals and the Administrative Procedures Manual and all other manuals identified in Exhibits 2 and 3, together with the CMMS and all other operational data,

Facility drawings, and reports and records (in any form) created by NAES in connection with the performance of this Agreement are the property of CRRA. NAES may retain for its records copies of any of the preceding documents.

### **20.3 Proprietary Information**

Where documents or any other materials used in connection with the performance of this Agreement, whether prepared or developed by NAES or its Affiliates, their respective employees and representatives, or any Subcontractor or Capital Project Contractor, contain proprietary or technical information, techniques or know-how previously developed by them or acquired by them from any Third Party, NAES retains the unrestricted and irrevocable right to use or dispose of such proprietary information as NAES deems fit. Notwithstanding the foregoing, CRRA has an irrevocable fully-paid license to use such proprietary information to the extent necessary for CRRA's operations, at no cost to CRRA other than the payments required hereunder.

### **20.4 Warranties**

Upon the expiration or termination of this Agreement, all warranties of any kind or nature existing with respect to all equipment and parts that are or will become the property of CRRA shall automatically be assigned and set over to CRRA absolutely and without further action on the part of the Parties, with the same force and effect as though all such warranties expressly ran for the benefit of CRRA.

## **ARTICLE 21 - CONFIDENTIALITY**

### **21.1 General**

During the Term, and for three years after the expiration or earlier termination of this Agreement, each Party shall hold in confidence any Confidential Information supplied by the other Party. The term "Confidential Information" means, with respect to each Party, all information of a proprietary, intellectual or similar nature, relating to a Party's business methods or practices, projects, operations, activities or affairs, whether of a technical or financial nature or otherwise (including environmental assessment reports, financial information, business plans and proposals, ideas, concepts, trade secrets, know-how, processes, pricing of services or products, and other technical or business information, whether concerning this Agreement, each Party's respective businesses or otherwise) that has not been publicly disclosed, is identified as Confidential Information in writing, and that the receiving Party acquires directly or indirectly from the disclosing Party. Each receiving Party further agrees, to the extent requested by the disclosing Party and required by this Agreement, to require its Subcontractors, Capital Project Contractors, other contractors, vendors, suppliers, and employees, agents or prospective purchasers to preserve the confidentiality of Confidential Information. The receiving Party may make necessary disclosures to any Third Party directly engaged in the operation, ownership or financing of the Facility, if such Third Party is under a written obligation to receive and hold such Confidential Information in confidence, in a manner at least equal to the requirements of this Agreement.

## **21.2 Exceptions**

The provisions of this Article 21 do not apply to information within one or more of the following categories:

### **21.2.1 Public Domain**

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

### **21.2.2 Prior Receipt**

Information that the receiving Party can demonstrate was in its possession prior to receipt thereof from the disclosing Party; or

### **21.2.3 Third Party Delivery**

Information received from a Third Party having no obligation of confidentiality with respect thereto.

## **21.3 Required Disclosure**

Any receiving Party required by Applicable Law, including the Connecticut Freedom of Information Act, or during the course of any administrative or judicial proceeding, to disclose Confidential Information that is otherwise required to be maintained in confidence pursuant to this Article 21, may make such disclosure notwithstanding the provisions of this Article 21; subject to the provisions of this Section 21.3. Prior to making any such disclosure, the disclosing Party shall have the opportunity to review and comment upon the Confidential Information subject to the disclosure request. The disclosing Party and the receiving Party shall discuss the scope and content of the requested Confidential Information, and shall cooperate to the maximum extent practicable to minimize disclosure of such Confidential Information. The disclosing Party shall have the right to respond to any demand for disclosure and to require the receiving Party, at the disclosing Party's expense, to withhold disclosure to the extent permitted by Applicable Law. In addition, the disclosing Party may take any action it deems necessary, at its expense, including the right to participate in any legal or administrative proceeding, to protect its Confidential Information. The receiving Party shall take reasonable steps not to prejudice the disclosing Party's proprietary rights to its Confidential Information, including the seeking of an appropriate protective order if requested by the disclosing Party. Nothing in this Section 21.3 shall prevent a disclosing Party from appearing in any administrative or judicial proceeding concerning the potential disclosure of Confidential Information.

## **ARTICLE 22 - ADDITIONAL PROVISIONS**

### **22.1 Effect of Bankruptcy**

In the event of a Bankruptcy, payments required under this Agreement shall be deemed to be administrative expenses as defined in 11 USC §503.

## **22.2 Subcontractors; Capital Project Contractors**

Any Subcontracting of the Services or the execution and performance of a Capital Project Contract by NAES, shall not relieve NAES of its duties, liabilities or obligations to CRRA.

## **22.3 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 and not for the benefit of any Third Party.

## **22.4 Force Majeure**

### **22.4.1 Events Constituting Force Majeure**

A "Force Majeure Event" is any event that restricts or prevents performance under this Agreement by either Party, is not reasonably within the control of, or caused by any act of commission or omission of an affected Party, and cannot be overcome or avoided by the exercise of due care. Force Majeure Events include any drought, flood, earthquake, storm, fire, lightning, explosion, epidemic, war, act of terrorism, acts of Governmental Authorities, civil disturbances, sabotage, work stoppages (e.g., strikes), accident, curtailment of supply, unavailability of construction materials or replacement equipment beyond the affected Party's control, inability to obtain and maintain any Permit, restraint by court order, and changes in Applicable Law that materially affect performance under this Agreement. Except for all accrued payment obligations of each Party, each Party shall be excused from performance, and will not be considered to be in default in respect to any obligation hereunder, if performance cannot occur due to a Force Majeure Event. Neither Party shall be relieved of its obligations under this Agreement solely because of increased costs or other adverse economic consequences that may be incurred through the performance of such obligations. Strikes, work stoppages, secondary boycotts or walkouts shall not be a Force Majeure Event if such action is due to: (a) NAES's breach of its labor agreement with any collective bargaining representative of its employees engaged in such actions; (b) NAES's lack of good faith or maintenance of an unreasonable economic position in negotiating with any collective bargaining representative of the unit employees engaged in such actions; (c) NAES's willful disregard in the context of labor negotiations of its obligations under this Agreement with the intent or effect of hindering, interfering with, or otherwise adversely affecting the Facility or of gaining an unfair advantage over CRRA with respect to the Facility or this Agreement; or (d) any lack of cooperation or resistance on the part of the previous operators of the WPF and PBF/EGF, excluding any materials or documents previous operators remove from the Facility.

### **22.4.2 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 (1) promptly

notify the other Party of the Force Majeure Event and its cause and confirm the same in writing within five Business Days of its discovery; (2) promptly supply such available information about the Force Majeure Event and its cause as reasonably may be requested by the other Party; and (3) initiate efforts to remove the cause of the Force Majeure Event or to lessen its effect.

#### 22.4.3 Scope

The suspension of performance arising from a Force Majeure Event shall be of no greater scope and no longer duration than necessary to deal with such Force Majeure Event. The excused Party shall use commercially reasonable efforts to remedy any inability to perform its obligations hereunder as the result of a Force Majeure Event.

### **22.5 Dispute Resolution**

#### 22.5.1 Assertion of Disputes

A Party seeking to assert the existence of a dispute, difference in interpretation, claim or other controversy pertaining to, arising out of or otherwise relating to this Agreement or an asserted breach hereof (individually, a “Dispute”), shall provide written notice of such Dispute to the other Party, describing the nature and substance of the Dispute. Each of NAES and CRRA shall designate a representative who shall promptly begin discussions in an effort to agree upon a resolution of the Dispute. If the representatives do not agree upon a resolution of the Dispute within thirty (30) days after the referral of such Dispute to them, either Party may elect to abandon the discussions and pursue resolution of the Dispute as provided below.

#### 22.5.2 Adjudication of Disputes

Any Dispute which the Parties are unable to resolve themselves shall be resolved by a court of competent jurisdiction in Connecticut, unless the Parties jointly agree to do so by arbitration or mediation. Any arbitration or mediation proceedings shall be held in Hartford, Connecticut. The Parties shall continue to perform all of their obligations under this Agreement during the pendency of any proceeding under this Section 22.5.

#### 22.5.3 Expenses of Litigation

If any suit or other action at law or in equity is commenced to enforce or construe any provision of this Agreement or to resolve any Dispute arising out of or in connection with this Agreement, each party shall pay its own costs and attorneys' fees, unless (a) such suit or action relates to an act or Event of Default (as defined in this Agreement), in which case the party in default shall pay the party not in default a reasonable sum for the non-defaulting party's attorneys' fees and costs of suit; or (b) otherwise specified elsewhere in this Agreement.



## **22.6 Amendments**

No amendments or modifications of this Agreement shall be valid unless in writing and executed by duly authorized representatives of the Parties.

## **22.7 No Waiver**

No delay, waiver or omission by a Party to exercise any right or power arising from any breach or default by the other Party of any representation, warranty, covenant or other provision of this Agreement, shall be a waiver of any subsequent breach or default of the same or other presentation, warranty, covenant or provision hereof.

## **22.8 Notices**

Any written notice 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 address indicated on the first page of this Agreement, or at the most recent address specified by written notice given in the manner provided in this Section 22.8.

## **22.9 Counterparts**

This Agreement may be executed in any number of counterparts or separate 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.

## **22.10 Governing Law**

This Agreement is governed by and shall be construed in accordance with the laws of the State of Connecticut, exclusive of the conflicts of laws provisions thereof.

## **22.11 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.

## **22.12 Severability**

If any provision of this Agreement, or the application of any such provision to any Person or circumstance, is held invalid by any court or other forum of competent jurisdiction, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions

contemplated hereby is not affected in a manner materially adverse to a Party. Upon any such determination of invalidity, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that this Agreement is consummated as originally contemplated to the greatest extent possible.

### **22.13 Entire Agreement**

This Agreement contains the entire agreement between the parties hereto regarding the subject matter hereof. Any prior or contemporaneous oral and written representations, agreements, understandings and/or statements respecting this subject matter shall be of no force and effect, including without limitation the RFP any proposals submitted in response thereto.

### **22.14 Further Assurances**

Each party shall take such action and deliver such instruments to the other party, in addition to the actions and instruments specifically provided for herein, as may be reasonably be requested or required to effectuate the purposes or provisions of this Agreement.

### **22.15 Nondiscrimination**

NAES agrees to the following:

- (a) NAES agrees and warrants that in the performance of this Agreement NAES will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, sexual orientation, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by NAES that such disability prevents performance of the Services involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and NAES further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, sexual orientation, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by NAES that such disability prevents performance of the Services involved;
- (b) NAES agrees, in all solicitations or advertisements for employees placed by or on behalf of NAES, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Connecticut Commission on Human Rights and Opportunities (the "Commission");
- (c) NAES agrees to provide each labor union or representative of workers with which NAES has a collective bargaining agreement or other contract or understanding and each vendor with which NAES has a contract or understanding, a notice to be provided by the Commission, advising the labor

union or workers' representative of Hauler's commitments under Sections 4a-60 and 4a-60a of the Connecticut General Statutes and to post copies of the notice in conspicuous places available to employees and applicants for employment;

- (d) NAES agrees to comply with each provision of Sections 4a-60, 4a-60a, 46a-68e, and 46a-68f, inclusive, of the Connecticut General Statutes and with each regulation or relevant order issued by the Commission pursuant to Sections 46a-56, 46a-68e, and 46a-68f of the Connecticut General Statutes; and
- (e) NAES agrees to provide the Commission with such information requested by the Commission, and permit access to pertinent books, records and accounts concerning the employment practices and procedures of NAES as relate to the provisions of Sections 4a-60, 4a-60a and 46a-56 of the Connecticut General Statutes.
- (f) If this Agreement is a public works contract, NAES agrees and warrants that it will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials in such public works project.

## **22.16 Whistleblower Provision**

If NAES is a large state contractor, NAES shall comply with the provisions of Section 4-61dd of the Connecticut General Statutes, as may be revised. "Large state contract" and "Large state contractor" shall have the same meanings as set forth in Section 4-61dd(h) of the Connecticut General Statutes, as may be revised. Each contract between a state or quasi-public agency and a large state contractor shall provide that, if an officer, employee, or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of the contractor in retaliation for such employee's disclosure of information to the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of Section 4-61dd of the Connecticut General Statutes, the contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The executive head of the state or quasi-public agency may request the Attorney General to bring a civil action in the Superior Court for the judicial district of Hartford to seek imposition and recovery of such civil penalty.

Each large state contractor shall post a notice of the provisions of Section 4-61dd relating to large state contractors in a conspicuous place that is readily available for viewing by the employees of the contractor.

## **22.17 Campaign Contribution Restriction**

For all State Contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, NAES expressly acknowledges receipt of the State Elections

Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions attached hereto as **Exhibit 4**, and will inform its principals of the contents of the notice.

**22.18 Affidavit Concerning Nondiscrimination**

At the time of NAES's submission of its Bid, NAES provided CRRA with the executed Affidavit Concerning Nondiscrimination attached hereto and made a part of this Agreement as **Exhibit 5**.

**22.19 Affidavit Concerning Consulting Fees**

At the time of NAES's submission of its Bid, NAES provided CRRA with the executed Affidavit Concerning Consulting Fees attached hereto and made a part of this Agreement as **Exhibit 6**.

**22.20 Contractor's Certification Concerning Gifts**

At the time of NAES's execution this Agreement, NAES simultaneously executed a document entitles Contractor's Certification Concerning Gifts and said document is attached hereto and made a part of this Agreement as **Exhibit 7**.

**22.21 President's Certification Concerning Gifts.**

At the time of the President of CRRA's execution of this Agreement, the President simultaneously executed a document entitled President's Certification Concerning Gifts and said document is attached hereto and made a part of this Agreement as **Exhibit 8**.

**22.22 Time is of the Essence**


For purposes of all aspects of this Agreement time is of the essence.

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[SIGNATURE PAGE FOLLOWS]

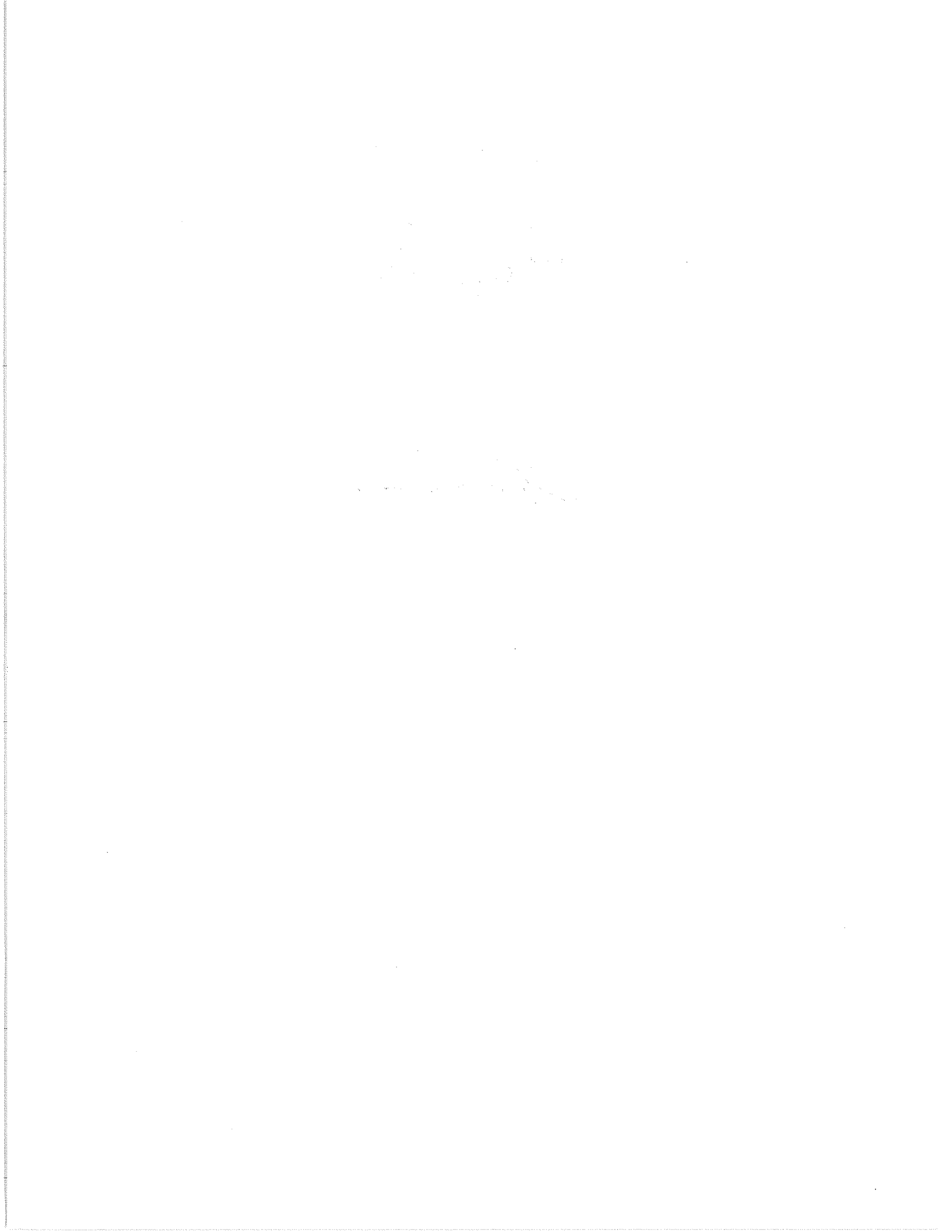
**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals as of the day and year first written above.

