

## INSURANCE COVERAGE DISCLOSURE

Grant Capital Management, Inc., LESSOR

Housing Authority of the City of Newark, New Jersey, LESSEE

RE: INSURANCE COVERAGE REQUIREMENTS

1. In accordance with that certain Equipment Lease-Purchase Agreement dated as of September 30, 2011 (the "*Lease*") between Grant Capital Management, Inc. ("*Lessor*") and the Housing Authority of the City of Newark, New Jersey ("*Lessee*") and identified in the Lease, Lessee certifies that it has instructed the insurance agent named below:

Polaris Risk Managers, Inc.  
P.O. Box 674  
Boonton, NJ 07005

(as to Public Liability Insurance)

Housing Insurance Services Inc.  
189 Commerce Court, P.O. Box 189  
Cheshire, CT 06410

(as to All Risk Physical Damage Insurance)

to issue: (check to indicate coverage)

☒ a. All Risk Physical Damage Insurance on the leased Equipment evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming the **Deutsche Bank National Trust Company, as Trustee under Trust Agreement dated as of September 30, 2011** (the "Trustee") as Loss Payee.

Coverage Required: Termination Value Specified

☒ b. Public Liability Insurance evidenced by a Certificate of Insurance naming the Trustee as an Additional Insured.

Minimum Coverage Required:

\$1,000,000 per occurrence/\$3,000,000 in the aggregate for bodily injury and property damage coverage

excess liability umbrella coverage of at least \$5,000,000

Proof of insurance coverage will be provided to the Trustee, prior to the time that the property is delivered to Lessee.

LESSEE: HOUSING AUTHORITY OF THE CITY  
OF NEWARK

By: 

Name: Keith Kinard

Title: Executive Director

Date: September 30, 2011

MULTIPLE OBLIGEE RIDER

TO BE ATTACHED TO and form part of Bond Number 929521343 (the "Bond" issued by WESTERN SURETY COMPANY, as Surety, on behalf of CLT EFFICIENT TECHNOLOGIES, D/B/A CONSTELLATION ENERGY PROJECTS & SERVICES NJ, as Principal, and NEWARK HOUSING AUTHORITY, as Obligee, in the sum of Four Nine Million Five Hundred Sixty Thousand Two Hundred Three and 00/100 DOLLARS (\$49,560,203.00), dated the 19th day of September, 2011.

In consideration of the sum of One Dollar, (\$1.00), and other good and valuable consideration, receipt of which is hereby acknowledged, the Undersigned hereby agree as follows:

1. Deutsche Bank National Trust Company, as Trustee under Trust Agreement dated as of September 30, 2011 and Grant Capital Management, Inc. are hereby added to the Bond as Additional Obligees. The Obligee and the Additional Obligees are hereinafter referred to as the "Obligees".
2. The Surety shall not be liable under the Bond to the Obligees or any of them unless the Obligees, or any of them, shall make payments to the Principal strictly in accordance with the terms of the contract which is the subject of the Bond (the "Bonded Contract") as to payments, and shall perform all other obligations to be performed under said contract at the time and in manner therein set forth.
3. No suit, action or proceeding by reason of any default whatsoever shall be brought on the Bond after 2 years from the date on which the final payment under the Bonded Contract falls due.
4. Surety's aggregate liability under the Bond is limited to the penal sum above stated and Surety, upon making payment hereunder, shall be subrogated to, and shall be entitled to an assignment of all rights of the payee(s) with respect to the particular obligation(s) discharged by the payment, either against Principal or against any other party liable to the payee(s) on the discharged obligation(s).

SIGNED, SEALED AND DATED this 19<sup>th</sup> day of September, 2011.

