

**10080. RESOLUTION 09-63 - APPROVING OF SETTLEMENT AGREEMENT
BETWEEN THE DELAWARE RIVER AND BAY AUTHORITY AND NAES
CORPORATION**

WHEREAS, The Delaware River and Bay Authority (the "Authority") is the owner of a building located at 1 Collins Drive, Carney's Point, New Jersey (the "Building"); and

WHEREAS, the Authority and NAES Corporation, as successor by merger to Centric Operating Services Company (collectively, "NAES"), entered into a certain Lease Agreement, dated September 15, 2003 (said Original Lease, as subsequently amended by a First Amendment to Lease, a Second Amendment to Lease, and a Third Amendment to Lease, the "Lease"), pursuant to which the Authority, as landlord, leased to NAES, as tenant, certain space in the Building, as more particularly described in the Lease; and

WHEREAS, a dispute arose between the Authority and NAES regarding amounts due and owing under the Lease for operating expenses, taxes, and electrical charges (the "Dispute"); and

WHEREAS, the Authority and NAES have agreed to settle the Dispute and enter into the Settlement Agreement attached hereto as Exhibit "A" (the "Settlement Agreement").

NOW, THEREFORE, BE IT RESOLVED, that the Settlement Agreement is hereby approved and that the Chairman, Vice Chairman, and Executive Director are hereby authorized, with the advice and consent of Counsel, to execute the Settlement Agreement.

EXHIBIT A

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into by and between The Delaware River and Bay Authority, a body politic and an agency of the State of Delaware and the State of New Jersey, duly created by Compact (as hereinafter defined), having an address of P.O. Box 71, New Castle, Delaware 19720 (the "Landlord") and North American Energy Services Company, a Washington corporation (successor by merger to Centric Operating Services Company, a Delaware corporation), having an address of 1180 NW Maple Street, Suite 200, Issaquah, Washington 98027 (the "Tenant").

BACKGROUND

A. The Landlord, a body politic and an agency of the State of Delaware and the State of New Jersey, was duly created pursuant to the Delaware-New Jersey Compact, 17 Del. C. § 1701 and N.J.S.A. 32:11E-1, et seq. (the "Compact").

B. The Landlord was created for the purpose of advancing the economic growth and development within the counties of Delaware and New Jersey which border the Delaware River and Bay by providing for, planning and engaging in projects which will enhance the future economic growth and development of those areas.

C. In order to fulfill its purpose, the Landlord has been empowered to plan, develop and lease property within the State of New Jersey which the Landlord determines is necessary for the sound economic development of the area.

D. The Landlord and Tenant (through its predecessor by merger, Centric Operating Services Company, a Delaware corporation) entered into that certain Lease Agreement dated September 15, 2003 (the "Original Lease"; the Original Lease as amended by the First Amendment of Lease, Second Amendment to Lease and the Third Amendment to Lease, is referred to herein as the "Lease") pursuant to which the Landlord leased to the Tenant and the Tenant leased from the Landlord approximately 6,005 rentable square feet of space in the Building commonly known as 1 Collins Drive, Carnegys Point, New Jersey, as more particularly described in the Lease (the "Premises").

E. The parties executed the First Amendment to Lease dated June 14, 2005 in order to amend the Lease to permit the Tenant to expand the Premises into an additional 2,697.50 rentable square feet of adjacent space in the Building.

F. The parties executed the Second Amendment to Lease dated November 20, 2007 in order to amend the Lease to modify the determination of the Base Year of the Lease and establish Year 2004 as the Base Year.

G. The parties executed the Third Amendment to Lease dated February 25, 2008 in order to amend the Lease to permit the Tenant to expand the Premises into an additional 4,440 rentable square feet of adjacent space in the Building.

H. It is the Landlord's position that, pursuant to the Lease, there are due and owing from the Tenant Operating Expenses (as defined therein) for the period of approximately 2005 to 2008 in the amount of \$22,155.34.

I. It is the Landlord's position that, pursuant to the Lease, there are due and owing from the Tenant Taxes (as defined therein) for the period of approximately 2004 to 2008 in the amount of \$118,457.76.

J. It is the Landlord's position that, due to the failure of the Tenant to obtain and pay for a separate meter pursuant to Section 2(f) of the Original Lease, there are due and owing from the Tenant charges for providing electric current to the Premises for the period of approximately November 2003 to December 2006 in the amount of \$176,237.75 ("Electrical Charges").