**CONNECTICUT RESOURCES RECOVERY AUTHORITY**

By:   
\_\_\_\_\_  
Thomas D. Kirk  
Its President  
Duly Authorized

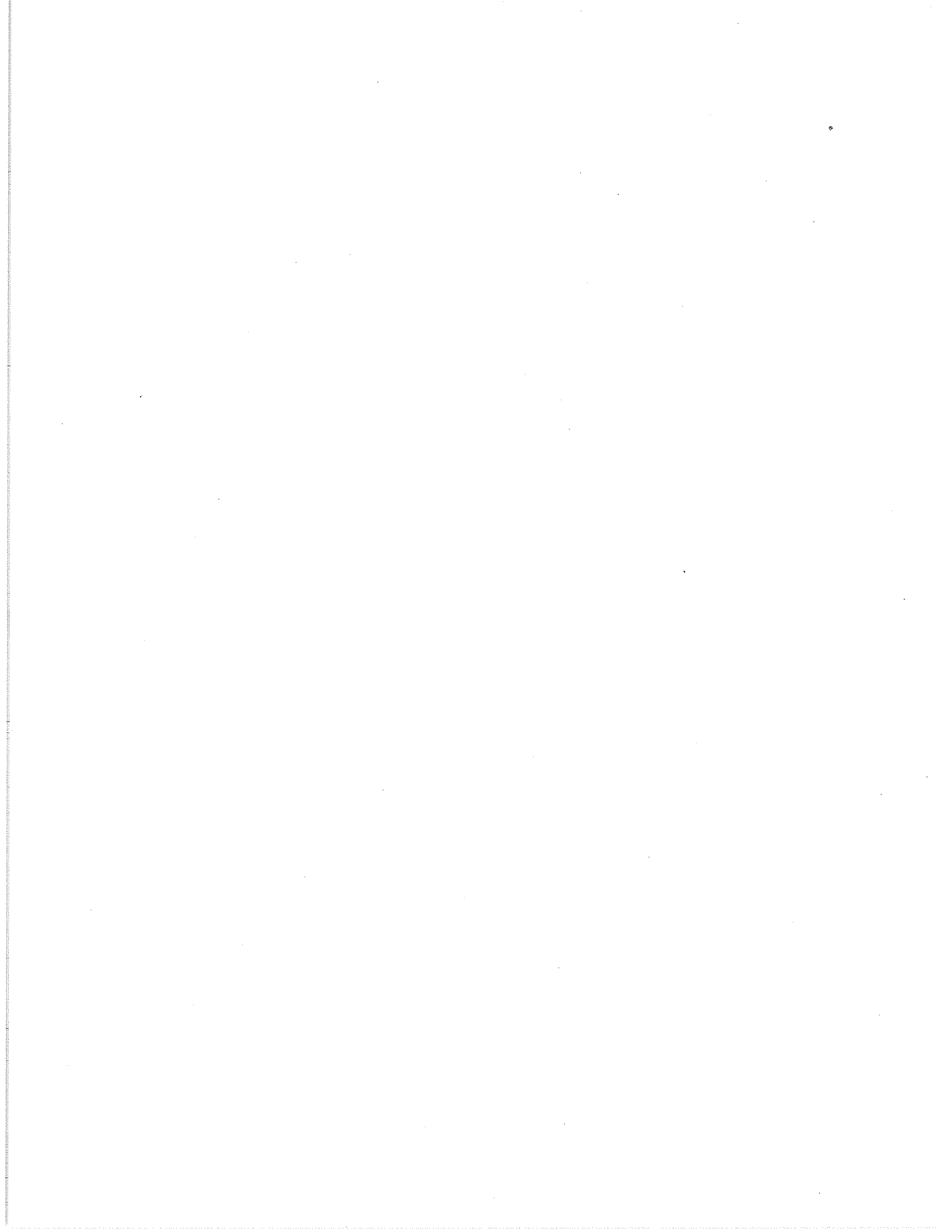
**NAES CORPORATION**

By:   
\_\_\_\_\_  
Glen Canavera  
Its Vice President, Marketing  
Duly Authorized



**EXHIBIT 1**

**DEFINITIONS**





## EXHIBIT 1

### DEFINITIONS

“Acceptable Recyclables” means Solid Waste generated by and collected from residential, commercial, institutional, industrial and other establishments and deemed acceptable by CRRA in accordance with Applicable Law and the Procedures for processing and disposal at the Recycling Facilities.

“Acceptable Solid Waste” includes Solid Waste generated by and collected from residential, commercial, institutional, industrial and other establishments and deemed acceptable by CRRA in accordance with Applicable Law and the Procedures for processing by and disposal at the Facility. Acceptable Solid Waste shall include the following: (i) scrap wood not exceeding six (6) feet in length or width or four (4) inches in thickness, (ii) Single trees and large tree limbs not exceeding six (6) feet in length or four (4) inches in diameter and with branches cut to within six (6) inches of the trunk or limb, as the case may be; (iii) metal pipes, tracks and banding or cable and wire not exceeding three (3) feet in length and one and a half (1 1/2) inches in diameter; (iv) cleaned and emptied cans or drums not exceeding five (5) gallons in capacity and with covers removed; (v) automobile tires without rims exclusively from the residential Solid Waste stream and in limited quantities, if any, to be determined by CRRA on a day to-day basis; (vi) paper butts or rolls, plastic or leather strapping or similar materials not exceeding three (3) feet in length or three (3) inches in thickness and cut in half lengthwise; (vii) Non-processible Waste; and (viii) any other Solid Waste deemed acceptable by CRRA in its sole discretion. Acceptable Solid Waste shall not include any Acceptable Recyclables, Recycling Residue, or other materials required to be recycled in accordance with the *Connecticut General Statutes*, or Special Waste, unless such Special Waste is approved by CRRA for disposal at the Facility, or any materials or waste that are or may in the future be required by law and/or regulation to be recycled.

“Act” has the meaning in the Recitals.

“Administrative Procedures Manual” means the manual developed by NAES for the entire Facility pursuant to Section 2.3 that includes information, policies, and procedures pertinent to NAES’s performance hereunder, including: (i) reporting, (ii) correspondence and review procedures, (iii) procurement procedures, (iv) employee policies and procedures, and (v) accounting, bookkeeping and record keeping.

“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 ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning in the Preamble.

“Applicable Law” means any applicable federal, state, municipal or local statute, regulation, rule, code, standard, ordinance, permit (including any Permit); any judgment, order, injunction, decree, directive, interpretation or pronouncement of or by any Governmental Authority; or any other authority otherwise having the force of law, including all Environmental Laws; whether in force as of the Effective Date, or as amended or enacted in the future.

“Authorized Activities” has the meaning in Section 3.4.

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

“Budget” means the budget adopted by CRRA as provided in Section 10.1.4.

“Business Day” means any day on which CRRA’s business office is in operation.

“Capital Project” means the purchase of property, plant or equipment with an aggregate cost (including freight, labor, installation costs, taxes, etc.) equal to or greater than twenty five thousand dollars (\$25,000.00) and with an economic useful life in excess of one year. Major extraordinary repairs that are non-recurring in nature and increase the value of the original purchase of property, plant or equipment and increase the remaining life of the property, plant or equipment will be considered a Capital Project.

“Capital Project Contract” has the meaning in Section 10.3.1

“Capital Project Contractor” has the meaning in Section 10.3.1.

“Commission” has the meaning in Section 22.15(b).

“Confidential Information” has the meaning in Section 21.1.

“CMMS” has the meaning in Section 12.4.

“CRRA” has the meaning in the Preamble.

“CRRA Cure Period” has the meaning in Section 15.5

“CRRA Event of Default” has the meaning in Section 15.4

“CRRA Facility General Manager” has the meaning in Section 8.3.3.

“CRRA Reserved Rights” has the meaning in Section 3.5.1.

“CRRA Termination Notice” has the meaning in Section 15.3.1.

“Daily Report” has the meaning in Section 12.4.

“Day” (whether or not capitalized) shall mean a calendar day, unless designated as a Business Day.

“Day-Ahead Energy Market” shall have the same meaning used in the ISO New England Market Rules.

“Discharge” means any release, threatened release, deposit, spillage, leakage, escape, uncontrolled loss, seepage and/or filtration.

“Dispute” has the meaning in Section 22.5.1.

“Effective Date” has the meaning in the Preamble.

“Electric Generating Facility” (or “EGF”) shall mean the existing building at South Meadow Station located at Gate 20 owned by CRRA that contains the turbines and generators used for the generation of electricity from steam provided by the Power Block Facility, including the employee building, so-called, which stands northerly from the EGF.

“Emergency” has the meaning in Section 8.6.

“Environmental Condition” means the presence of one or more Hazardous Materials in the Environmental Media requiring Remedial action under applicable Environmental Laws and/or that may give rise to claims and/or liabilities to any Third Party, including any Governmental Authority. Environmental Conditions shall include the presence of any Hazardous Material in Environmental Media at or above any applicable default criterion in the Remediation Standard Regulations, Regulations of Connecticut State Agencies, § 22a-

133k-1 et seq., as the same may be amended, supplemented or superseded from time to time.

“Environmental Laws” means all federal and state statutes, regulations, codes, orders, directives, rules, guidelines, standards, general permits, individual permits, judgments, injunctions and requirements of common law, whether in force as of the Effective Date, or as amended or enacted in the future, concerning or relating to land use and the protection of health, safety and the natural environment (including those relating to the ground, air, water, solid waste, hazardous waste, odors, noise, pollution or contamination, and those concerning the installation, operation, closure and corrective action of underground or above ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 to 136y; the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.; and all state laws enacted as part of Title 22a of the Connecticut General Statutes including (without limitation) the Connecticut Environmental Policy Act (§§ 22a-1a through 22a-1h of the Connecticut General Statutes), the Environmental Protection Act of 1971 (§§ 22a-14 to 22a-20 of the Connecticut General Statutes), the Connecticut Wetlands and Watercourses Protection Act (Chapter 440 of the Connecticut General Statutes), the Noise Pollution Control Act (Chapter 442 of the Connecticut General Statutes), Coastal Management Act (§§ 22a-90 to 22a-112 of the Connecticut General Statutes), the Connecticut statutes on Hazardous Waste (Chapter 445 of the Connecticut General Statutes), Air Pollution (Chapter 446c of the Connecticut General Statutes), Solid Waste Management (Chapter 446d of the Connecticut General Statutes), Water Pollution Control (Chapter 446k of the Connecticut General Statutes), the Soil Erosion and Sediment Control Act (§§ 22a-325 to 22a-329), the Water Diversion Policy Act (§§ 22a-365 to 22a-378 of the Connecticut General Statutes), and any other federal or state environmental requirements in addition to these acts or other laws, together with all rules, regulations, codes, orders, decrees and judicial decisions now or hereafter promulgated under any of the foregoing.

“Environmental Media” means soil, land, surface or subsurface strata, surface waters, ponds, streams, groundwater, bedrock, drinking water supply, stream sediments, atmosphere, air, vegetation and any other environmental medium or natural resource.

“Environmental Permits” means any and all permits, licenses, registrations, general permits, certificates, or approvals necessary to operate the Facility in accordance with the Environmental Laws.

“Extension” has the meaning in Section 4.3.

“Extraordinary Item” means any purchase order issued by NAES in an amount greater than fifty thousand dollars (\$50,000.00) or, if an annual blanket purchase order, that NAES reasonably anticipates will exceed fifty thousand dollars (\$50,000) during an Operating Year.

“Facility” means the refuse-derived fuel, steam turbine waste-to-energy facility owned by CRRA, located at 1 Reserve Road and 300 Maxim Road in Hartford, Connecticut, including the WPF, the PBF the EGF, together with all related structures and connections (up to the interconnection point(s) of the Public Utility).

“Facility Agreements” means agreements entered into from time to time by CRRA whose subject matter has relevance to the subject matter of this Agreement, including any agreement concerning equipment warranties, of which CRRA has knowledge and possession as of the WPF Transition Period Commencement Date.

“Facility Information” has the meaning in Section 12.1.

“Facility Manager” has the meaning in Section 8.3.1.

“Facility Manuals” means such materials, including any Facility equipment manuals and maintenance instructions, system descriptions and operating instructions, design documentation, Mid-Connecticut Project Permitting, Disposal and Billing Procedures, and similar documents, of which CRRA has knowledge and possession as of the WPF Transition Period Commencement Date, and which CRRA deems relevant to NAES’s performance of the Services.

“Financing Agreement” means any loan agreement, note, bond, indenture, security agreement, registration or disclosure statement, subordination agreement, mortgage, deed of trust, participation agreement and similar documents relating to any CRRA financing of the Facility provided by any Lender, and including any modification, supplement, extension, renewal or replacement of any such financing.

“Force Majeure Event” has the meaning in Section 22.4.1.

“Generating Unit” shall mean either of the two steam turbines (Units 5 and 6) together with the related equipment owned by CRRA and located at the EGF.

“Governmental Authority” means any governmental agency, authority, bureau, quasi-governmental body (other than CRRA), regulatory body, department, court, or other instrumentality having jurisdiction over CRRA, NAES, the Facility or the performance of any of the Services.

“Gross Negligence” and “Grossly Negligent” shall mean more than the lack of ordinary and reasonable care under the circumstances, including more than momentary thoughtlessness, inadvertence, or error of judgment. It includes the failure to exercise even slight or scant care or slight diligence.

“Hazardous Materials” means any and all pollutants, contaminants, hazardous or toxic waste, substance or material, Hazardous Waste, or any other substance that might pose a hazard to health, safety or the environment, the removal of which may be required or the manufacture, use, maintenance or handling of which is regulated, restricted, prohibited or penalized by any Environmental Law, as amended, or any other Applicable Law, or any substance that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, or any substance containing gasoline, diesel or other petroleum hydrocarbons, petroleum products or petroleum by-products.

“Hazardous Waste” includes any material or substance which is, by reason of its composition or its characteristics or its delivery to the Facility (i) defined as hazardous waste in the Solid Waste Disposal Act, 42 U.S.C. §6901 et seq., and any regulations, rules or policies promulgated thereunder, (ii) defined as hazardous waste in Section 22a-115 of the Connecticut General Statutes, (iii) defined as special nuclear material or by-product material in Section 11 of the Atomic Energy Act of 1954, 42 U.S.C. §2014, and any regulations, rules or policies promulgated thereunder (all as amended or superseded from time to time, or (iv) regulated under Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. §2605(e), and any regulations, rules or policies promulgated thereunder, as any of the authority referred to in clauses (i) through (iv) may be amended or superseded from time to time; provided, however, that Hazardous Waste shall not include such insignificant quantities of any of the wastes covered by clauses (i), (ii) and (iv) as are customarily found in normal household, commercial and industrial waste to the extent such insignificant quantities are permitted by Applicable Law to be processed at the Facility. “Hazardous Waste” also includes such other waste deemed by CRRA in a commercially reasonable manner to be “Hazardous Waste.”

“Home Office Personnel” means the Facility Manager and such other employees of NAES who are engaged in, or otherwise involved in the provision of the Services, other than Site Personnel.

“Initial Budget” has the meaning in Section 10.1.1.

“Initial Term” has the meaning in Section 4.2.

“Lead Market Participant” shall mean the purchaser of the net electricity output from the EGF.

“Lender” means any Person providing financing or refinancing under any Financing Agreement(s) for the Facility, together with its successors and assigns.

“Lien” means any lien, mortgage, pledge, hypothecation, assignment, deposit arrangement, notice of contract, preference, priority, security interest, chattel mortgage or other charge or encumbrance of any kind, any levy under execution or attachment, any easement, right of way or other encumbrance on title to real property, and any lease, license or sublease having substantially the same effect as any of the foregoing.

“Month” means a calendar month.

“Monthly Deviation Report” has the meaning in Section 12.5.

“NAES” has the meaning in the Preamble.

“NAES Cure Period” has the meaning in Section 15.2.

“NAES Event of Default” has the meaning in Section 15.1.

“NAES Termination Notice” has the meaning in Section 15.6.

“New Contractor” has the meaning in Section 16.4.

“Non-Processible Waste” shall be as defined in CRRA’s procedures as may be amended from time to time.

“Non-Project Recycling Facility” shall mean any land and structures thereon where “Recycling,” as defined in Section 22a-207(7) of the Connecticut General Statutes, as amended, substituted or superseded from time to time, is conducted, including an “Intermediate Processing Facility” as defined in Section 22a-260(25) of the Connecticut General Statutes, as amended, substituted or superseded from time to time, or a “Solid Waste Facility” as defined in Section 22a-207(4) of the Connecticut General Statutes, as amended, substituted or superseded from time to time, which provides for recycling in its plan of operations; excluding, however, the Recycling Facility and any Recycling Transfer Station.

“Notice to Proceed with PBF/EGF Transition Services” means the written notice from CRRA to NAES, instructing NAES to commence performance of the PBF/EGF O&M Transition Services.

“Notice to Proceed with WPF Transition Services” means the written notice from CRRA to NAES, instructing NAES to commence performance of the WPF O&M Transition Services.

“O&M Manual for PBF/EGF O&M Services” means the materials, including PBF/EGF system operating and maintenance procedures, training, health and safety procedures, environmental compliance and Emergency management procedures, together with any supporting materials, developed by NAES pursuant to Section 2.3.2.

“O&M Manual for WPF O&M Services” means the materials, including WPF system operating and maintenance procedures, training, health and safety procedures, environmental compliance and Emergency management procedures, together with any supporting materials, developed by NAES pursuant to Section 2.3.1.

“O&M Manual” has the meaning in Section 2.3.2.

“O&M Services” means, individually or collectively as determined by the context, the WPF O&M Services and the PBF/EGF O&M Services described in **Exhibit 3** hereto.

“O&M Services Compensation Schedule” means the payment schedule for CRRA’s payments to NAES for the performance of the WPF O&M Services and the PBF/EGF O&M Services contained in **Schedule 14.2** hereto.

“Operating Costs” include each and every item of cost or expense expended by NAES and reimbursed by CRRA in the course of NAES’s performance of the O&M Services, including each cost or expense incurred under any Subcontract; excluding however, any costs or expenses incurred by NAES or any Capital Project Contractor as the result of any Capital Project. Operating Costs include the following: (i) equipment, material, supplies, consumables, spare parts, replacement components, tools, office equipment and supplies, and utilities used at the Facility or the Site; (ii) special training of Site Personnel, whether conducted on-Site or off-Site; (iii) Third Party advisors, consultants, attorneys, accountants and contractors providing work in support of the Services that cannot reasonably be performed by Site Personnel or Home Office Personnel; (iv) fees for any Permits required to be held in the name of NAES; (v) Site Personnel wages, salaries, overtime, benefits and worker’s compensation costs; (vi) costs incurred by NAES in responding to any Emergency; (vii) substantiated costs of Home Office Personnel incurred for the support of Site Personnel; and (viii) the cost of the insurance obtained and maintained pursuant to Article 17.

“Operating Parameters” has the meaning in Section 12.4.

“Operating Year” means with respect to the first Operating Year the period beginning on the WPF Commencement Date and ending on June 30<sup>th</sup>, 2012, and for each successive Operating Year, the period beginning on July 1<sup>st</sup> and ending on the following June 30<sup>th</sup>.

“OSHA” means the Occupation Safety and Health Administration.

“Party” and “Parties” have the respective meanings in the Preamble.

“PBF/EGF Commencement Date” means June 1, 2012.

“PBF/EGF O&M Services” means the O&M Services necessary for the operation and maintenance of the PBF and the EGF, described in **Exhibit 3** hereto.

“PBF/EGF Transition Period” means the period for NAES’s performance of the PBF/EGF Transition Services, beginning on the PBF/EGF Transition Period Commencement Date and ending on or before the PBF/EGF Transition Period Completion Date.

“PBF/EGF Transition Period Commencement Date” has the meaning in Section 2.2.

“PBF/EGF Transition Period Completion Date” means the date that NAES and CRRA mutually agree upon for the completion of PBF/EGF Transition Services pursuant to the PBF/EGF Transition Plan contemplated in Section 2.3.

“PBF/EGF Transition Plan” has the meaning in Section 2.3.2.



“PBF/EGF Transition Services” means the Transition Services to be performed by NAES during the PBF O&M Transition Period and described in Exhibit 2 hereto.

“Performance Goals” has the meaning in Section 10.1.3.

“Permit” means any permit (including any Environmental Permit), license, consent or approval required for the operation or maintenance of the Facility, or the performance of any of the Services.

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

“Plan” means the plan adopted by CRRA as provided in Section 10.1.4.

“Plant Manager” has the meaning in Section 8.3.2.

“Power Block Facility” (or “PBF”) means that portion of the Facility comprising the processed waste transport conveyors from and including the transfer building to the steam generating units, the steam generating units, coal handling and storage system and balance of power plant equipment.

“Power Purchase Agreement” (or “PPA”) means any agreement between CRRA and a Third Party for the sale of the electric output of the Facility.