Witness:

CLT EFFICIENT TECHNOLOGIES, D/B/A CONSTELLATION ENERGY PROJECTS & SERVICES NJ,

(Principal)

By: 

By:  (Seal)  
Wayne Kusma, Vice President

WESTERN SURETY COMPANY

(Surety)

By: Jaquanda Martin  
Jaquanda Martin, Witness

By: Wayne G. McVaugh (Seal)  
Wayne G. McVaugh, Attorney-in-Fact





**State of New Jersey**  
**DEPARTMENT OF BANKING AND INSURANCE**

**CERTIFICATE OF AUTHORITY**

DATE: APRIL 13, 2011

NAIC COMPANY CODE: 13188

THIS IS TO CERTIFY THAT THE **WESTERN SURETY COMPANY OF SIOUX FALLS, SOUTH DAKOTA**, HAVING COMPLIED WITH THE LAWS OF THE STATE OF NEW JERSEY, AND ANY SUPPLEMENTS OR AMENDMENTS THERETO WITH RESPECT TO THE TRANSACTION OF THE BUSINESS OF INSURANCE, IS LICENSED TO TRANSACT IN THIS STATE UNTIL THE FIRST DAY OF **MAY, 2012**, THE LINES OF INSURANCE SPECIFICALLY DESIGNATED BELOW:

**11 - OTHER LIABILITY**

**13 - FIDELITY AND SURETY**



**THOMAS B. CONSIDINE**

**COMMISSIONER**



# AIA® Document A312™ – 2010

## Performance Bond

Bond No. 929521343

### CONTRACTOR:

(Name, legal status and address)

CLT EFFICIENT TECHNOLOGIES, D/B/A  
CONSTELLATION ENERGY PROJECTS  
& SERVICES NJ  
2090 Greentree Road, Suite 200  
Pittsburgh, PA 15220

### OWNER:

(Name, legal status and address)

NEWARK HOUSING AUTHORITY  
500 BROAD STREET  
NEWARK, NJ 07102

### SURETY:

(Name, legal status and principal place  
of business)

WESTERN SURETY COMPANY  
101 South Phillips Avenue  
Sioux Falls, SD 57104

This document has important legal  
consequences. Consultation with  
an attorney is encouraged with  
respect to its completion or  
modification.

Any singular reference to  
Contractor, Surety, Owner or  
other party shall be considered  
plural where applicable.

AIA Document A312-2010  
combines two separate bonds, a  
Performance Bond and a  
Payment Bond, into one form.  
This is not a single combined  
Performance and Payment Bond.

### CONSTRUCTION CONTRACT

Date: 3/31/11

Forty Nine Million Five Hundred Sixty Thousand Two Hundred Three and 00/100  
Amount: Dollars  
(\$49,560,203.00)

### Description:

(Name and location)

Energy Performance Contract between Newark Housing Authority and Constellation under HUD's  
Energy Incentive Program for Public and Indian Housing

### BOND

Date: 9/19/11

(Not earlier than Construction Contract Date)

Forty Nine Million Five Hundred Sixty Thousand Two Hundred Three and 00/100 Dollars.  
Amount: (\$49,560,203.00)

Modifications to this Bond: ☐ None ☒ See Section 16

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)  
CLT EFFICIENT TECHNOLOGIES, D/B/A  
CONSTELLATION ENERGY PROJECTS & SERVICES  
NJ

Signature: 

Name: Wayne G. Mc Vaughn

and Title: Vice President

(Any additional signatures appear on the last page of this Performance Bond.)

### SURETY

Company: (Corporate Seal)  
WESTERN SURETY COMPANY

Signature: 

Name: Wayne G. Mc Vaughn, Attorney-in-Fact

and Title:

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

Aon Risk Services Central, Inc.  
One Liberty Place, 1650 Market Street  
Philadelphia, PA 19103  
215-255-2000