K. It is the Landlord's position that the total amount due and owing from the Tenant for Operating Expenses, Taxes and Electrical Charges for the specific time periods set forth above equals \$316,850.85 (collectively, the "Accumulated Charges").

L. The Tenant disputes that the Accumulated Charges are due and owing on the basis that the Landlord did not timely invoice the Tenant (the "Dispute").

M. The parties desire to avoid the expense, time and uncertainty of litigation and resolve the Dispute in accordance with the terms of this Agreement.

AGREEMENT

In consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, the parties agree as follows:

1. Defined Terms. Unless the context otherwise requires, for all purposes of this Agreement, all capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in this Agreement.

2. Payment of the Accumulated Charges. The Tenant shall pay the Landlord \$270,000.00 (the "Sum") as follows:

- a. Within thirty (30) days from the date of this Agreement, \$150,000.00 by certified or cashier's check (the "Initial Payment").
- b. The balance of \$120,000.00 shall be paid in eighteen (18) equal consecutive monthly installments of \$6,666.67 beginning on November 1, 2009, and the first day of each month thereafter (each an "Installment Payment").

Notwithstanding anything to the contrary in this Agreement, no payment shall fall due until the Effective Date (as hereinafter defined). Notwithstanding anything to the contrary in the Lease, the Tenant shall be in default of this Agreement and the Lease, without notice, if it fails to make the Initial Payment as set forth above or any Installment Payment by the first day of each month for which payment is due.

3. Allocation of the Sum. The Sum shall be allocated as follows:

Operating Expenses	\$11,000.00
Taxes	\$118,457.76
Electrical Charges	\$140,542.24

4. Payment of Other Amounts Under Lease. The Tenant shall pay the Landlord all other amounts due under the Lease when due pursuant to the terms of the Lease.

5. Release. The Landlord releases the Tenant from all claims related to the Accumulated Charges and the Dispute. This release does not include any other amounts that may be due under the Lease whether arising or accruing during, or related to, any period of time before or after the date of this Agreement. This release also does not include any claims the Landlord may have against any other person or entity related to the Accumulated Charges and/or Dispute including, but not limited to, Commonwealth Real Estate Services, Inc., the property management company for the Building, and its employees, managers, agents, servants, representatives, officers, directors, shareholders, subsidiaries, successors and assigns.

6. Effective Date: This Agreement shall become effective as of the date when both of the following are completed (the "Effective Date"):

- a. The Landlord's consent to the terms and conditions of this Agreement as approved by the Landlord's Board of Commissioners in accordance with Article VI of the Compact; and
- b. Failure of the Governors of Delaware and New Jersey to cancel this Agreement within ten (10) days (Saturdays, Sundays and public holidays in each state excepted) after receipt at the respective Governor's offices of a certified copy of the minutes of the meeting at which the Landlord's Board of Commissioner's vote for approval of this Agreement was taken pursuant to Article VI of the Compact.

7. Miscellaneous.

a. The Lease shall remain in full force and effect and is hereby ratified and affirmed. Except as set forth in this Agreement, the rights and obligations of the Landlord and Tenant under the Lease shall not be affected.

b. This Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey, without regard to any doctrine of conflicts of laws.

c. The Lease (and all exhibits thereto) and this Agreement, contain the entire agreement between the parties and shall not be amended, modified or supplemented except by agreement in writing signed by both the Landlord and the Tenant.

d. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

c. This Agreement is a compromise of the Dispute as set forth herein and shall never be treated as an admission of liability or any wrongdoing for any purpose whatsoever.

f. All periods of time stated in this Agreement are of the essence.

g. This Agreement may be executed in any number of original or telecopied counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement, intending the same to be a sealed instrument, as of the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

THE DELAWARE RIVER AND BAY
AUTHORITY

Witness

By: _____ (SEAL)
Name: James N. Hogan
Title: Chairman

Witness

By: _____ (SEAL)
Name: Scott A. Green
Title: Vice Chairman

Witness

By: _____ (SEAL)
Name: James T. Johnson, Jr.
Title: Executive Director

NORTH AMERICAN ENERGY SERVICES
COMPANY

Witness

By: _____
Name: _____
Title: _____

A motion to approve Resolution 09-63 was made by Commissioner Van Sant, seconded by Commissioner Favre, and approved by a roll call vote of 12-0.