“Pre-Existing Contamination” means any Environmental Condition which exists at the Facility or the Site as of the WPF Commencement Date or the PBF/EGF Commencement Date, as applicable, whether known or unknown, or whenever discovered.

“Proposed Budget” has the meaning in Section 10.1.2.

“Proposed Plan” has the meaning in Section 10.1.2.

“Prudent Operating and Maintenance Practices” means those operating and maintenance practices with respect to NAES’s performance of the O&M Services which: (1) are required by Applicable Law; (2) conform to all manufacturers’ manuals and maintenance schedules applicable to equipment at the Facility or the Site used or usable in the performance of the activities contemplated hereunder; (3) maintain the Facility in the same or better condition as of the date NAES assumed responsibility for operating and maintenance services including any improvements resulting from work performed under the Agreement; (4) ensure that all work, repairs or replacement of any equipment, facilities, improvements or other items are in accordance with the same or greater specifications of materials, equipment replacement, parts, supplies, and other components as of the commencement of this Agreement or when installed during the course of NAES’s Services.; (5) shall enable the Facility to receive and process Acceptable Solid Waste to maximize revenue and minimize expenses consistent with the best interests of CRRA in the manner contemplated by this Agreement; and (6) are good industry practices with

respect to trash-to-energy and electric generating facilities of a type and size comparable to the Facility.

“Public Utility” means The Connecticut Light and Power Company, and its successors and assigns.

“Quarter” (or “Quarterly”) means any consecutive period of three calendar months.

“Recklessness” shall mean a conscious choice of a course of action either with knowledge of the serious danger to others or property involved in it or with knowledge of facts that would disclose this danger to any reasonable person. It includes conduct that involves a risk substantially greater than that necessary to make one’s conduct negligent.

“Recovered Products” means materials or substances, including electric energy or capacity, resulting from the processing of Acceptable Solid Waste by the Facility.

“Recycling Facilities” means the Recycling Facility and any Recycling Transfer Station.

“Recycling Facility” shall mean CRRA’s regional recycling center located at 211 Murphy Road in Hartford, Connecticut.

“Recycling Residue” shall mean Solid Waste remaining after the Recycling Facility or any Non-Project Recycling Facility has processed Solid Waste.

“Recycling Transfer Station” shall mean any Transfer Station, including all roads appurtenant thereto, owned or operated (or both) by CRRA, which receives Acceptable Recyclables for transport to the Recycling Facility or to a Non-Project Recycling Facility.

“Remediate” (or “Remedy(ies),” “Remedial,” “Remediating” or “Remediation”) means to investigate, address, remedy, mitigate, remove, response, respond, abate, or otherwise clean up.

“Revenue” means total Facility revenue, including tipping fees and other service fees, and proceeds from the sale of Recovered Products.

“Scheduling Deadline” shall mean the time of day by which the Generating Units must be self-scheduled into the Day-Ahead Energy Market as required by ISO New England (typically 12:00 noon).

“Scrap/Light Weight Metals” includes the following: scrap steel parts, aluminum sheets, pipes, desks, chairs, bicycle frames, lawn mowers with engines drained, file cabinets, springs, sheet metal, hot water heaters, cleaned and emptied fifty-five (55) gallon drums with the top and bottom covers removed, fencing, oil tanks and fuel tanks approved by CRRA for disposal, cleaned and rinsed in accordance with Applicable Law, together with like materials deemed by CRRA to be Scrap/Light Weight Metals.

“Services” means the Transition Services or the O&M Services (or both), as determined by the context.

“Special Waste” means materials determined by CRRA to be suitable for delivery to the Facility from time to time but which may require special handling and/or special approval by the Connecticut Department of Environmental Protection or by any other Person (other than CRRA).

“Site” means the land on which the Facility is situated.

“Site Personnel” means those employees of NAES assigned to the Facility or the Site to perform the Services.

“Solid Waste” means unwanted and discarded solid materials, consistent with the meaning of that term pursuant to Section 22a-207(3) of the Connecticut General Statutes, as amended or superseded from time to time, excluding semi-solid, liquid materials collected and treated in a water pollution abatement facility.

“South Meadow Station” shall mean all of the real property, fixtures, improvements and personal property and equipment in the City of Hartford, Connecticut on a parcel of land bounded on the North by property now or formerly of the City of Hartford, on the East by the Connecticut River, on the South by Maxim Road and on the West by Reserve Road.

“Subcontract” means any contract executed by NAES and a Subcontractor.

“Subcontractor” means any Third Party with whom NAES contracts for activities related to the Services.

“Term” means the Initial Term, together with any Extensions, as applicable.

“Termination Date” means the effective date of termination of this Agreement contained in a CRRA Termination Notice or an NAES Termination Notice, as applicable.

“Termination Payment” has the meaning in Section 15.7.

“Third Party” means any Person other than a Party.

“Ton” means 2,000 pounds.

“Transfer Station” shall mean any facility, including all roads appurtenant thereto, owned or operated (or both) by CRRA, and used for the receipt of Solid Waste to be transported to another location for processing or disposal.

“Transition Plans” means, individually or collectively as determined by the context, NAES’s WPF O&M Transition Plan and PBF/EGF O&M Transition Plan as developed in accordance with Section 2.3.

“Transition Services” means, individually or collectively as determined by the context, the WPF Transition Services and the PBF/EGF Transition Services.

“Transition Services Compensation Schedule” means the payment schedule for CRRA’s payments to NAES for the performance of the WPF O&M Transition Services and the PBF/EGF O&M Transition Services, which payment schedule is contained in **Schedule 14.1** hereto.

“Unacceptable Waste” includes (i) explosives, pathological or biological waste, hazardous chemicals or materials, paint and solvents, regulated medical wastes as defined in the EPA Standards for Tracking and Maintaining Medical Wastes, 40 C.F.R. Section 259.30 (1990), as the same may be amended or superseded, radioactive materials, oil and oil sludges, dust or powders, cesspool or other human waste, human or animal remains, motor vehicles, and auto parts, liquid waste (other than liquid Solid Waste derived from food or food by-products), and Hazardous Waste and hazardous substances of any kind (including those substances regulated under 42 U.S.C. §6921-6925 and the regulations thereto adopted by the United States Environmental Protection Agency pursuant to the Resource Recovery Conservation and Recovery Act of 1976, 90 Stat. 2806 *et seq.*, 42 U.S.C. § 6901 *et seq.*, all as amended or superseded from time to time), other than such insignificant quantities of the foregoing as are customarily found in normal household and commercial waste and as permitted by Applicable Law; (ii) any item of waste that is either smoldering or on fire; (iii) waste in quantities and concentrations which require special handling in their collection and/or processing such as bulk items, junked automobiles, large items of machinery and equipment and their component parts, batteries or waste oil; (iv) any other items of waste that would be likely to pose a threat to health or safety, or that would likely damage the processing equipment of the Facilities (other than ordinary wear and tear), or the processing of which at the Facility would violate Applicable Law; (v) Any Solid Waste that is deemed by CRRA as not in conformance with its requirements for Acceptable Solid Waste or Non-Processible Waste; and (vi) any other waste deemed by CRRA to be Unacceptable Waste, including waste generated by a source which is not authorized by CRRA to deliver such waste to any of the Facilities.

“Waste Processing Facility” (or “WPF”) means that portion of the Facility used for the receipt and processing of Acceptable Solid Waste comprising the receiving area, processing system, and processed waste handling and storage system up to the transfer building on the processed waste transport conveyors to the Power Block Facility.

“White Metals” shall mean large appliances or machinery, refrigerators, freezers, gas/electric stoves, dishwashers, clothes washers and dryers, microwaves, copiers, computers, vending machines, air conditioners, industrial equipment and venting hood fans, and any other materials deemed by CRRA to be White Metals.

“Willful Misconduct” shall mean intentional conduct designed to injure person or property for which there is no just cause or excuse. Such conduct may also be implied from one’s conduct and related circumstances.

“WPF Commencement Date” means December 31, 2011.

“WPF O&M Services” means the O&M Services necessary for the operation and maintenance of the WPF, described in **Exhibit 3** hereto.

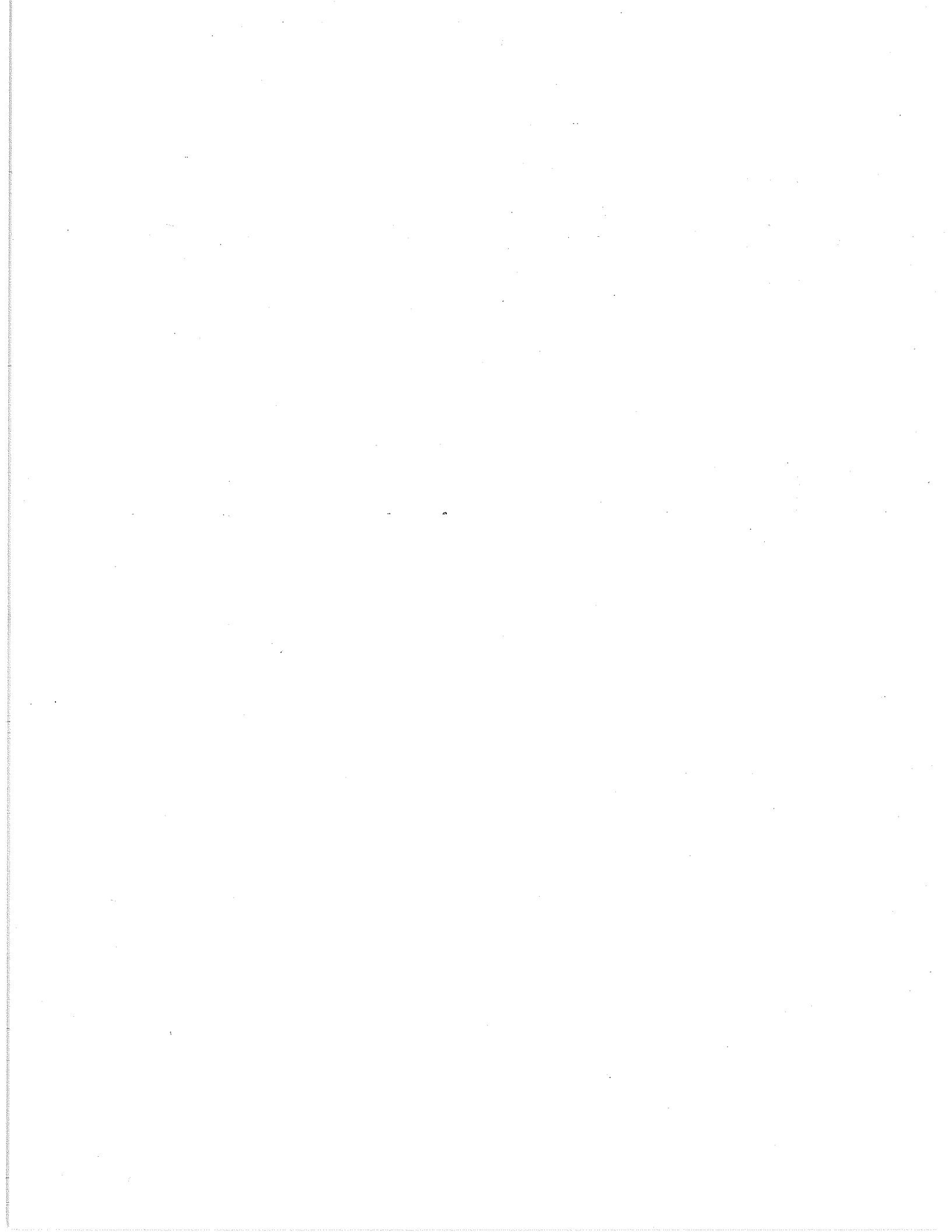
“WPF Transition Period” means the period for NAES’s performance of the WPF Transition Services, beginning on the WPF Transition Period Commencement Date and ending on the WPF Transition Period Completion Date.

“WPF Transition Period Commencement Date” has the meaning in Section 2.1.

“WPF Transition Plan” has the meaning in Section 2.3.1.

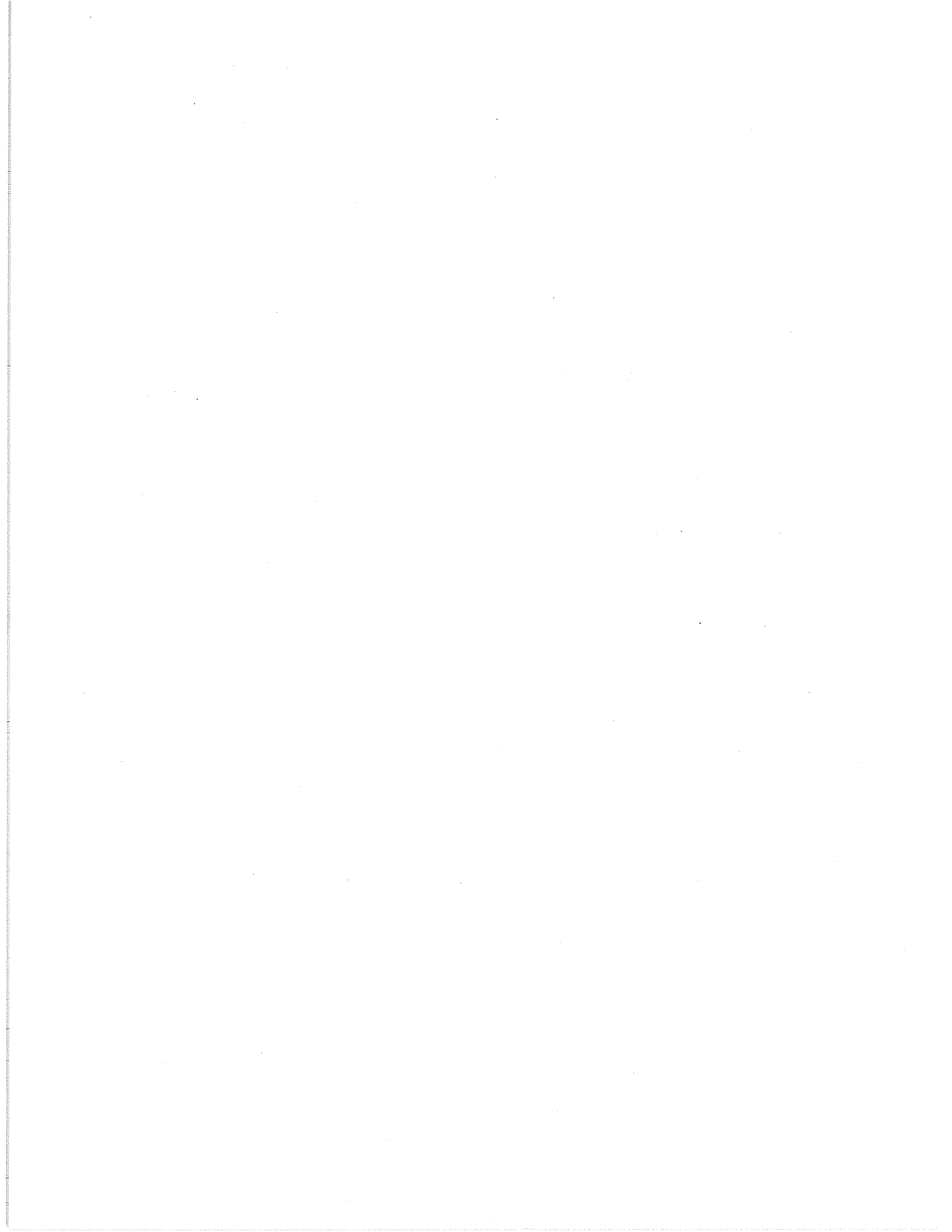
“WPF Transition Services” mean the Transition Services to be performed by NAES during the WPF Transition Period, as described in **Exhibit 2** hereto.

“WPF Transition Period Completion Date” means the date that NAES and CRRA mutually agree upon for the completion of WPF Transition Services pursuant to the WPF Transition Plan contemplated in Section 2.3.



## **EXHIBIT 2**

# **FACILITY TRANSITION SERVICES**





## EXHIBIT 2

### FACILITY TRANSITION SERVICES

Facility Transition Services may include but not necessarily be limited to the activities presented in the following table.

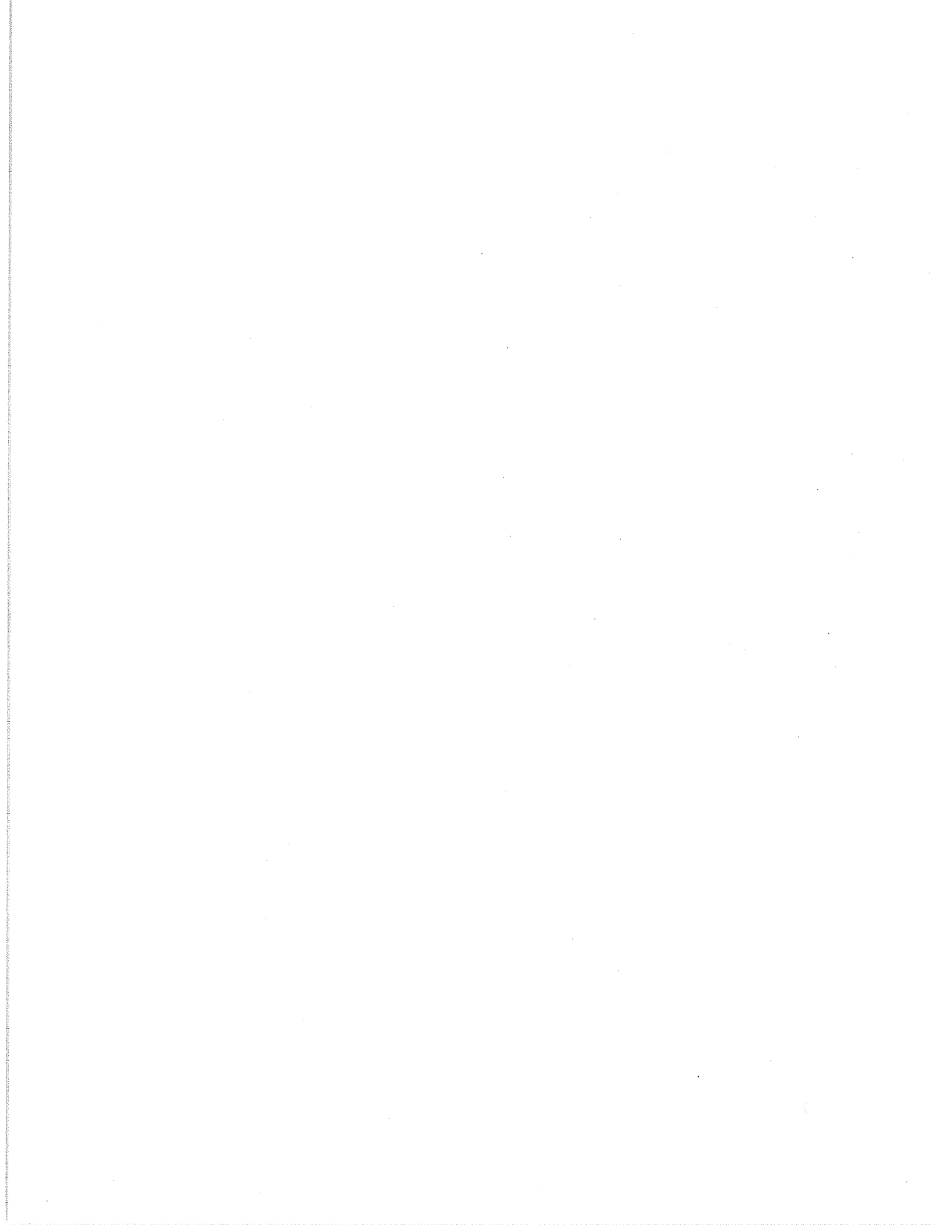
Task Name	Description
<b>Mobilize Transition Team</b>	NAES shall: <ul style="list-style-type: none"><li>• Meet with CRRA to review the proposed Transition Plan. NAES and CRRA shall also determine to what extent current practices are transferable and agree upon specific transition activities along with the timetable for implementation of such activities.</li><li>• Upon receipt of the Notice to Proceed with WPF Transitions Services and the Notice to Proceed with PFB and EGF Transition Services, NAES shall begin implementing the WPF Transition Plan and the PFB and EGF Transition Plan, respectively in accordance with the respective Transition Plans.</li></ul>
<b>Hire Facility Personnel</b>	NAES shall: <ul style="list-style-type: none"><li>• Consult with CRRA regarding staffing needs and identify staff efficiencies where possible.</li><li>• Offer employment to existing Facility staff.</li><li>• Recruit, hire, and train replacement personnel, as needed.</li></ul>
<b>Review Current Facility Status</b>	NAES shall perform an assessment of the WPF, PFB and EGF and prepare an Assessment Report inclusive of: <ul style="list-style-type: none"><li>• Evaluation of current condition of Facility systems and equipment;</li><li>• Recommendations regarding vital repairs, maintenance actions, or capital improvements (if necessary) and submit to CRRA;</li><li>• Review Facility licenses and permits to ensure that all requirements are taken into consideration;</li><li>• Evaluate status of available spare parts and tool inventories including recommendations for additions or replacements.</li></ul>