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

**§ 1** The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

**§ 2** If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

**§ 3** If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

**§ 4** Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

**§ 5** When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

**§ 5.1** Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

**§ 5.2** Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

**§ 5.3** Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

**§ 5.4** Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

**§ 6** If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

Multiple Obligee Rider

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

CONTRACTOR AS PRINCIPAL

SURETY

Company: \_\_\_\_\_

*(Corporate Seal)*

Company: \_\_\_\_\_

*(Corporate Seal)*

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

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

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

Name and Title: \_\_\_\_\_, Attorney-in-Fact

Address: \_\_\_\_\_





# AIA Document A312™ – 2010

## Payment Bond

Bond No. 929521343

### CONTRACTOR:

(Name, legal status and address)

CLT EFFICIENT TECHNOLOGIES, D/B/A  
CONSTELLATION ENERGY PROJECTS  
& SERVICES NJ

2090 Greentree Road, Suite 200  
Pittsburgh, PA 15220

### OWNER:

(Name, legal status and address)

NEWARK HOUSING AUTHORITY  
500 BROAD STREET  
NEWARK, NJ 07102

### SURETY:

(Name, legal status and principal place  
of business)

WESTERN SURETY COMPANY  
101 South Phillips Avenue  
Sioux Falls, SD 57104

This document has important legal  
consequences. Consultation with  
an attorney is encouraged with  
respect to its completion or  
modification.

Any singular reference to  
Contractor, Surety, Owner or  
other party shall be considered  
plural where applicable.

AIA Document A312-2010  
combines two separate bonds, a  
Performance Bond and a  
Payment Bond, into one form.  
This is not a single combined  
Performance and Payment Bond.

### CONSTRUCTION CONTRACT

Date: 3/31/11

Amount: Forty Nine Million Five Hundred Sixty Thousand Two Hundred Three and 00/100  
Dollars

(\$49,560,203.00)

### Description:

(Name and location)

Energy Performance Contract between Newark Housing Authority and Constellation under HUD's  
Energy Incentive Program for Public and Indian Housing

### BOND

Date: 9/19/11

(Not earlier than Construction Contract Date)

Amount: \$49,560,203.00

Modifications to this Bond: ☐ None

☒ See Section 1.8

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

CLT EFFICIENT TECHNOLOGIES, D/B/A  
CONSTELLATION ENERGY PROJECTS & SERVICES  
NJ

Signature: *Wayne G. Mc Vaugh*

Name: *Wayne G. Mc Vaugh*

and Title: *Vice President*

(Any additional signatures appear on the last page of this Payment Bond.)

### SURETY

Company: (Corporate Seal)

WESTERN SURETY COMPANY

Signature: *Wayne G. Mc Vaugh*

Name: *Wayne G. Mc Vaugh, Attorney-in-Fact*

and Title:

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

Aon Risk Services Central, Inc.  
One Liberty Place, 1650 Market Street  
Philadelphia, PA 19103  
215-255-2000

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions.

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

**§ 16.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**§ 16.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**§ 17** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

**§ 18** Modifications to this bond are as follows:

Multiple Obligor Rider

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

CONTRACTOR AS PRINCIPAL

SURETY

Company:

*(Corporate Seal)*

Company:

*(Corporate Seal)*

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

Name and Title: ,

Address:

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

Name and Title: , Attorney-in-Fact

Address:



# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Darella White, Richard A Jacobus, Sandra E Bronson, Mary C O Leary, Douglas R Wheeler, Wayne G Mc Vaugh, Individually**

of Philadelphia, PA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

### - In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 21st day of September, 2009.



WESTERN SURETY COMPANY

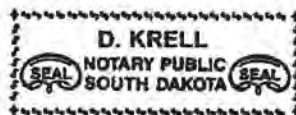
Paul T. Bruflat, Senior Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 21st day of September, 2009, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

November 30, 2012



D. Krell, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 19th day of September, 2011.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

**Authorizing By-Law**

**ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY**

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

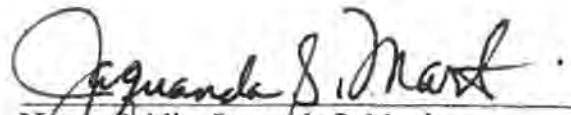
***CORPORATE ACKNOWLEDGEMENT-SURETY***

STATE OF NEW JERSEY

ss.