Task Name	Description
<p><b>Evaluate Safety, Environmental and NERC Programs</b></p>	<p>NAES shall evaluate the following programs and undertake the specified actions:</p> <p><u>Safety</u></p> <ul style="list-style-type: none"> <li>• Review current safety program policies and procedures to identify required changes;</li> <li>• Upgrade safety program based on industry standard safety practices and assessment of current Facility safety program, as required; and</li> <li>• Issue site specific Safety Manual.</li> </ul> <p><u>Environmental</u></p> <ul style="list-style-type: none"> <li>• Review permits and existing environmental management system;</li> <li>• Review and evaluate environmental performance;</li> <li>• Identify any notices/plan modifications required due to operator replacement; and</li> <li>• Make recommendations to CRRA for any issues identified and for environmental program enhancements.</li> </ul> <p><u>NERC</u></p> <ul style="list-style-type: none"> <li>• Review existing NERC compliance system program;</li> <li>• Identify any notices/plan modifications required;</li> <li>• Make recommendations to CRRA for any issues identified; and for NERC program enhancements.</li> <li>• Develop protocol for plant communications with the purchaser of the electric output of the Facility (Lead Market Participant).</li> </ul>

Task Name	Description
<p><b>Setup/Implement Accounting, Payroll Process, Inventory, Invoice, and Administrative Procedures</b></p>	<p>NAES shall setup/implement the following procedures and undertake the specified actions:</p> <p><u>Accounting</u></p> <ul style="list-style-type: none"> <li>• Install/implement software accounting application;</li> <li>• Import vendor maintenance history;</li> <li>• Setup vendor accounts/address change; and</li> <li>• Establish operating account and pre-funding procedures.</li> </ul> <p><u>Payroll</u></p> <ul style="list-style-type: none"> <li>• Setup employees in payroll system;</li> <li>• Prepare and distribute Facility time card approval and processing procedures; and</li> <li>• Establish payroll pre-funding procedure.</li> </ul> <p><u>Inventory:</u></p> <ul style="list-style-type: none"> <li>• Prepare and distribute inventory reconciliation procedures;</li> <li>• Train Facility Administrator in monthly budget variance report responsibility; and</li> <li>• Develop administrative procedure for Operator accounting responsibilities.</li> </ul> <p><u>Invoice</u></p> <ul style="list-style-type: none"> <li>• Generate invoice formats for Operator payroll and fee invoices; and</li> <li>• Establish invoice approval procedure.</li> </ul> <p><u>Administrative Procedures</u></p> <ul style="list-style-type: none"> <li>• Develop administrative procedures for Operator accounts payable responsibilities.</li> </ul>

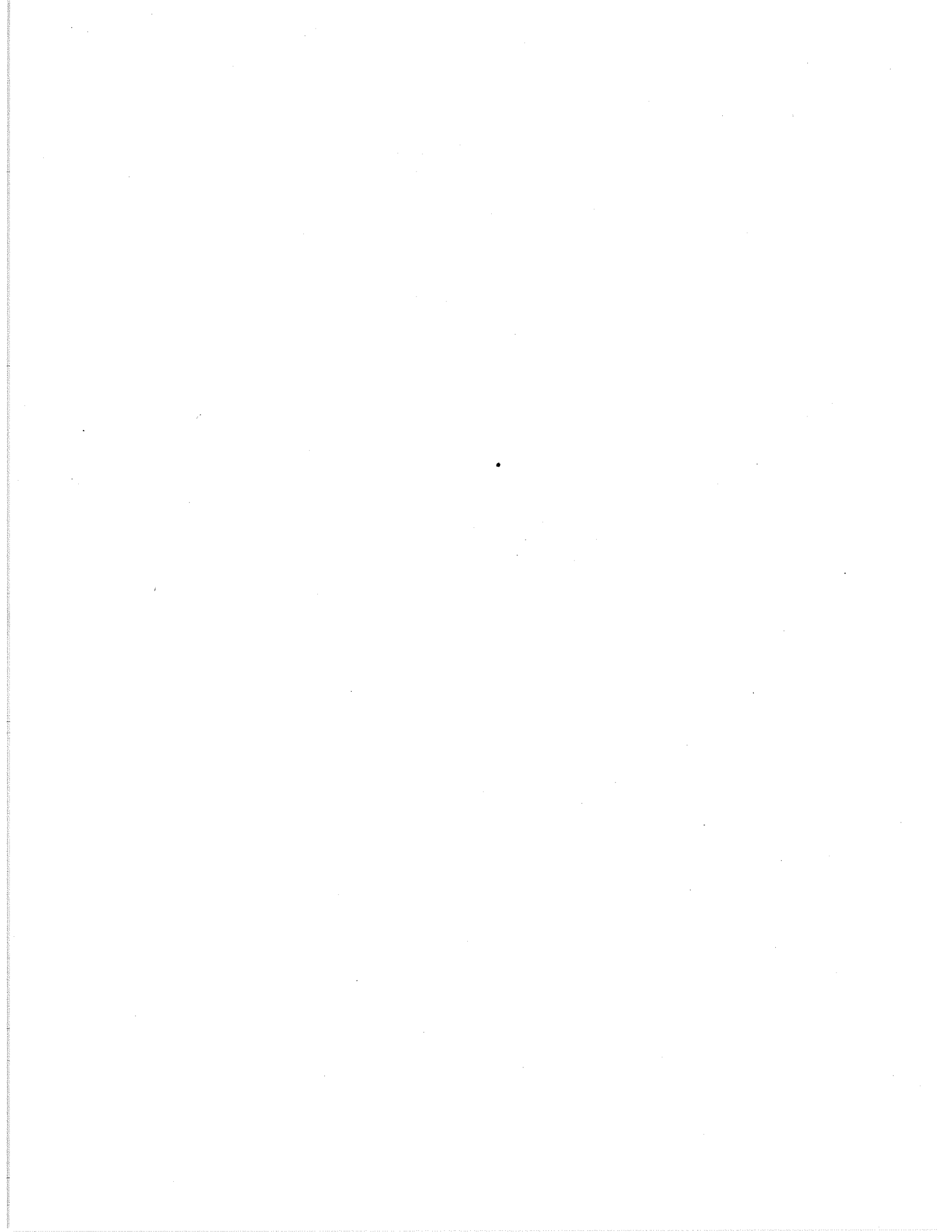
Task Name	Description
<p><b>Evaluate Facility Operational Programs</b></p>	<p>NAES shall review the following programs and make recommendations for improvement and prepare operational program development plan to upgrade or replace (as needed) operational programs:</p> <p><u>Administration</u></p> <ul style="list-style-type: none"> <li>• Review administrative procedures and policies in conjunction with CRRA; and</li> <li>• Issue site specific Administrative Manual.</li> </ul> <p><u>Human Resources</u></p> <ul style="list-style-type: none"> <li>• Implement Operator’s Human Resources Policy Manual.</li> </ul> <p><u>Operations</u></p> <ul style="list-style-type: none"> <li>• Review current operating procedures to identify required changes. Assess procedures and make recommendations to CRRA for approval of additional work.</li> </ul> <p><u>Maintenance</u></p> <ul style="list-style-type: none"> <li>• Evaluate the maintenance program to address the full range of activities including: preventive/condition-based maintenance; predictive maintenance, corrective maintenance; and additional maintenance support activities.</li> <li>• Issue a Maintenance Policy Manual containing Operator’s maintenance policies.</li> </ul> <p><u>Training</u></p> <ul style="list-style-type: none"> <li>• Review the content and adequacy of training requirements and plant employee qualifications to comply with Operator’s standards;</li> <li>• Provide new Facility personnel integrated operations training;</li> <li>• Implement a training and qualifications program for new Facility personnel; and</li> <li>• Issue a Training Manual for the Facility.</li> </ul>
<p><b>Evaluate Plan and Budget</b></p>	<p>NAES shall:</p> <ul style="list-style-type: none"> <li>• Review current budget and plan and discuss potential issues with CRRA; and</li> <li>• If required, modify the budget and plan for approval from CRRA.</li> </ul>

Task Name	Description
<p><b>Develop and Implement a Communication Plan</b></p>	<p>NAES shall:</p> <ul style="list-style-type: none"> <li>• Develop and implement a progress report format mutually acceptable to CRRA and Operator; and</li> <li>• Develop and implement a plan for routine and extraordinary communications.</li> </ul>
<p><b>Deliverables</b></p>	<p>NAES shall provide CRRA the following written documents which shall be Facility specific and shall be maintained and updated, as appropriate and applicable, by NAES throughout the Initial Term of the Agreement and all extensions thereof, if any, and such written documents shall remain with the Facility and become the property of CRRA upon the Termination Date of the Agreement:</p> <ul style="list-style-type: none"> <li>• Assessment Report</li> <li>• Assessment Manual</li> <li>• Chemistry Manual</li> <li>• Maintenance Policy Manual</li> <li>• Training Manual</li> <li>• Safety Manual</li> <li>• HR Plant Policies and Procedures Manual</li> <li>• Administrative Procedures Manual</li> </ul>



**EXHIBIT 3**

**O&M SERVICES**





## EXHIBIT 3

### O&M SERVICES

NAES shall perform all operations and maintenance activities associated with the Facility without limitation and in accordance with the prevailing Budget. O&M Services shall include, but not necessarily be limited to, items presented in the table that follows.

Task Name	Description
<b>Routine Operations</b>	Provide 24 hours/day, 7 days/week continuous Facility operation to optimize municipal solid waste throughput, materials recovery and electrical power generation.
<b>Detailed Operational Programs</b>	<p>Continue follow-up and implementation (in coordination with appropriate Owner policies and procedures) of detailed programs.</p> <ul style="list-style-type: none"> <li>• Safety and Health Program</li> <li>• Environmental Compliance Program</li> <li>• Operations Program</li> <li>• Maintenance Program</li> <li>• Administrative Program</li> <li>• Training/Qualification Program (including emergency training)</li> </ul>
<b>Routine Maintenance</b>	<p>Perform routine and preventive maintenance actions on all Facility systems and equipment in accordance with vendor instructions and the maintenance plan for the Facility. This program includes:</p> <p><b>Operational Checks</b> – Conduct frequent visual equipment inspections and log significant parameters such as pressures, temperatures, and flow rates. Trend and analyze this information as appropriate.</p> <p><b>Routine and Fixed Interval Maintenance</b> – Based on the CMMS database, identify all preventive maintenance requirements. Schedule and assign routine maintenance during operations, planned outages, or forced or unscheduled outages.</p>
<b>Predictive Maintenance Program</b>	Conduct/oversee predictive maintenance program. For those maintenance requirements that are not cost-effective for the Site Personnel to perform, NAES shall retain qualified vendors to provide such services.
<b>Major Maintenance and Repairs</b>	In coordination with and support of the Facility Agreements and generation plan, arrange for scheduled inspections and overhauls on major equipment. Retain vendors for unscheduled major repairs as required and manage and oversee all repairs and modifications.

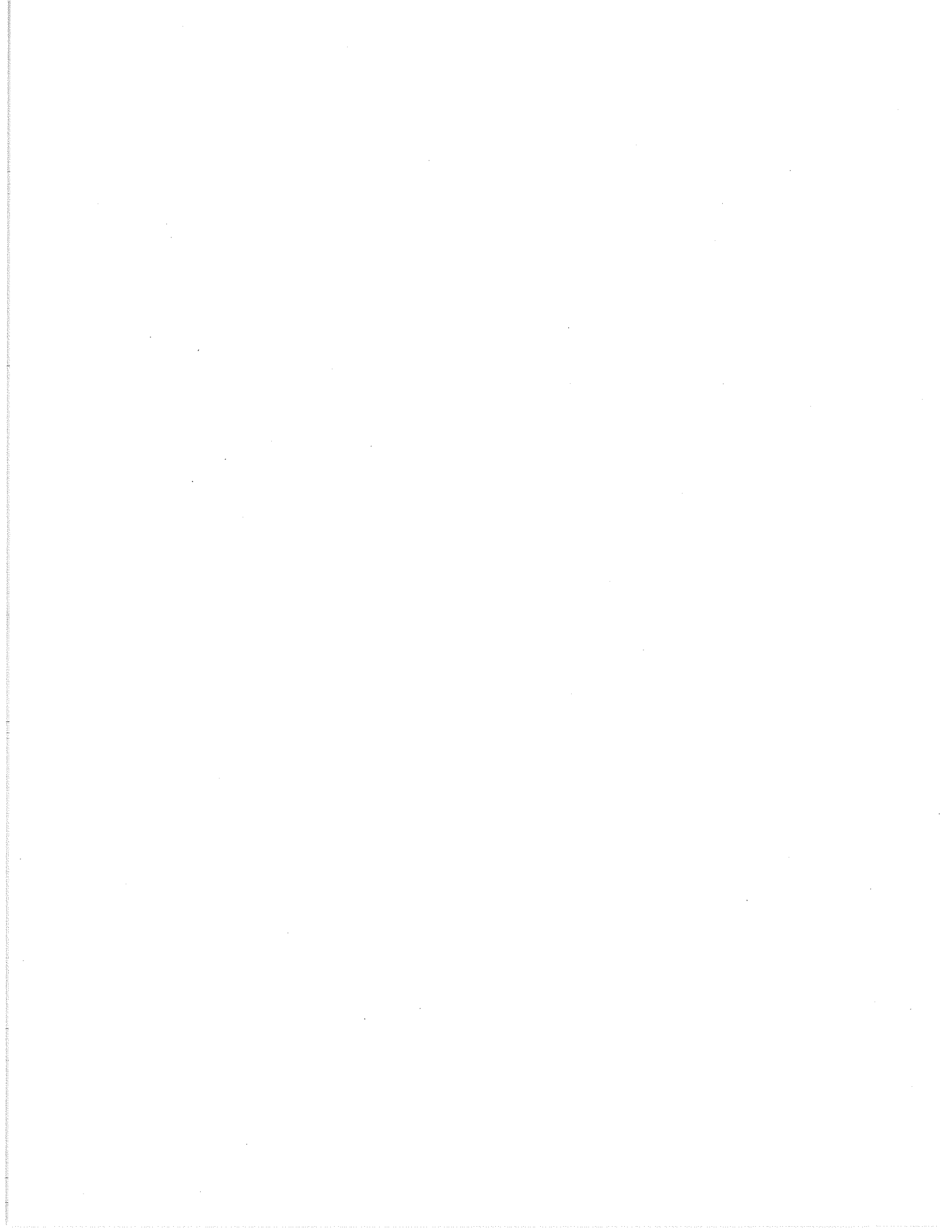
Task Name	Description
<b>Plant Outages</b>	<p>Manage all Facility outages (planned, unscheduled, forced) to minimize outage duration and impact on production:</p> <p><b>Task Assignment</b> – Within the CMMS, identify all maintenance that requires a Facility outage or equipment to be taken out of service.</p> <p><b>Work Schedule</b> – Develop and implement a detailed schedule to track all outage preparations (for both major and minor maintenance outages), work and testing, including corrective maintenance actions, contractor work and scheduled preventive maintenance. Conduct preparations to support this plan, including ordering and receiving all required spare parts.</p>
<b>Assistance to CRRA</b>	<p>Provide assistance to CRRA, as reasonably requested, with the execution of Owner’s duties relative to operation of the Facility. This task includes such activities as the preparation and coordination of warranty claims, license and permit renewals, interfacing with CRRA management and personnel, and interfacing with local authorities.</p>
<b>Plant Administration</b>	<p>Conduct administration to meet NAES requirements and CRRA’s goals, including:</p> <p><b>Budgets</b> – Prepare annual Budgets and submit them for CRRA approval. Following approval, manage operations to comply with each Budget. Generate budget variance reports, as required.</p> <p><b>Payroll</b> – Oversee the preparation and distribution of payroll and related tax payments. Ensure compliance with all federal and state labor and tax requirements.</p> <p><b>Procurement</b> – Establish and implement an effective purchasing system. Procure all materials, equipment, chemicals, supplies, services, parts, and other miscellaneous items required for routine O&amp;M. Pay all invoices in a timely manner. Minimize CRRA costs as much as feasible.</p> <p><b>Inventory Control</b> – 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 routine O&amp;M of the Facility. Maintain an inventory of critical spare parts for the Facility.</p> <p><b>Personnel Matters</b> – In coordination with NAES’s Home Office Personnel and in compliance with NAES programs and policies, manage all payroll and employee-relations issues. These tasks include: employment; compensation and benefits; initial training; and employee relations. Provide support to recruit, hire, transfer, or otherwise acquire and retain qualified Site Personnel to maintain the staffing levels and skill mix required for successful long-term operation of the Facility.</p>

Task Name	Description
<b>Work Assignment</b>	Assign work to either Site Personnel or vendors as cost-effective and appropriate. Normally, Site Personnel conduct preventive maintenance and actions requiring a high degree of plant 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). Vendors also perform tasks that make sense to minimize outage time and costs.
<b>Buildings and Grounds</b>	Arrange for janitorial, garbage pickup, landscape services, snow plowing and road sweeping, vector control, litter control and maintain all access roads, office buildings, and other structures in good repair at all times.
<b>Reports</b>	Prepare and submit to CRRA O&M reports as requested and/or scheduled relative to performance, including environmental compliance records, maintenance and repair status, Facility operating data, and any other information requested by CRRA.
<b>Security</b>	Implement or arrange for implementation of security measures in accordance with the Facility security plan.
<b>Training Program</b>	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 Facility safety requirements and emergency procedures. This program includes specialty skills training.
<b>Drawing/Manual Maintenance</b>	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.

Task Name	Description
<b>Power Agreement</b>	<p>Provide the Lead Market Participant of CRRA's power agreement with such information as may reasonably be requested, including but not limited to the following:</p> <ul style="list-style-type: none"> <li>• NAES shall provide to the Lead Market Participant a day ahead forecast for the Generating Units as soon as possible but not later than three (3) hours prior (typically 9:00 a.m.) to the Scheduling Deadline (which deadline is typically 12:00 noon), in order to allow the Lead Market Participant to self-schedule the output of the Generating Units into the Day-Ahead Energy Market;</li> <li>• An updated forecast regarding electric output of the Generating Unit during the upcoming planned maintenance outage;</li> <li>• Notice promptly the Lead Market Participant by telephone and in writing of any forced or unplanned outage event for the PBF boilers and Generating Units and an estimate regarding the duration of the forced or unplanned event and a forecast of its impact on electric output and, once the boiler(s) and/or Generating Units are stabilized, communicate by telephone and in writing as to when the boilers and/or Generating Units are operational; and</li> <li>• Provide each month to the Lead Market Participant a Generating Availability Data System Report ("GADS") report for the immediately preceding month.</li> </ul>

**EXHIBIT 4**

**SEEC FORM 11, NOTICE TO EXECUTIVE  
BRANCH STATE CONTRACTORS AND  
PROSPECTIVE STATE CONTRACTORS OF  
CAMPAIGN CONTRIBUTION AND SOLICITATION  
BAN**



## SEEC FORM 11

### **NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND SOLICITATION BAN**

This notice is provided under the authority of Connecticut General Statutes 9-612(g)(2), as amended by P.A. 07-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (*italicized words* are defined on the following page):

#### **Campaign Contribution and Solicitation Ban**

No *state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor*, with regard to a *state contract or state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or *solicit* contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

#### **Duty to Inform**

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

#### **Penalties for Violations**

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

Civil penalties--\$2000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of \$2000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or \$5000 in fines, or both.

#### **Contract Consequences**

Contributions made or solicited in violation of the above prohibitions may result, in the case of a state contractor, in the contract being voided.

Contributions made or solicited in violation of the above prohibitions, in the case of a prospective state contractor, shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State will not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information and the entire text of P.A 07-1 may be found on the website of the State Elections Enforcement Commission, [www.ct.gov/seec](http://www.ct.gov/seec). Click on the link to "State Contractor Contribution Ban."

Definitions:

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. "Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan or a loan to an individual for other than commercial purposes.

"State contract solicitation" means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

"Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

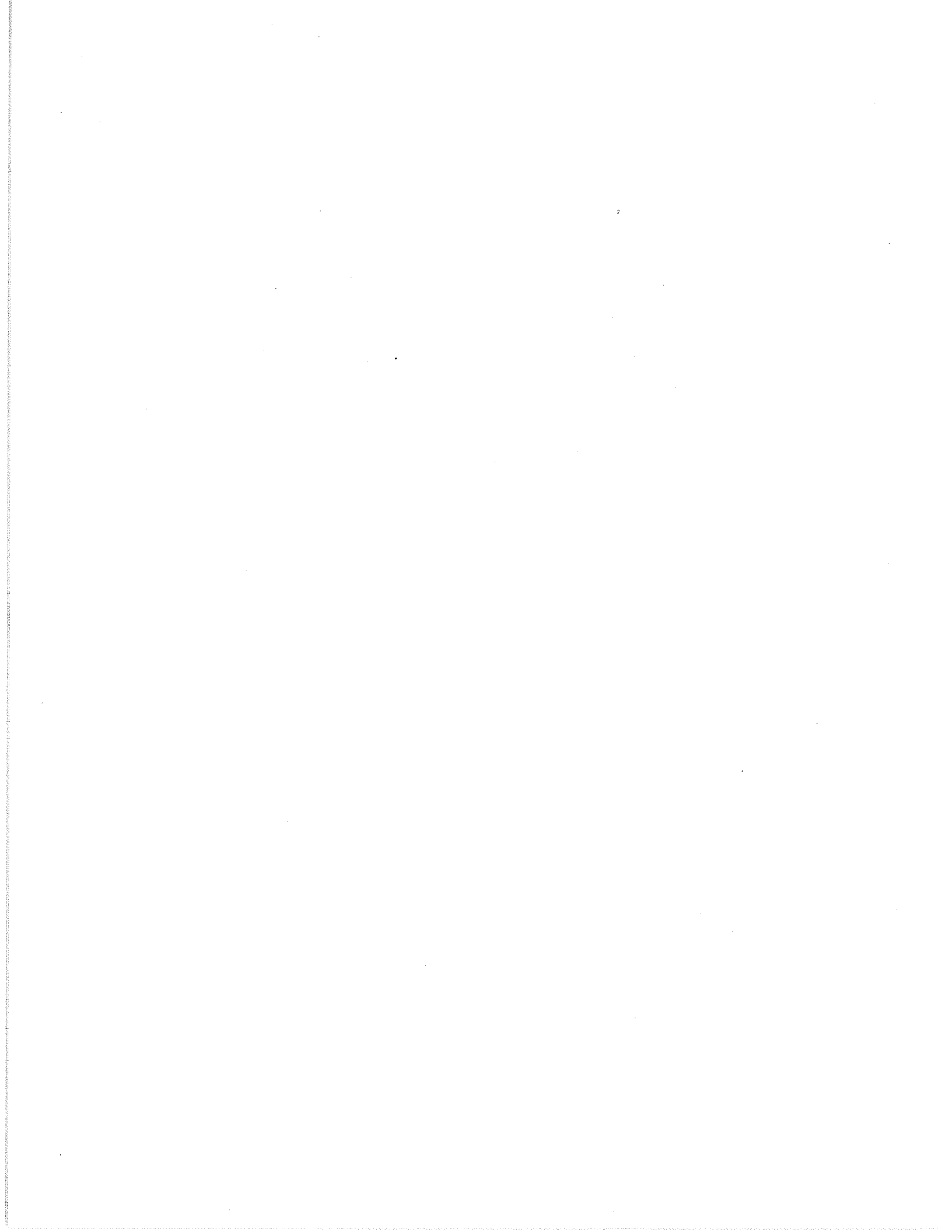
"Dependent child" means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

"Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.



**EXHIBIT 5**

**AFFIDAVIT CONCERNING NONDISCRIMINATION**



**COPY**



**AFFIDAVIT CONCERNING  
NONDISCRIMINATION**

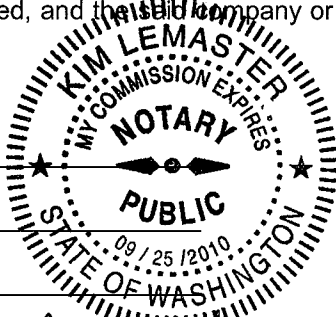
This Affidavit must be completed and properly executed under penalty of false statement by a chief executive officer, president, chairperson, member or other corporate officer duly authorized to adopt company, corporate or partnership policy of the business entity submitting a bid/proposal to the Connecticut Resources Recovery Authority that certifies such business entity complies with the nondiscrimination agreement and warranties contained in Connecticut General Statutes §§ 4a-60(a)(1) and 4a-60a(a)(1), as amended, regarding nondiscrimination against persons on account of their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, mental disability, physical disability or sexual orientation.

I, the undersigned, am over the age of eighteen and understand and appreciate the obligation of an oath. I am Glen Canavera, Vice President - Marketing (title) of NAES Corporation (firm name), an entity duly formed and existing under the laws of Washington (name of state or commonwealth) ("Contractor").

I certify that I am authorized to execute and deliver this affidavit on behalf of Contractor, as follows:

1. Contractor seeks to enter into the "Operation and Maintenance of the Mid-Connecticut Resource Recovery Facility" (the "Agreement") with the Connecticut Resources Recovery Authority; and
2. Contractor has in place a company or corporate policy that complies with the nondiscrimination agreements and warranties required under Connecticut General Statutes §§ 4a-60(a)(1) and 4a-60a(a)(1), as amended, and the said company or corporate policy is in effect as of the date hereof.

By (Signature): [Signature]  
Name (Print): Glen Canavera  
Title: Vice President, Marketing



Sworn to before me this 30<sup>th</sup> day of August 20 10

[Signature]  
Notary Public/Commissioner of the Superior Court

9/25/10  
Commission Expiration Date

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LIBRARY  
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CHICAGO, ILL. 60637  
TEL: 773-936-3000  
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**EXHIBIT 6**

**AFFIDAVIT CONCERNING CONSULTING FEES**



# COPY



## AFFIDAVIT CONCERNING CONSULTING FEES

Pursuant to Section 4a-81 of the Connecticut General Statutes, this Affidavit must be completed and properly executed under penalty of false statement by a chief official of the successful bidder/proposer for an Agreement (the "Contractor"). Such chief official of the Contractor must be the person who is properly authorized to execute the Agreement on behalf of the Contractor. This Affidavit must be properly executed at the same time that the Bidder submits its Bid/Proposal. If the Bidder fails to execute this Affidavit, the Bidder shall be disqualified for the Agreement.

I, the undersigned, am over the age of eighteen and understand and appreciate the obligation of an oath. I am Glen Canavera, Vice President - Marketing (title) of NAES Corporation (firm name), an entity duly formed and existing under the laws of Washington (name of state or commonwealth) ("Contractor").

I certify that I am authorized to execute and deliver this affidavit on behalf of Contractor, as follows:

1. Contractor seeks to enter into the "Operation and Maintenance of the Mid-Connecticut Resource Recovery Facility" (the "Agreement") with the Connecticut Resources Recovery Authority ("CRRRA");
2. Except as disclosed in Table 1 below and except for a consulting agreement that is with a consultant who is registered under the provisions of Chapter 10 of the Connecticut General Statutes<sup>1</sup> as of the date this Affidavit is submitted, Contractor has not entered into any consulting agreement<sup>2</sup> in connection with the Agreement whereby any duties of the consultant pursuant to said consulting agreement<sup>2</sup> require that consultant pursue communications concerning business of CRRRA, whether or not direct contact with CRRRA, a CRRRA official, a CRRRA employee, a state agency, a state or public official, or a state employee was expected or made;
3. Contractor shall amend this Affidavit whenever Contractor enters into any new consulting agreement<sup>2</sup> during the term of the Agreement; and
4. The statements set forth herein are true, to the best of my knowledge and belief, subject to the penalties of false statement.

<sup>1</sup> Pursuant to Section 1-94 of Chapter 10 the Connecticut General Statutes, a lobbyist as defined in the Chapter is required to register with the Office of State Ethics.

<sup>2</sup> Pursuant to Section 41-81 of the Connecticut General Statutes, for the purposes of this Affidavit, "consulting agreement" means "any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the state, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the state, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contract. Consulting agreement does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 as of the date such affidavit is submitted in accordance with the provisions of this section.

COPY






**TABLE 1: Disclosure of Consulting Agreements**

(If Contractor has not entered into any consulting agreements<sup>2</sup> in connection with the Agreement, Contractor should enter "None" in the space provided for the "Name of Consultant.")

Name of Consultant:	None	
Name of Consultant's Firm:		
Description of the Basic Terms of the Consulting Agreement:		
Brief Description of the Services Provided:		
Is the Consultant a Former State Employee or Public Official?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If the answer to the question above concerning whether or not the consultant is a former state employee or public official is "Yes," the following information must be provided.		
Name of Former Agency:		
Date Employment Terminated:		

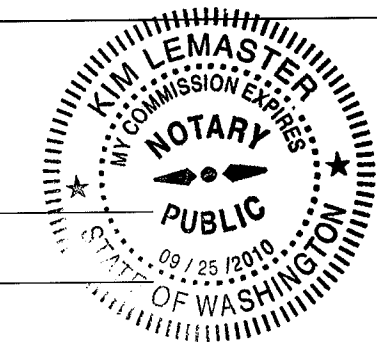
By (Signature): 

Name (Print): Glen Canavera

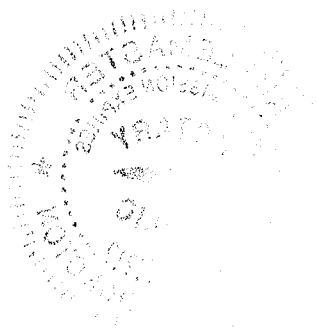
Title: Vice President, Marketing

Sworn to before me this 30<sup>th</sup> day of August 20 10

  
Notary Public/Commissioner of the Superior Court



9/25/10  
Commission Expiration Date



**EXHIBIT 7**

**CONTRACTOR'S CERTIFICATION CONCERNING**  
**GIFTS**





## CONTRACTOR'S CERTIFICATION CONCERNING GIFTS

### CONNECTICUT RESOURCES RECOVERY AUTHORITY

(This CERTIFICATION is to be signed by an authorized officer of the Contractor or the Contractor's managing general partner.)

Section 4-252 of the *Connecticut General Statutes* requires that a Contractor complete and properly execute this Certification Concerning Gifts at the same time that the Contractor executes the Agreement. If the Contractor fails to make the required certifications, the Contractor shall be disqualified for the Agreement.

I, **GLEN CANAVERA**, a duly authorized officer and/or representative of **NAES CORPORATION** (firm name) (the "Contractor"), being duly sworn, hereby depose and say that:

1. I am over eighteen (18) years of age and believe in the obligations of an oath; and
  2. The Contractor has entered into a "Operation and Maintenance Agreement for the Mid-Connecticut Resource Recovery Facility" (the "Agreement") with the Connecticut Resources Recovery Authority ("CRRA"), and certifies that,
    - (a) The Contractor,
    - (b) Any principals and key personnel of the Contractor who participated substantially in preparing the Agreement, or
    - (c) Any agent of the Contractor or principals and key personnel who participated substantially in the negotiation of the Agreement
- to
- (1) Any public official or employee of CRRA who participated substantially in the preparation or negotiation of the Agreement (such CRRA employees are listed in Table 2 below), or
  - (2) Any public official or state employee of any state agency who has supervisory or appointing authority over CRRA (such public officials and state employees are listed in Table 3 below); and
4. No such principals and key personnel of the Contractor or agent of the Contractor or principals and key personnel knows of any action by Contractor to circumvent the prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or state employee; and
  5. The Contractor entered into the Agreement without fraud or collusion with any person;
  6. The information set forth herein is true, to the best of my knowledge and belief, subject to



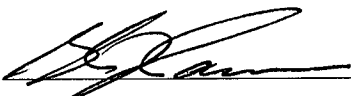
the penalties of false statement.

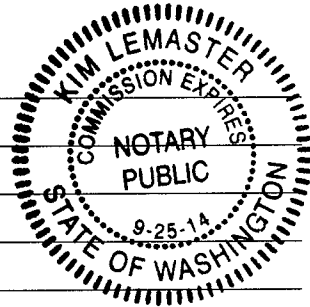
**TABLE 2: CRRA Substantial Participants in the Preparation of the Agreement**

Ron Gingrich, Development, Environmental Compliance & IT Manager
Virginia Raymond, Senior Operations Analyst
Peter Egan, Environmental Affairs and Development Director

**TABLE 3: Public Officials and State Employees of State Agencies Who Have Supervisory or Appointing Authority over CRRA**


Governor M. Jodi Rell
Senator Donald E. Williams, Jr., President Pro Tempore of the Senate
Senator John McKinney, Minority Leader of the Senate
Representative Christopher G. Donovan, Speaker of the House of Representatives
Representative Lawrence F. Cafero, Jr., Minority Leader of the House of Representatives

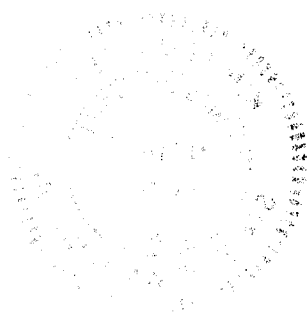
Signature:   
Name (type/print): GLENN CANAVERA  
Title: VP, MARKETING  
State Of: WASHINGTON  
County Of: KING



GLENN CANAVERA, being fully sworn, deposes and says that he/she is the VICE PRESIDENT, MARKETING (Title) of NAES CORPORATION (Firm Name), the Contractor herein, that he/she has read the foregoing statement concerning gifts, and, under the penalty of perjury, certifies that each and every part of said statement is true to his/her best knowledge and belief.