COUNTY OF BURLINGTON

On this 19<sup>th</sup> of September, 2011, before me came Wayne G. McVaugh, to me known, who, being by me duly sworn, did depose and say that he/she resides in Philadelphia, PA, that he/she is Attorney-in-Fact of Western Surety Company, the corporation described in and which executed the foregoing instrument as principal; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his name thereto by like order.

  
Notary Public: Jaquanda S. Martin  
My commission expires: October 29, 2013

JAQUANDA S. MARTIN  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 10/29/2013

## PRINCIPAL'S ACKNOWLEDGMENT

State of Maryland

County of Anne Arundel

On 09-21-2011 before me, Laura L. Crocen,  
personally appeared Wayne Luoma, who proved to me  
on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of  
Maryland that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Laura L. Crocen



# Western Surety Company

## SURETY DISCLOSURE STATEMENT AND CERTIFICATION

Western Surety Company, surety on the attached bond, hereby certifies the following:

(1) The surety meets the applicable capital and surplus requirements of R.S. 17:17-6 or R.S. 17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amount(s) as of the calendar year ended December 31, 2010. The financial statements of Western Surety Company as of and for the year ended December 31, 2010 have been audited by Deloitte & Touche LLP, 111 S. Wacker Drive, Chicago, IL 60606-4301.

Surety Company	Capital	Policyholders' Surplus (including Capital)
Western Surety Company	\$4,000,000	\$825,638,678

(3) (a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C. § 9305, the underwriting limitation established therein on July 1, 2010, is as follows:

Surety Company	Underwriting Limitation
Western Surety Company	\$67,122,000

(b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the United States Secretary of the Treasury, the underwriting limitation of that surety as established pursuant to R.S. 17:18.9 as of (date of which such limitation was so established) is as follows: N/A

(4) The amount of the bond to which this statement and certification is attached is \$ 49,560,203.00

(5) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in items (3)(a) or (3)(b) above, or both, then for each such contract of reinsurance:

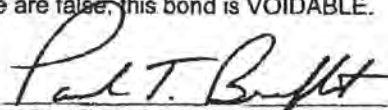
(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows: N/A  
and

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L.1993, c. 243 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency. N/A

## CERTIFICATE

I, Paul T. Bruflat, as Senior Vice President, for Western Surety Company, a corporation domiciled in South Dakota, DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements made by me are false, this bond is VOIDABLE.

Date: September 19, 2011

  
Paul T. Bruflat, Senior Vice President

**WESTERN SURETY COMPANY**  
**Sioux Falls, South Dakota**  
**Statement of Condition and Affairs**  
**December 31, 2010**

**ASSETS**

Bonds	\$1,325,363,817
Stocks	21,890,144
Cash and short-term investments	37,261,545
Uncollected premiums and agents' balances	33,361,392
Amounts recoverable from reinsurers	335,279
Funds held by or deposited with reinsured companies	22,831,236
Net deferred tax asset	18,318,016
Electronic data processing equipment and software	2,016,332
Investment income due and accrued	17,101,571
Other assets	2,812,199
<b>Total Assets</b>	<u><u><b>\$1,481,291,531</b></u></u>

**LIABILITIES AND SURPLUS**

Losses	\$255,341,187
Loss adjustment expense	77,225,536
Contingent and other commissions payable	4,572,077
Other expense	31,451,726
Taxes, licenses and fees	2,605,647
Federal and foreign income taxes payable	16,293,774
Unearned premiums	239,599,691
Retroactive reinsurance reserve assumed	10,222,969
Other liabilities	18,340,246
<b>Total Liabilities</b>	<u><u><b>655,652,853</b></u></u>

**Surplus Account:**

Capital paid up	\$4,000,000
Gross paid in and contributed surplus	176,435,232
Unassigned funds	<u>645,203,446</u>
Surplus as regards policyholders	<u><u><b>\$825,638,678</b></u></u>

**Total Liabilities and Capital** **\$1,481,291,531**

I, Philip E. Lundy, Vice President and Treasurer of Western Surety Company hereby certify that the above is an exact copy of the financial statement of the Company dated December 31, 2010, as filed with the various Insurance Departments and is a true and correct statement of the condition of Western Surety Company as of that date.