Sworn to before me this 14th day of DECEMBER 20 10

  
Notary Public/Commissioner of the Superior Court



1911



For the purposes of this Certification Concerning Gifts, the following terms are defined as follows:

"Gift" means anything of value, which is directly and personally received, unless consideration of equal or greater value is given in return. "Gift" shall not include:

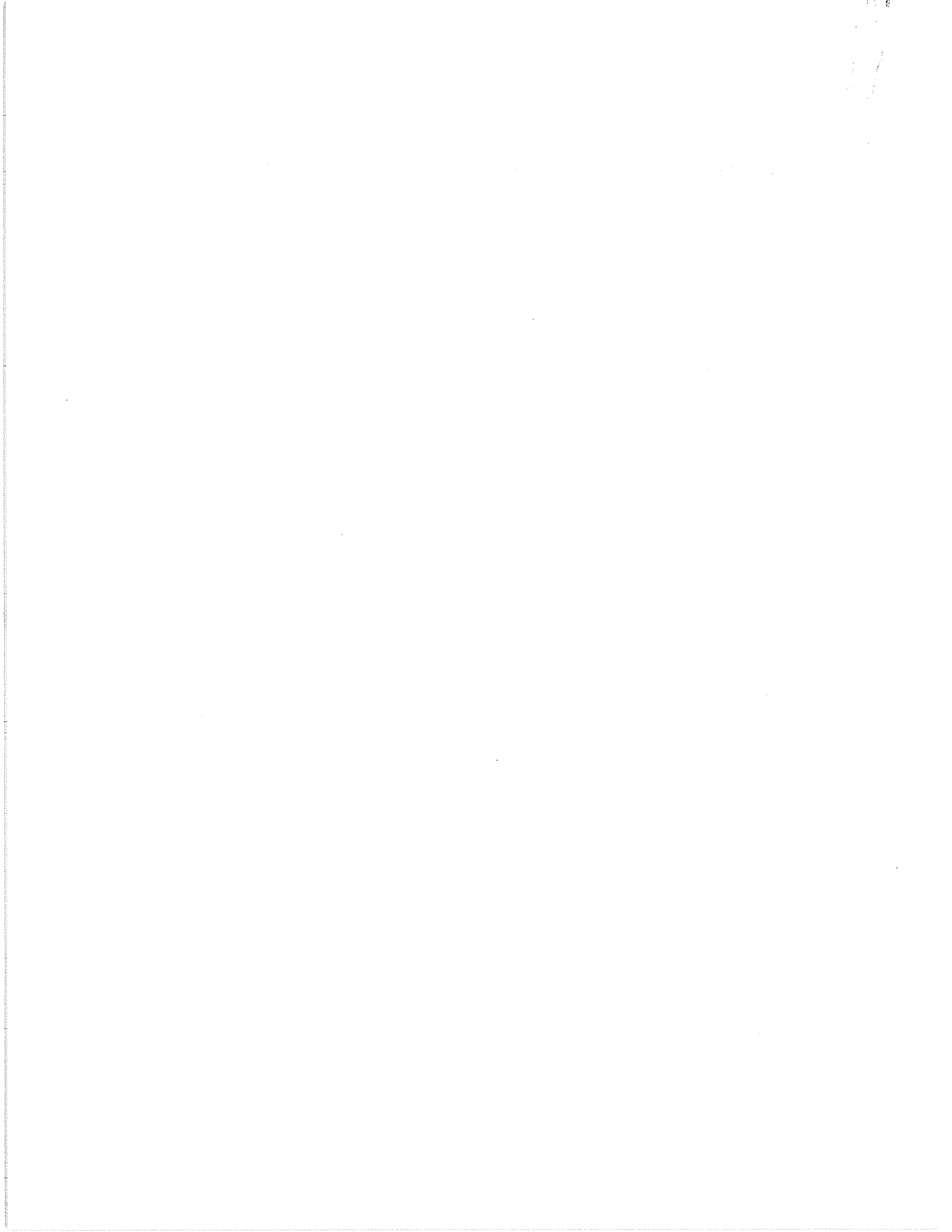
- (1) A political contribution otherwise reported as required by law or a donation or payment as described in subdivision (9) or (10) of subsection (b) of section 9-333b of the *Connecticut General Statutes*;
- (2) Services provided by persons volunteering their time, if provided to aid or promote the success or defeat of any political party, any candidate or candidates for public office or the position of convention delegate or town committee member or any referendum question;
- (3) A commercially reasonable loan made on terms not more favorable than loans made in the ordinary course of business;
- (4) A gift received from (A) an individual's spouse, fiance or fiancée, (B) the parent, brother or sister of such spouse or such individual, or (C) the child of such individual or the spouse of such child;
- (5) Goods or services (A) which are provided to the state (i) for use on state property, or (ii) to support an event or the participation by a public official or state employee at an event, and (B) which facilitate state action or functions. As used in this Affidavit Concerning Gifts, "state property" means (i) property owned by the state, or (ii) property leased to an agency in the Executive or Judicial Department of the state;
- (6) A certificate, plaque or other ceremonial award costing less than one hundred dollars;
- (7) A rebate, discount or promotional item available to the general public;
- (8) Printed or recorded informational material germane to state action or functions;
- (9) Food or beverage or both, costing less than fifty dollars in the aggregate per recipient in a calendar year, and consumed on an occasion or occasions at which the person paying, directly or indirectly, for the food or beverage, or his representative, is in attendance;
- (10) Food or beverage or both, costing less than fifty dollars per person and consumed at a publicly noticed legislative reception to which all members of the General Assembly are invited and which is hosted not more than once in any calendar year by a lobbyist or business organization. For the purposes of such limit, (A) a reception hosted by a lobbyist who is an individual shall be deemed to have also been hosted by the business organization which he owns or is employed by, and (B) a reception hosted by a business organization shall be deemed to have also been hosted by all owners and employees of the business organization who are lobbyists. In making the calculation for the purposes of such fifty-dollar limit, the donor shall divide the amount spent on food and beverage by the number of persons whom the donor reasonably expects to attend the reception;
- (11) Food or beverage or both, costing less than fifty dollars per person and consumed at a publicly noticed reception to which all members of the General Assembly from a region of the state are

invited and which is hosted not more than once in any calendar year by a lobbyist or business organization. For the purposes of such limit, (A) a reception hosted by a lobbyist who is an individual shall be deemed to have also been hosted by the business organization which he owns or is employed by, and (B) a reception hosted by a business organization shall be deemed to have also been hosted by all owners and employees of the business organization who are lobbyists. In making the calculation for the purposes of such fifty-dollar limit, the donor shall divide the amount spent on food and beverage by the number of persons whom the donor reasonably expects to attend the reception. As used in this subdivision, "region of the state" means the established geographic service area of the organization hosting the reception;

- (12) Gifts costing less than one hundred dollars in the aggregate or food or beverage provided at a hospitality suite at a meeting or conference of an interstate legislative association, by a person who is not a registrant or is not doing business with the state of Connecticut;
- (13) Admission to a charitable or civic event, including food and beverage provided at such event, but excluding lodging or travel expenses, at which a public official or state employee participates in his official capacity, provided such admission is provided by the primary sponsoring entity;
- (14) Anything of value provided by an employer of (A) a public official, (B) a state employee, or (C) a spouse of a public official or state employee, to such official, employee or spouse, provided such benefits are customarily and ordinarily provided to others in similar circumstances; or
- (15) Anything having a value of not more than ten dollars, provided the aggregate value of all things provided by a donor to a recipient under this subdivision in any calendar year shall not exceed fifty dollars.

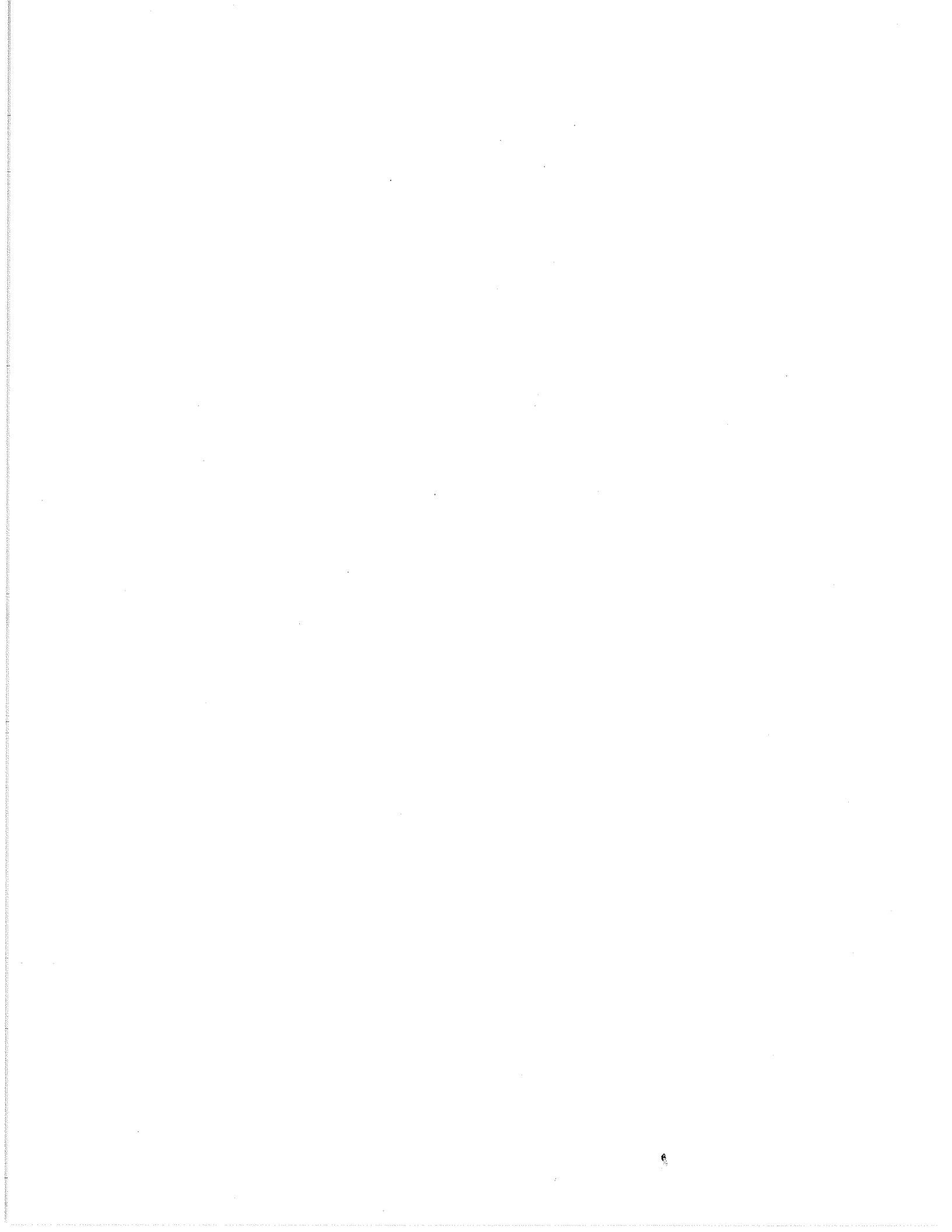
"Participated substantially" means participation that is direct, extensive and substantive, and not peripheral, clerical or ministerial.

"Principals and key personnel" means officers, directors, shareholders, members, partners and managerial employees.



**EXHIBIT 8**

**CRRA PRESIDENT'S CERTIFICATION**  
**CONCERNING GIFTS**





**PRESIDENT'S CERTIFICATION  
CONCERNING GIFTS**

**OPERATION AND MAINTENANCE OF THE MID-CONNECTICUT RESOURCE  
RECOVERY FACILITY AGREEMENT**

(This CERTIFICATION is to be signed by the President of CRRA  
at the time the Agreement is executed by him/her.)

By submission of this Certification, the President of the Connecticut Resources Recovery Authority ("CRRA") hereby certifies that the "Operation and Maintenance of the Mid-Connecticut Resource Recovery Facility" was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

Signature: TD Kirk

Name: **Thomas D. Kirk**

Title: **President**

State Of: **Connecticut**

County Of: **Hartford**

Thomas D. Kirk, being fully sworn, deposes and says that he is the President of the Connecticut Resources Recovery Authority, that he has read the forgoing statement concerning collusion, the giving of gifts or the promise of gifts, compensation, fraud or inappropriate influence and, under the penalty of perjury, certifies that each and every part of said statement is true.

Sworn to before me this Thursday, 16th day of December 20 10

M. S. Kenney  
Notary Public/Commissioner of the Superior Court

**MOIRA S. KENNEY  
NOTARY PUBLIC  
MY COMMISSION EXPIRES DEC. 31, 2012**



**SCHEDULE 14.1**

**NAES ARTICLE 2 COMPENSATION**  
**FOR TRANSITION SERVICES**





## SCHEDULE 14.1

### NAES ARTICLE 2 COMPENSATION FOR TRANSITION SERVICES

NAES shall be compensated by CRRA in the amounts and according to the timing as set forth in this Schedule for all Transition Phase Services associated with Article 2 of the Agreement.

#### 1. TOTAL COMPENSATION

The total amount of NAES compensation for Transition Services shall be the product of the following calculation:

$$\text{Total Compensation} = \text{HOME} + \text{I} + \text{L} + \text{TP} + \text{OTHER}$$

Where,

**HOME;** means NAES home office expenses determined as provided for in subsection 3 below.

**I;** means actual and reasonable costs associated with NAES' provision of the insurance coverages pursuant to Article 17 of the Agreement.

**L;** means NAES actual and reasonable costs associated with on-site personnel needed for Article 2 services in preparation for the provision of day-to-day management, operation and maintenance of the facility, provided such costs are approved in a budget or otherwise by CRRA as further described below. Such costs include (a) wages, salaries, overtime, bonus, paid time off (short term disability payments, sick leave, vacation, holidays, FMLA, jury duty); (b) statutory requirements including state and federal unemployment insurance, payroll taxes imposed on wages and benefits (FICA, Medicare), and worker's compensation costs; and (c) NAES benefits including group medical, dental, vision insurance, basic life insurance, long term disability insurance, AD&D insurance, business travel AD&D insurance, employee assistance plan, educational assistance program, defined contribution retirement and 401(k) plans and administrative fees associated with the retirement and 401(k), tax-free benefit enhancement plan, and employee assistance plan. Such costs do not include NAES Student Scholarship Program, Supplemental Life Insurance, and Supplemental AD&D Insurance.

The budget for such costs associated with **L** shall include (i) wages, salaries, overtime, paid time off; and (ii) an amount for the statutory and NAES benefit burden items listed in (b) and (c) of the paragraph above, to be expressed as a percentage of (a) of the paragraph above. For the period in which Transition Services are provided, the average burden percentage shall be set at a target of thirty-three and twenty-five hundredths percent (33.25%), provided that such

target shall be adjusted based upon statutory changes, actual employee wage, salary, and benefit elections, or other CRRA-approved changes.

**TP**; means the actual cost incurred by NAES for third party vendor services as approved by CRRA in accordance with the Agreement, including but not limited to subcontractors associated with transition phase services. In the event NAES Power Contractors (NAES PC) is selected and authorized to perform any work for CRRA, the cost of such services shall be performed at the direct cost to NAES PC plus a markup of not more than eight (8%) percent.

**OTHER**; means actual and reasonable costs for any other expense that has been approved by CRRA in accordance with the Agreement, including but not limited to provision of utilities, purchase of spare parts and supplies, site personnel recruitment and relocation, site personnel customary or required severance payments, telephone and communication services, or similar expenses associated with transition phase services.

## 2. MONTHLY INVOICING

NAES shall submit requests for payment for Article 2 services in writing to CRRA as soon as possible at the end of each month but not later than fifteen (15) days thereafter. All monthly requests for payment shall be in such detail as CRRA may reasonably require and shall include the following information and amounts, if any are due:

- (a) the date of the billing period
- (b) the contract number (to be provided by CRRA),
- (c) The cost of any **HOME** expenses incurred in the prior month, as defined in this Schedule
- (d) The cost of any insurance costs (“I” above) that were incurred and paid by NAES in the prior month
- (e) The cost of any **L**, **TP** or **OTHER** services which have been provided with respect to transition phase services.

CRRA shall pay any undisputed amounts of such monthly invoice within thirty (30) days of its receipt of said invoice.

## 3. HOME OFFICE EXPENSES

### 3.1 Exhibit 2 Services

With respect to any services that are provided by NAES personnel regarding the scope of services described in Exhibit 2 to this Agreement, other than any employees on-site and fully dedicated to CRRA’s program whose costs are reimbursed to NAES as described in “L” above, NAES shall invoice CRRA for such personnel at the following rates:

**Table 3.1**

<b>Staff Level</b>	<b>Position</b>	<b>Rate(*)</b>
<b>Operations</b>	Division Director	\$157.00
	Project Mgr. I	\$110.00
<b>Technical Services</b>	Division Director	\$157.00
	Director, Envir. Support Svcs	\$137.00
	Sr. Environmental Mgr.	\$123.00
	Sr. Environmental Specialist	\$110.00
	Project Mgr. - Safety	\$110.00
	Engineer/NERC Specialist	\$110.00
	Project Engineer *	\$90.00
	Sr. Operations Analyst *	\$68.00
	Operations Analyst II *	\$62.00
	Operations Analyst I *	\$58.00
Tech. Support Spec. II	\$73.00	
<b>Accounting</b>	Senior Accountant	\$82.00
<b>Human Resources</b>	VP, HR & Admin	\$181.00
	HR Employee Relations Manager	\$123.00
	Recruitment/Hiring Manager	\$110.00
	HR Specialist — Employee Orientation	\$68.00
	Benefits Administrator	\$58.00
	HR Specialist — Offer Letters	\$68.00
	HR Administrator — Data Input HRISA	\$58.00
	HR Administrator — New Hire Packets	\$58.00
	HR Specialist — In-processing HRPPM Manual	\$68.00
<b>Information Services</b>	IS Support II	\$82.00

\* The amounts in this table apply to the twelve-month period ending on June 30, 2011, and such amounts shall be subject to Annual Escalation for each Operating Year in accordance with the terms of this Agreement.

NAES shall also be entitled to compensation for its reasonable and necessary direct costs associated with the provision of any services by such staff. To the extent NAES is requested to provide services from a staff position not included in the above table, the rate for any such party shall be subject to CRRA's approval.

### 3.2 Other Than Exhibit 2 Services

CRRA may also, at its sole option, elect to obtain services from NAES for tasks/activities other than those provided for in Exhibit 2 of this Agreement, calling upon its staff from other offices of the company. Such services may include but not be limited to the following; environmental consulting, NERC program development, engineering support services, recruitment, and other program development.

To the extent NAES is requested and provides any such services to CRRA, payment shall be made on a time-and-materials basis at the billing rates provided for in Table 3.2, below:

**Table 3.2**

Staff Level	Position	Rate(*)
Technical Services	Division Director	\$203.60
	Director, Envir. Support Svcs	\$177.60
	Sr. Environmental Mgr.	\$159.60
	Senior Engineer	\$159.60
	Sr. Environmental Specialist	\$143.50
	Engineer	\$143.50
	Project Manager 1	\$129.50
	Environmental Specialist II	\$129.50
	Environmental Specialist I	\$116.50
	Sr. Operations Analyst	\$88.70
	Operations Analyst II	\$80.30
	Operations Analyst I	\$74.90
	Operations Accountant III	\$88.40
Accounting	Mgr., Corp. Acctng	\$143.50
	Mgr. Financial Planning	\$143.50
	Sr. Accountant	\$106.30
	Staff Accountant	\$106.30
	Accounting Specialist	\$70.20
Human Resources	VP, HR & Admin	\$235.60
	HR Employee Relations Manager	\$159.60
	HR Manager	\$143.50
	HR Specialist	\$88.10
	HR. Administrator	\$75.90

Staff Level	Position	Rate(*)
Miscellaneous Support	IS Support II	\$106.30
	IS Support I	\$75.90
	Tech. Support Spec. I	\$88.10
	Administrative Asst.	\$70.20

\* The amounts in this table apply to the twelve-month period ending on June 30, 2011, and such amounts shall be subject to Annual Escalation for each Operating Year in accordance with the terms of this Agreement.

To the extent NAES is requested to provide services from a staff position not included in the above table, the rate for any such party shall be subject to CRRA's approval.

### 3.3 Ancillary Services

To the extent NAES provides any ancillary services, the rates to be charged CRRA are as follows:

**Table 3.3**

Ancillary Service	Rate
Drafting	\$0
Word Processing	\$0
Copying (Per Page)	\$0
Computer Time	\$0
Travel in NAES-Owned Vehicle (Per Mile)	IRS Rate

### 4. Reconciliation

As soon as possible, but not later than forty-five (45) days following the end of the period during which transition phase services were provided, NAES shall provide CRRA with its proposed annual reconciliation of its costs and payments from CRRA for such period, together with reimbursement of any amounts overpaid by CRRA during the course of the period and statement of any amounts remaining due to NAES at that time. CRRA shall provide NAES its review comments not later than thirty (30) days after receipt of the proposed reconciliation, together with payment for any amounts deemed outstanding and payable to NAES.

### 5. Annual Escalation

Any amount in this Schedule deemed subject to escalation from one Operating Year to the next Operating Year shall be determined pursuant to this subsection. Stated amounts above are as of September 2010, and shall be escalated by determining the change as of July 1,

2011 and on each succeeding July 1, all as compared to the base amount or prior Operating Year, as the case may be, using the following U.S. Department of Labor Index:

U.S. Department of Labor Consumer Price Index for Urban Wage Earners and Clerical Workers, Series ID CWURA101SAOLE, for New York, Northern New Jersey, Long Island, NY, NJ, CT, PA).

Notwithstanding the previous sentence, NAES home office personnel rates shall not be escalated by more than 2.5% or less than 1% any Operating Year.

In preparing and considering the proposed Budget for any upcoming Operating Year, the parties may agree upon an estimated factor for annual escalation, with a correction for any difference between the estimated amount and actual calculation once the referenced index is finally published.

**SCHEDULE 14.2**  
**NAES ARTICLE 3 COMPENSATION**  
**FOR O&M SERVICES**





## SCHEDULE 14.2

### NAES ARTICLE 3 COMPENSATION FOR O&M SERVICES

NAES shall be compensated by CRRA in the amounts and according to the timing as set forth in this Schedule for all O&M Services associated with Article 3 of the Agreement.

#### 1. TOTAL COMPENSATION

The total amount of NAES compensation for O&M Services in any Operating Year shall be the product of the following calculation:

$$\text{Total Compensation} = \text{FF} + \text{NIBC} + \text{EIBC} + \text{HOME} + \text{I} + \text{L} + \text{TP} + \text{OTHER}$$

Where,

**FF;** means a fixed fee of \$390,000 per operating year, subject to Annual Escalation.

**NIBC;** means the NAES Incentive Based Compensation deemed eligible for payment in accordance with the terms of Schedule 14.3, which shall not exceed \$390,000 per Operating Year, which amount is subject to Annual Escalation.

**EIBC;** means the Employee Incentive Based Compensation pool deemed eligible for payment and distribution to NAES site employees in accordance with the terms of Schedule 14.3, which shall not exceed the following total amount: The sum of the amount determined for each employee at the site eligible for such incentive bonus at the end of each Operating Year equal to the individual employee's total paid annual base wages/salaries ("Gross Annual Wages/Salaries") times the applicable percentage as follows; For the plant manager 20%, for site supervisory employees 15%, and for all other site staff 10%. Does not include burden.

**HOME;** means NAES home office expenses determined as provided for in Section 3 below.

**I;** means actual and reasonable costs associated with NAES's provision of the insurance coverages pursuant to Article 17 of the Agreement.

**L;** means NAES actual and reasonable costs associated with on-site personnel needed for day-to-day management, operation and maintenance of the facility, provided such costs are approved in a budget or otherwise by CRRA as further described below. Such costs include (a) wages, salaries, overtime, paid time off (incl. short term disability payments, sick leave, vacation, holidays, FMLA, jury duty); (b) statutory requirements including state and federal unemployment insurance, payroll taxes imposed on wages and benefits (FICA, Medicare), and worker's compensation costs; and (c) NAES benefits including group medical,

dental, vision insurance, basic life insurance, long term disability insurance, AD&D insurance, business travel AD&D insurance, employee assistance plan, educational assistance program, defined contribution retirement and 401(k) plans and administrative fees associated with the retirement and 401(k), tax-free benefit enhancement plan, and employee assistance plan. Such costs do not include NAES Student Scholarship Program, Supplemental Life Insurance, and Supplemental AD&D Insurance.

The budget for such costs associated with **L** shall include (i) wages, salaries, overtime, paid time off; and (ii) an amount for the statutory and NAES benefit burden items listed in (b) and (c) of the paragraph above (to include burden on EIBC), to be expressed as a percentage of (a) of the paragraph above. For the period in which O&M Services are provided, the burden percentage shall be set at a target of thirty-three and twenty-five hundredths percent (33.25%) for the first Operating Year, provided that such target shall be adjusted based upon statutory changes, actual employee wage, salary, and benefit elections, or other CRRA-approved changes.

**TP;** means the actual cost incurred by NAES for Third Party vendor services as approved by CRRA in accordance with the Agreement, including but not limited to subcontractors associated with maintenance of the Facility or for capital projects. In the event NAES Power Contractors (NAES PC) is selected and authorized to perform any work for CRRA, the cost of such services shall be performed at the direct cost to NAES PC plus a markup of not more than eight (8%) percent.

**OTHER;** means actual and reasonable costs for any other expense that has been approved by CRRA in accordance with the Agreement, including but not limited to provision of utilities, purchase of spare parts and supplies, site personnel recruitment and relocation, site personnel customary or required severance payments, telephone and communication services, or similar expenses associated with O&M Services.

## 2. ITEMS ELIGIBLE FOR MONTHLY INVOICING

NAES shall submit requests for payment for certain Article 3 services in writing to CRRA as soon as possible at the end of each month but not later than fifteen (15) days thereafter during an Operating Year. All monthly requests for payment shall be in such detail as CRRA may reasonably require and include the following information and amounts, if any are due:

- (a) the date of the billing period
- (b) the contract number (to be provided by CRRA),
- (c) 1/12th of the applicable **FF** amount as identified above
- (d) The cost of any **HOME** expenses incurred in the prior month, as defined in this Schedule

- (e) The cost of any insurance costs (“I” above) that were incurred and paid by NAES in the prior month.

CRRA shall pay any undisputed amounts of such monthly invoice within thirty (30) days of its receipt of said invoice.

### 3. HOME OFFICE EXPENSES

#### 3.1 Exhibit 3 Services

With respect to any services that are provided by NAES personnel regarding the scope of services described in Exhibit 3 to this Agreement, other than those employees on-site and fully dedicated to CRRA’s program whose costs are reimbursed to NAES as described in “L” above, NAES shall invoice CRRA for such personnel at the following rates:

**Table 3.1**

Staff Level	Position	Rate(*)
Operations	Division Director	\$157.00
	Project Mgr. I	\$110.00
Technical Services	Division Director	\$157.00
	Director, Envir. Support Svcs	\$137.00
	Sr. Environmental Mgr.	\$123.00
	Sr. Environmental Specialist	\$110.00
	Project Mgr. - Safety	\$110.00
	Engineer/NERC Specialist	\$110.00
	Project Engineer *	\$90.00
	Sr. Operations Analyst *	\$68.00
	Operations Analyst II *	\$62.00
	Operations Analyst I *	\$58.00
Tech. Support Spec. II	\$73.00	
Accounting	Senior Accountant	\$82.00

Staff Level	Position	Rate(*)
Human Resources	VP, HR & Admin	\$181.00
	HR Employee Relations Manager	\$123.00
	Recruitment/Hiring Manager	\$110.00
	HR Specialist — Employee Orientation	\$68.00
	Benefits Administrator	\$58.00
	HR Specialist — Offer Letters	\$68.00
	HR. Administrator — Data Input HRISA	\$58.00
	HR Administrator — New Hire Packets	\$58.00
	HR Specialist — In-processing HRPPM Manual	\$68.00
Information Systems	IS Support II	\$82.00

\* The amounts in this table apply to the twelve-month period ending on June 30, 2011, and such amounts shall be subject to Annual Escalation for each Operating Year in accordance with the terms of this Agreement.

NAES shall also be entitled to compensation for its reasonable and necessary direct costs associated with the provision of any services by such staff. To the extent NAES is requested to provide services from a staff position not included in the above table, the rate for any such party shall be subject to CRRA's approval.

### 3.2 Other Than Exhibit 3 Services

CRRA may also, at its sole option, elect to obtain services from NAES for tasks/activities other than those provided for in Exhibit 3 of this Agreement, calling upon its staff from other offices of the company. Such services may include but not be limited to the following; environmental consulting, NERC program development, engineering support services, recruitment, and other program development.

To the extent NAES is requested and provides any such services to CRRA, payment shall be made on a time-and-materials basis at the billing rates provided for in Table 3.2, below:

**Table 3.2**

Staff Level	Position	Rate(*)
Technical Services	Division Director	\$203.60
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	Sr. Operations Analyst	\$88.70
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	Operations Analyst I	\$74.90
	Operations Accountant III	\$88.40
Accounting	Mgr., Corp. Acctng	\$143.50
	Mgr. Financial Planning	\$143.50
	Sr. Accountant	\$106.30
	Staff Accountant	\$106.30
	Accounting Specialist	\$70.20
Human Resources	VP, HR & Admin	\$235.60
	HR Employee Relations Manager	\$159.60
	HR Manager	\$143.50
	HR Specialist	\$88.10
	HR. Administrator	\$75.90
Miscellaneous Support	IS Support II	\$106.30
	IS Support I	\$75.90
	Tech. Support Spec. I	\$88.10
	Administrative Asst.	\$70.20

\* The amounts in this table apply to the twelve-month period ending on June 30, 2011, and such amounts shall be subject to Annual Escalation for each Operating Year in accordance with the terms of this Agreement.

To the extent NAES is requested to provide services from a staff position not included in the above table, the rate for any such party shall be subject to CRRA's approval.

### 3.3 Ancillary Services

To the extent NAES provides any ancillary services, the rates to be charged CRRA are as follows:

**Table 3.3**

Ancillary Service	Rate
Drafting	\$0
Word Processing	\$0
Copying (Per Page)	\$0
Computer Time	\$0
Travel in NAES-Owned Vehicle (Per Mile)	IRS Rate

#### 4. Payments from Operating Account

NAES shall be compensated for items **L**, **TP** and **OTHER**, as defined above, as specified in Schedule 14.4 - Operating Account of this Agreement.

#### 5. Annual Reconciliation

As soon as possible, but not later than forty-five (45) days following the end of each Operating Year, NAES shall provide CRRA with its proposed annual reconciliation of its costs and payments from CRRA for the prior Operating Year under this Agreement, together with reimbursement of any amounts overpaid by CRRA during the course of the prior Operating Year and statement of any amounts remaining due to NAES at that time. CRRA shall provide NAES its review comments not later than thirty (30) days after receipt of the proposed reconciliation, together with payment for any amounts deemed outstanding and payable to NAES.

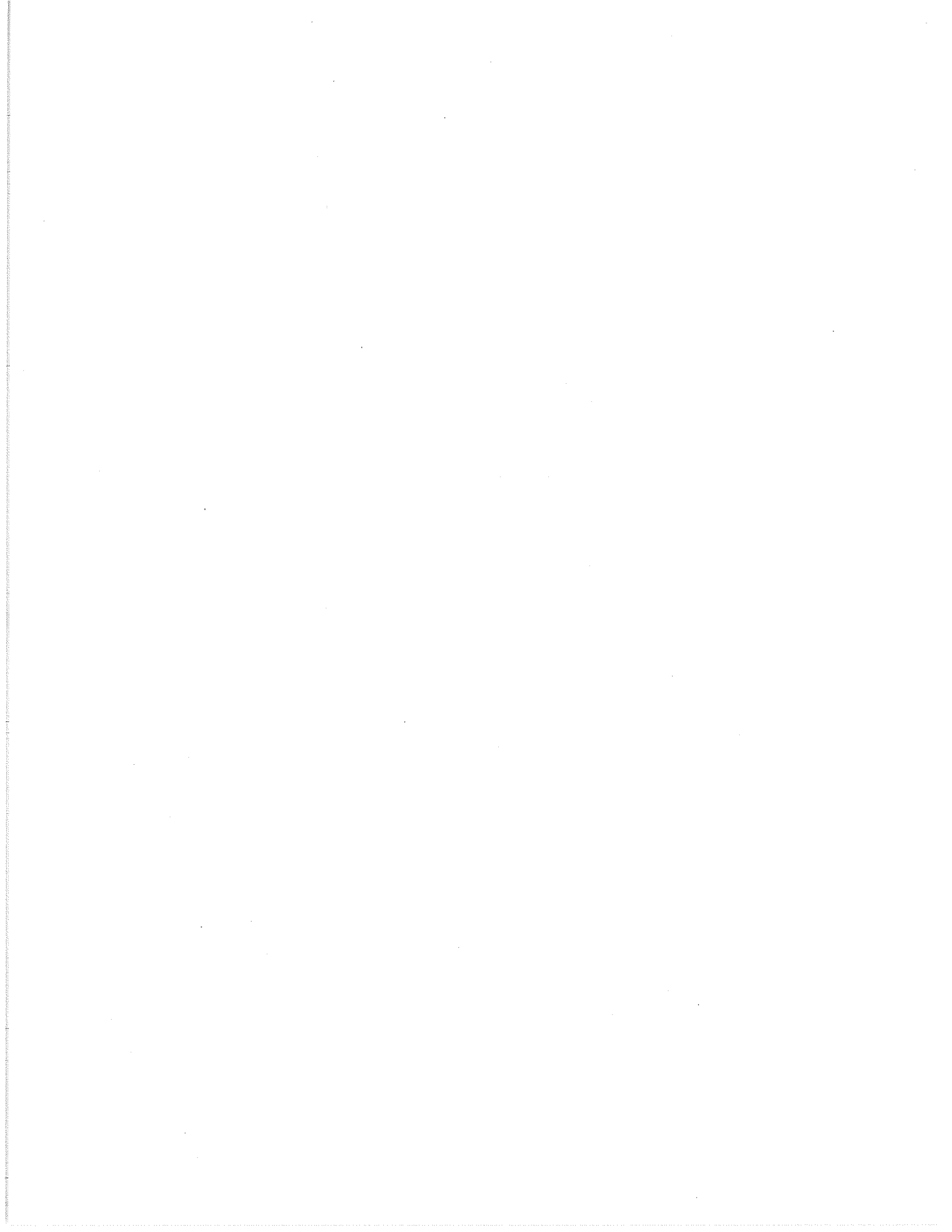
#### 6. Annual Escalation

Any amount in this Schedule deemed subject to escalation from one Operating Year to the next Operating Year shall be determined pursuant to this subsection. Any such stated amounts are as of September 2010, and shall be escalated by determining the change as of July 1, 2011 and on each succeeding July 1, all as compared to the base amount or prior contract year as the case may be using the following U.S. Department of Labor Index:

U.S. Department of Labor Consumer Price Index for Urban Wage Earners and Clerical Workers, Series ID CWURA101SAOLE, for New York, Northern New Jersey, Long Island, NY, NJ, CT, PA).

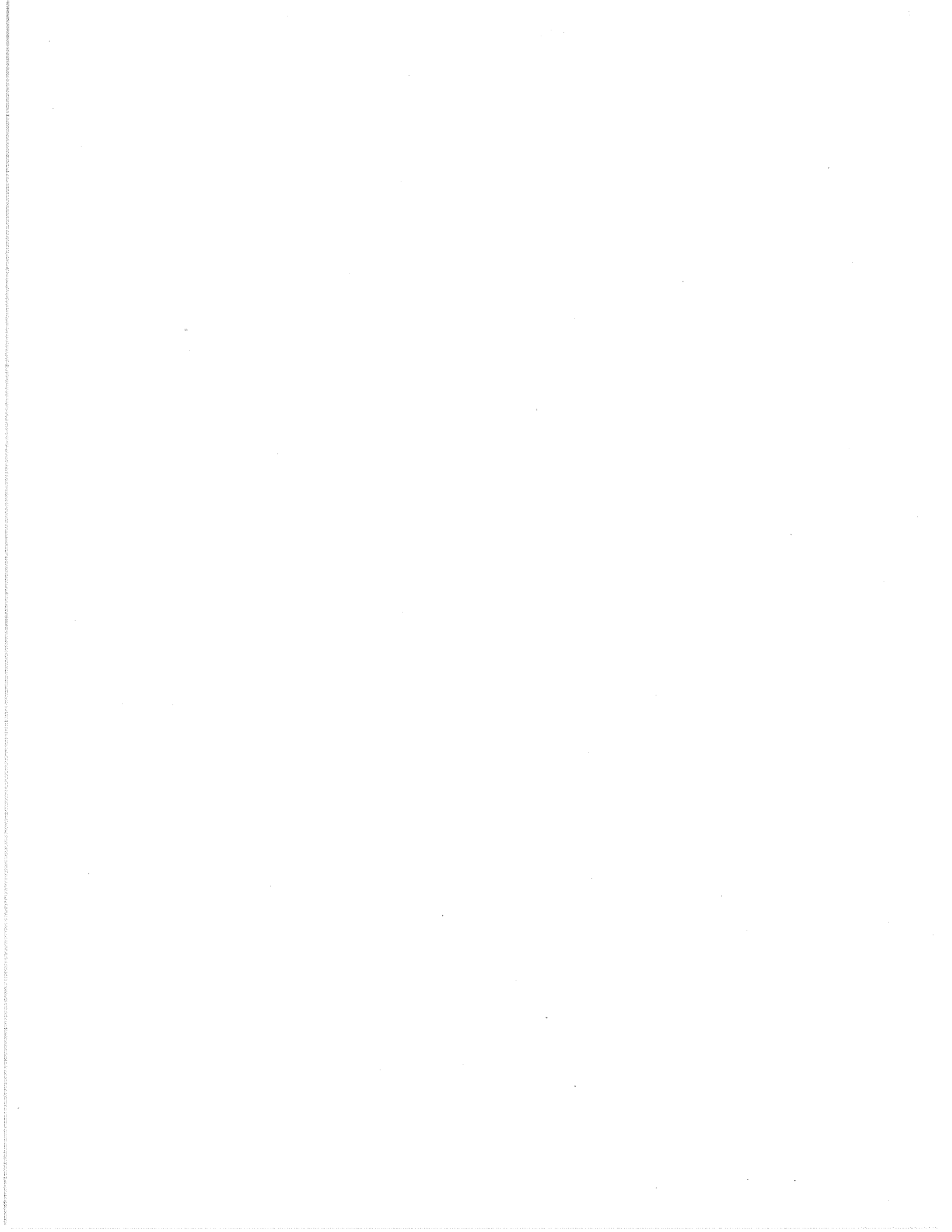
Notwithstanding the previous sentence, NAES home office personnel rates, **FF**, and **NIBC** shall not be escalated by more than 2.5% or less than 1% any Operating Year.

In preparing and considering the proposed Budget for any upcoming Operating Year, the parties may agree upon an estimated factor for annual escalation, with a correction for any difference between the estimated amount and actual calculation once the referenced index is finally published.





**SCHEDULE 14.2**  
**NAES ARTICLE 3 COMPENSATION**  
**FOR O&M SERVICES**



## SCHEDULE 14.2

### NAES ARTICLE 3 COMPENSATION FOR O&M SERVICES

NAES shall be compensated by CRRA in the amounts and according to the timing as set forth in this Schedule for all O&M Services associated with Article 3 of the Agreement.

#### 1. TOTAL COMPENSATION

The total amount of NAES compensation for O&M Services in any Operating Year shall be the product of the following calculation:

$$\text{Total Compensation} = \text{FF} + \text{NIBC} + \text{EIBC} + \text{HOME} + \text{I} + \text{L} + \text{TP} + \text{OTHER}$$

Where,

**FF;** means a fixed fee of \$390,000 per operating year, subject to Annual Escalation.

**NIBC;** means the NAES Incentive Based Compensation deemed eligible for payment in accordance with the terms of Schedule 14.3, which shall not exceed \$390,000 per Operating Year, which amount is subject to Annual Escalation.

**EIBC;** means the Employee Incentive Based Compensation pool deemed eligible for payment and distribution to NAES site employees in accordance with the terms of Schedule 14.3, which shall not exceed the following total amount: The sum of the amount determined for each employee at the site eligible for such incentive bonus at the end of each Operating Year equal to the individual employee's total paid annual base wages/salaries ("Gross Annual Wages/Salaries") times the applicable percentage as follows; For the plant manager 20%, for site supervisory employees 15%, and for all other site staff 10%. Does not include burden.

**HOME;** means NAES home office expenses determined as provided for in Section 3 below.

**I;** means actual and reasonable costs associated with NAES's provision of the insurance coverages pursuant to Article 17 of the Agreement.