Western Surety Company

By Philip E. Lundy  
Vice President, Treasurer

Subscribed and sworn to me this 22nd day of February, 2011.

My commission expires:

KATHRYN J. SCHROEDER  
My Commission Expires 7-21-2015

Kathryn J. Schroeder  
Notary Public

## HOUSING AUTHORITY OF THE CITY OF NEWARK

### CERTIFICATE

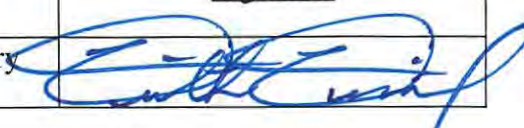
The undersigned, in his capacity as Chairman of the Housing Authority of the City of Newark (the "Authority"), does hereby certify as follows:

1. The representations and warranties of the Authority contained in that certain Equipment Lease-Purchase Agreement (the "Lease") and other Related Agreements (as defined in the Lease) to which the Authority is a party are true and correct as of the date of the Lease (the "Commencement Date").

2. No Event of Default has occurred and is continuing or would result from the execution, delivery or performance of the Lease or any other Related Agreement to which the Authority is a party.

3. There has been no event or circumstance since the date of the audited annual financial statements of the Authority for the fiscal year ended March 31, 2010, that has resulted or could be reasonably expected to result, either individually or in the aggregate, in a Material Adverse Change (as defined in the Lease).

4. The following persons are authorized to execute the Related Agreements to which the Authority is a party on behalf of the Authority, and the signature set forth opposite the name of such person is his accurate and genuine signature:

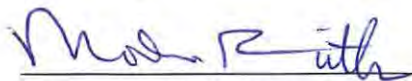
<u>Incumbent</u>	<u>Office</u>	<u>Signature</u>
Keith Kinard	Executive Director/Secretary	

5. Attached hereto as Exhibit A are true and complete copies of the resolutions of the Board of Commissioners of the Authority approving the execution and delivery of the Related Agreements to which the Authority is a party and the other matters contemplated by the Lease that are in full force and effect on the Commencement Date.

IN WITNESS WHEREOF, the undersigned has signed this Certificate.

HOUSING AUTHORITY OF THE CITY  
OF NEWARK

By:



Name: Modia Butler

Title: Chairman

Date: September 30, 2011

**EXHIBIT A**

**RESOLUTIONS OF THE BOARD OF COMMISSIONERS OF THE HOUSING  
AUTHORITY OF THE CITY OF NEWARK**



Board Meeting Date: October 21, 2010

**RESOLUTION OF THE  
HOUSING AUTHORITY OF THE CITY OF NEWARK  
RESOLUTION NO. H-10-10-21-03**

Factual Content Certified By:



Approved for Legality Based on Facts Stated:

  
Chief Legal Officer

Commissioner CASEY submitted the following resolution

**Resolution:** That the Newark Housing Authority Board of Commissioners authorize the Executive Director to negotiate, execute and make any necessary corrections to a finance agreement to fund the Water and Energy Services Agreement between Constellation Energy and NHA at a cost of \$49,560,203 with a guaranteed annual savings of \$3,850,486 to be applied to amortizing payments during the 15-year term of the agreement pursuant to the October 15, 2010 memorandum from Allison Durham, Executive Assistant to Keith Kinard, Executive Director.

Commissioner PEREZ seconded the motion.