**L;** means NAES actual and reasonable costs associated with on-site personnel needed for day-to-day management, operation and maintenance of the facility, provided such costs are approved in a budget or otherwise by CRRA as further described below. Such costs include (a) wages, salaries, overtime, paid time off (incl. short term disability payments, sick leave, vacation, holidays, FMLA, jury duty); (b) statutory requirements including state and federal unemployment insurance, payroll taxes imposed on wages and benefits (FICA, Medicare), and worker's compensation costs; and (c) NAES benefits including group medical,

dental, vision insurance, basic life insurance, long term disability insurance, AD&D insurance, business travel AD&D insurance, employee assistance plan, educational assistance program, defined contribution retirement and 401(k) plans and administrative fees associated with the retirement and 401(k), tax-free benefit enhancement plan, and employee assistance plan. Such costs do not include NAES Student Scholarship Program, Supplemental Life Insurance, and Supplemental AD&D Insurance.

The budget for such costs associated with **L** shall include (i) wages, salaries, overtime, paid time off; and (ii) an amount for the statutory and NAES benefit burden items listed in (b) and (c) of the paragraph above (to include burden on EIBC), to be expressed as a percentage of (a) of the paragraph above. For the period in which O&M Services are provided, the burden percentage shall be set at a target of thirty-three and twenty-five hundredths percent (33.25%) for the first Operating Year, provided that such target shall be adjusted based upon statutory changes, actual employee wage, salary, and benefit elections, or other CRRA-approved changes.

**TP;** means the actual cost incurred by NAES for Third Party vendor services as approved by CRRA in accordance with the Agreement, including but not limited to subcontractors associated with maintenance of the Facility or for capital projects. In the event NAES Power Contractors (NAES PC) is selected and authorized to perform any work for CRRA, the cost of such services shall be performed at the direct cost to NAES PC plus a markup of not more than eight (8%) percent.

**OTHER;** means actual and reasonable costs for any other expense that has been approved by CRRA in accordance with the Agreement, including but not limited to provision of utilities, purchase of spare parts and supplies, site personnel recruitment and relocation, site personnel customary or required severance payments, telephone and communication services, or similar expenses associated with O&M Services.

## 2. ITEMS ELIGIBLE FOR MONTHLY INVOICING

NAES shall submit requests for payment for certain Article 3 services in writing to CRRA as soon as possible at the end of each month but not later than fifteen (15) days thereafter during an Operating Year. All monthly requests for payment shall be in such detail as CRRA may reasonably require and include the following information and amounts, if any are due:

- (a) the date of the billing period
- (b) the contract number (to be provided by CRRA),
- (c) 1/12th of the applicable **FF** amount as identified above
- (d) The cost of any **HOME** expenses incurred in the prior month, as defined in this Schedule

- (e) The cost of any insurance costs (“I” above) that were incurred and paid by NAES in the prior month.

CRRA shall pay any undisputed amounts of such monthly invoice within thirty (30) days of its receipt of said invoice.

### 3. HOME OFFICE EXPENSES

#### 3.1 Exhibit 3 Services

With respect to any services that are provided by NAES personnel regarding the scope of services described in Exhibit 3 to this Agreement, other than those employees on-site and fully dedicated to CRRA’s program whose costs are reimbursed to NAES as described in “L” above, NAES shall invoice CRRA for such personnel at the following rates:

**Table 3.1**

Staff Level	Position	Rate(*)
Operations	Division Director	\$157.00
	Project Mgr. I	\$110.00
Technical Services	Division Director	\$157.00
	Director, Envir. Support Svcs	\$137.00
	Sr. Environmental Mgr.	\$123.00
	Sr. Environmental Specialist	\$110.00
	Project Mgr. - Safety	\$110.00
	Engineer/NERC Specialist	\$110.00
	Project Engineer *	\$90.00
	Sr. Operations Analyst *	\$68.00
	Operations Analyst II *	\$62.00
	Operations Analyst I *	\$58.00
	Tech. Support Spec. II	\$73.00
Accounting	Senior Accountant	\$82.00

Staff Level	Position	Rate(*)
Human Resources	VP, HR & Admin	\$181.00
	HR Employee Relations Manager	\$123.00
	Recruitment/Hiring Manager	\$110.00
	HR Specialist — Employee Orientation	\$68.00
	Benefits Administrator	\$58.00
	HR Specialist — Offer Letters	\$68.00
	HR. Administrator — Data Input HRISA	\$58.00
	HR Administrator — New Hire Packets	\$58.00
	HR Specialist — In-processing HRPPM Manual	\$68.00
Information Systems	IS Support II	\$82.00

\* The amounts in this table apply to the twelve-month period ending on June 30, 2011, and such amounts shall be subject to Annual Escalation for each Operating Year in accordance with the terms of this Agreement.

NAES shall also be entitled to compensation for its reasonable and necessary direct costs associated with the provision of any services by such staff. To the extent NAES is requested to provide services from a staff position not included in the above table, the rate for any such party shall be subject to CRRA's approval.

### 3.2 Other Than Exhibit 3 Services

CRRA may also, at its sole option, elect to obtain services from NAES for tasks/activities other than those provided for in Exhibit 3 of this Agreement, calling upon its staff from other offices of the company. Such services may include but not be limited to the following; environmental consulting, NERC program development, engineering support services, recruitment, and other program development.

To the extent NAES is requested and provides any such services to CRRA, payment shall be made on a time-and-materials basis at the billing rates provided for in Table 3.2, below:

**Table 3.2**

<b>Staff Level</b>	<b>Position</b>	<b>Rate(*)</b>
Technical Services	Division Director	\$203.60
	Director, Envir. Support Svcs	\$177.60
	Sr. Environmental Mgr.	\$159.60
	Senior Engineer	\$159.60
	Sr. Environmental Specialist	\$143.50
	Engineer	\$143.50
	Project Manager 1	\$129.50
	Environmental Specialist II	\$129.50
	Environmental Specialist I	\$116.50
	Sr. Operations Analyst	\$88.70
	Operations Analyst II	\$80.30
	Operations Analyst I	\$74.90
	Operations Accountant III	\$88.40
Accounting	Mgr., Corp. Acctng	\$143.50
	Mgr. Financial Planning	\$143.50
	Sr. Accountant	\$106.30
	Staff Accountant	\$106.30
	Accounting Specialist	\$70.20
Human Resources	VP, HR & Admin	\$235.60
	HR Employee Relations Manager	\$159.60
	HR Manager	\$143.50
	HR Specialist	\$88.10
	HR. Administrator	\$75.90
Miscellaneous Support	IS Support II	\$106.30
	IS Support I	\$75.90
	Tech. Support Spec. I	\$88.10
	Administrative Asst.	\$70.20

\* The amounts in this table apply to the twelve-month period ending on June 30, 2011, and such amounts shall be subject to Annual Escalation for each Operating Year in accordance with the terms of this Agreement.

To the extent NAES is requested to provide services from a staff position not included in the above table, the rate for any such party shall be subject to CRRA's approval.

### 3.3 Ancillary Services

To the extent NAES provides any ancillary services, the rates to be charged CRRA are as follows:

**Table 3.3**

Ancillary Service	Rate
Drafting	\$0
Word Processing	\$0
Copying (Per Page)	\$0
Computer Time	\$0
Travel in NAES-Owned Vehicle (Per Mile)	IRS Rate

#### 4. Payments from Operating Account

NAES shall be compensated for items **L**, **TP** and **OTHER**, as defined above, as specified in **Schedule 14.4** - Operating Account of this Agreement.

#### 5. Annual Reconciliation

As soon as possible, but not later than forty-five (45) days following the end of each Operating Year, NAES shall provide CRRA with its proposed annual reconciliation of its costs and payments from CRRA for the prior Operating Year under this Agreement, together with reimbursement of any amounts overpaid by CRRA during the course of the prior Operating Year and statement of any amounts remaining due to NAES at that time. CRRA shall provide NAES its review comments not later than thirty (30) days after receipt of the proposed reconciliation, together with payment for any amounts deemed outstanding and payable to NAES.

#### 6. Annual Escalation

Any amount in this Schedule deemed subject to escalation from one Operating Year to the next Operating Year shall be determined pursuant to this subsection. Any such stated amounts are as of September 2010, and shall be escalated by determining the change as of July 1, 2011 and on each succeeding July 1, all as compared to the base amount or prior contract year as the case may be using the following U.S. Department of Labor Index:

U.S. Department of Labor Consumer Price Index for Urban Wage Earners and Clerical Workers, Series ID CWURA101SAOLE, for New York, Northern New Jersey, Long Island, NY, NJ, CT, PA).

Notwithstanding the previous sentence, NAES home office personnel rates, **FF**, and **NIBC** shall not be escalated by more than 2.5% or less than 1% any Operating Year.



In preparing and considering the proposed Budget for any upcoming Operating Year, the parties may agree upon an estimated factor for annual escalation, with a correction for any difference between the estimated amount and actual calculation once the referenced index is finally published.



**SCHEDULE 14.3**

**NAES INCENTIVE BASED COMPENSATION AND**  
**SITE PERSONNEL INCENTIVE PAY POOL**  
**CALCULATION**



## SCHEDULE 14.3

### NAES INCENTIVE BASED COMPENSATION AND SITE PERSONNEL INCENTIVE PAY POOL CALCULATION

#### 1. AMOUNTS

NAES's Incentive Based Compensation and Employee Incentive Based Compensation, both as provided for in Schedule 14.2, shall be based upon such criteria and metrics established in this Schedule or as may otherwise be agreed to between the Parties and set forth in writing for a given Operating Year.

The maximum incentive compensation in respect of any Year is limited to each of the following:

- (a) Incentive based compensation to be paid to NAES ("NAES Incentive Based Compensation") equal to \$390,000, pro-rated for partial years and subject to Annual Escalation as provided for in Schedule 14.2 of this Agreement.
- (b) A maximum incentive based compensation pool to be distributed by NAES to its employees ("Employee Incentive Based Compensation") pro-rated for partial years, the amount of which is determined pursuant to Schedule 14.2.

#### 2. INCENTIVE COMPENSATION DETERMINATION AND PAYMENTS

The amount of incentive compensation shall be determined by using the calculation described in subsection c, below, which calculation shall result in a percentage equal to or less than 100% (the "Incentive Factor"). The calculation described in subsection 14.3.3, below, may be altered upon agreement of the Parties by letter agreement in accordance with Section 10.1.3 of this Agreement. Not later than thirty (30) days following the end of each Operating Year of this Agreement during which NAES has provided Article 3 services, NAES shall provide CRRA with its proposed calculation of the Incentive Factor, which will define the portion of the maximum incentive compensation then applicable to each of the NAES Incentive Based Compensation and Employee Incentive Based Compensation, respectively, together with such documentation and justification as it may provide.

Within thirty (30) days thereafter, CRRA shall provide its response to NAES, its determination of the Incentive Factor and each component of the incentive compensation. If NAES is in agreement with CRRA's response, CRRA shall pay NAES the amounts resulting from the agreed-to Incentive Factor and NAES Incentive Based Compensation and Employee Incentive Based Compensation. NAES shall promptly distribute thereafter the Employee Incentive Based Compensation in accordance with subsection 14.3.4 below.

In the event there is a disagreement between the parties, CRRA shall nonetheless pay the undisputed portion of the respective incentives to NAES and the parties shall address the disputed amounts in accordance with the provisions of Section 22.5 of this Agreement.

### 3. INCENTIVE FACTOR CRITERIA AND CALCULATIONS

The Incentive Factor shall be calculated using the following formula:

$$\text{Incentive Factor} = (0.4 \times [\text{TM}] + 0.15 \times [\text{CPM}] + 0.15 \times [\text{SPM}] + 0.3 \times [\text{OAM}]) \times 100\%$$

Notwithstanding anything to the contrary in this Section, in no event shall the total result of such calculation be greater than 100%.

Where:

**TM** = Throughput Multiplier

**CPM** = Compliance Performance Multiplier

**SPM** = Safety Performance Multiplier

**OAM** = Owner Assessment Multiplier

#### 3.1 Throughput Multiplier

Pursuant to Article 10, subsection 10.1.3 of the Agreement, CRRA and NAES shall agree on a throughput target each Operating Year during the process of developing the plan and corresponding budget which throughput target may include both tonnage and energy output from refuse derived fuel, and which target shall be memorialized in the letter agreement referenced therein. For each Operating Year, the throughput target will be based on CRRA's expected waste deliveries, planned outages, an allocation for unplanned outages, and capital events at the facilities and similar factors. In the event NAES falls short in meeting such throughput target but has nonetheless successfully processed (at the WPF, PBF and EGF) all of the waste CRRA arranged for delivery, the Throughput multiplier may be equal to 1.0. The variance between actual throughput and target throughput for the year shall be expressed as a fraction which may be greater than 1.0 and the Throughput Multiplier equal to such number.

#### 3.2 Compliance Performance Multiplier

The Compliance Performance Multiplier is determined by the number and severity of compliance events ("Compliance Events"). Compliance Event shall mean any notice of violation or the equivalent for an event within NAES' control from any Governmental Authority. The Compliance Performance Multiplier shall not exceed 1.0 and be determined through an overall evaluation of the number and severity of Compliance Events during such year and the impact upon CRRA of such Compliance Events. A single Compliance Event may result in a zero multiplier if the impact to CRRA is reasonably considered significant and adverse. Also, issuance of a notice of violation that is resolved rapidly to the satisfaction of the regulatory body and does not involve a fine may allow NAES to be reasonably entitled to a factor of 1.0.

### 3.3 Safety Performance Multiplier

The Safety Performance Multiplier shall be determined by matching the applicable Safety Performance Number in the left hand column of the table below with the multiplier in the same row of the right hand column. The Safety Performance Number for a given Operating Year shall be determined by adding (i) the number of OSHA Lost Time Accidents (LTA) for such Operating Year multiplied by three (3); and (ii) the total number of non-LTA OSHA Recordable Incidents for such Operating Year.

Safety Performance Number	Safety Performance Multiplier
0	1.00
1	0.90
2	0.80
3	0.70
4	0.60
5	0.50
6	0.40
7	0.30
8	0.20
9	0.10
10	0.00

### 3.4 Owner Assessment Multiplier ("OAM")

The OAM shall be a number ranging from 0.00 to 1.00 determined solely by CRRA, acting reasonably and in good faith, based on its evaluation of NAES's performance. At the beginning of each Operating Year, CRRA shall give written notice to NAES of the criteria upon which this assessment will be based. Criteria may include a range of factors such as, but not limited to, timely reporting and communication, employee relations, flexibility and responsiveness, Facility cleanliness, damage to CRRA property and equipment, audit and inspection success, and/or technical library maintenance.

## 4. EMPLOYEE INCENTIVE

NAES will pay its Site Personnel their Employee Incentive Based Compensation as determined in accordance with this subsection.

The individual Employee Bonus will be determined by calculating the product of the annual gross wages/salaries and the decimal equivalent of the bonus opportunity percentage for

each of the plant employees (refer to the following table), then multiplying such product by the Incentive Factor determined above (refer to following formula):

$$\text{Employee Bonus} = (\text{Gross Annual Wages/Salaries}) * (\text{applicable Bonus Opportunity}) * (\text{Incentive Factor})$$

Position	Bonus Opportunity
Plant Manager	20%
Supervisors	15%
Staff	10%

NAES will provide Employee Bonus payments to plant employees in the first regularly scheduled paycheck after determination of the amount due following the conclusion of each Operating Year.

“Gross Annual Wages/Salaries” is the sum of paid annual base wages/salaries and annual overtime wages.



**SCHEDULE 14.4**  
**OPERATING ACCOUNT**



## SCHEDULE 14.4

### OPERATING ACCOUNT

On or before the date of CRRA's issuance of authorization to proceed with performance of the O&M services described in Article 3 of the Agreement for any element of the Facility, NAES shall establish one or more bank accounts to be determined in conjunction with CRRA. CRRA shall at all times maintain any bank-required minimum balance in the Account(s) pursuant to this Schedule. Any interest accruing and all amounts contained in such Account(s) at any time are for the benefit of CRRA and are to be used solely for costs provided for in the Agreement.

CRRA shall establish all procedures, which CRRA may revise from time-to-time in its sole discretion, regarding the expenditure of funds from such Account(s), which procedures shall include the requirement for the signature of at least two NAES designated representatives on all checks or draws in any form against such Account(s). Such procedures shall also specify all monthly bank reconciliation by NAES, reporting and documentation requirements associated with expenditures from the Account(s).

NAES shall designate in writing its procedures and designated representatives, which may be different parties depending upon the amount of any individual payment or draw. NAES shall nominate Site Personnel, to be approved by CRRA, who shall have the written authority to sign checks against the Account(s) in accordance with the terms of this Agreement.

Any and all funds in such account at all times shall be exclusively for CRRA's benefit.

#### **Payments From the Account(s)**

No later than fifteen (15) days prior to the start of each calendar month, NAES will deliver to CRRA a Draw Request for sufficient funds as reasonably anticipated by NAES to become due and payable during the following month (the first Draw Request will be made as soon as practicable following the authorization by CRRA for NAES to commence performing O&M services). NAES shall itemize each Draw Request in such detail as CRRA may require. NAES shall base each Draw Request upon the applicable approved Budget for the upcoming month and any approved modifications thereof, and calculate each such Draw Request to consider at a minimum: (i) credit to CRRA for amounts deposited in the Account(s) in response to previous Draw Requests that have not been spent as of the time of the current Draw Request, except for (A) any bank required minimum balance and (B) amounts not yet spent but for which commitments have been incurred; (ii) credit to CRRA for all interest that has accrued in the Account(s) since the most recent adjustment; and (iii) an allowance for any bank charges relating to the Account(s) that have accrued since the most recent adjustment. On or before the last day of the month during which a Draw Request is made, CRRA shall deposit the requested funds in the Account(s), subject to CRRA's reasonable right to withhold amounts attributed to any individual item in the Draw Request that CRRA disputes in writing at the time. The

parties shall work in good faith to resolve any such disputes as quickly as possible and, once resolved, CRRA shall then deposit any additional amounts as may be appropriate.

NAES shall pay third party providers of goods and services to the Facility only from funds provided by CRRA via the Account(s), and never from NAES's own funds. NAES may transfer funds or write checks against the Account(s) to NAES's own account to fund the costs of dedicated on-site employees, subject to the same CRRA signature requirement in the same manner as otherwise applicable to the writing of a check to a third party.

### **Submission of Monthly Cash Reconciliation and Actual Expenditures**

With its Draw Request for the upcoming month, NAES will submit its monthly cash reconciliation of the Account(s) for the previous month cash activities. The reconciliation package will include the following:

- (a) Approved reconciliation,
- (b) The Account(s) working trial balance and general ledger for the period subject to the reconciliation;
- (c) A copy of the bank statement(s) including a list of checks that are clear through the bank;
- (d) A list of outstanding checks;
- (e) A list of void checks and stop-payments;
- (f) A list of the proposed payroll and non-payroll expenditures; and
- (g) A list of the actual payroll and non-payroll expenditures.

Upon receiving the reconciliation package, CRRA will review the reconciliation and related documentations and request NAES to provide explanations or additional information as needed.