**BOARD OF COMMISSIONERS VOTE OF FINAL PASSAGE**

X - Indicates vote

AB - Absent

NV - Not Voting

COMMISSIONERS	AYE	NAY	AB	NV	COMMISSIONERS	AYE	NYE	AB	NV
BUTLER			X		PEREZ	X			
CARTWRIGHT	X				CRUZ	X			
PALMER			X		CASEY	X			

I HEREBY CERTIFY THAT THE ABOVE RESOLUTION WAS ACCEPTED AT THE BOARD OF COMMISSIONERS MEETING OF THE HOUSING AUTHORITY OF THE CITY OF NEWARK, NJ ON 10-21-2010.

  
Keith D. Kinard  
Secretary/Executive Director

## Request For Board Agenda Item

1. **Brief Description of Proposed Item**

Authorize the Executive Director to negotiate and execute a finance agreement to fund the Energy Services Agreement between NHA and Constellation Energy.

2. **Date of Board Meeting:** October 21, 2010

3. **Proposed Board Resolution:**

**Resolution:** That the Newark Housing Authority Board of Commissioners authorize the Executive Director to negotiate, execute and make any necessary corrections to a finance agreement to fund the Water and Energy Services Agreement between Constellation Energy and NHA at a cost of \$49,560,203 with a guaranteed annual savings of \$3,850,486 to be applied to amortizing payments during the 15-year term of the agreement pursuant to the October 15, 2010 memorandum from Allison Durham, Executive Assistant to Keith Kinard, Executive Director.

4. **All Backups attached?**

☒ Yes

x

☐ No

If no, what is missing and when will it be submitted:

5. **Chief Approval**

Signature

 Date: 10/22/10

Print Name

6. **Contract & Procurement Approval Signature**

Date 10/22/10

Print Name SHARL G. HAMILTON

7. **Statement regarding availability of funds by CFO**

Funds Budgeted and Available

☐ yes

☐ no

Source

Account #

**CFO Approval**

Signature

N/A

Date:

Print Name

If Source is CFP Funds

**CAD&P Approval**

Signature

N/A

Date:

Print Name

8. **Executive Director Approval**

Signature



Date:

10/22/10

Print Name Keith Kinard





500 Broad Street • Newark, NJ 07102  
tel. (973) 273-6000 • fax (973) 642-1242

## BOARD MEMORANDUM

**TO:** Keith Kinard, Executive Director  
**FROM:** Allison Durham, Executive Assistant  
**DATE:** October 15, 2010  
**RE:** Energy Finance Agreement – RFP #10-S-101

---

This memorandum recommends that the Newark Housing Authority (NHA) Board of Commissioners authorize the Executive Director to negotiate, execute and make any necessary corrections to a finance agreement to fund the Water and Energy Services Agreement between Constellation Energy and NHA. The Water and Energy Services Agreement will reduce energy consumption levels; thereby, reducing NHA's utility bills for its facilities. This is a pre-proposal submittal resolution, as time is of the essence relating to securing an optimal interest rate and preparing documents for a loan closing. The November 18<sup>th</sup> meeting coupled with holidays would present a much shorter time period to finalize this project before the end of the year which would affect the baseline we intend to use for this project.

### BACKGROUND

In order to implement the scope of the Water and Energy Services Agreement with Constellation Energy, the NHA must first enter into a finance agreement to fund the work. The U.S. Department of Housing & Urban Development (HUD) provides incentives to reduce utility cost and permits the savings derived from the reduced cost to be used towards debt service payments. The NHA intends to utilize HUD's Additional Subsidy Incentive "Add-On" to apply to amortizing payments for a loan contracted to finance the energy conservation improvements.

### PROCUREMENT

Financing for Energy Conservation Program, RFP #10-S-101 was advertised from September 28 to October 20, 2010 in the Star-Ledger and online at [www.newarkha.org](http://www.newarkha.org), and [www.rfpdb.com](http://www.rfpdb.com), a free national business website. Bid proposals are due Friday, October 29, 2010. A pre-proposal meeting was held on Friday, October 8, 2010 in which five (5) separate large financing entities attended. The NHA will make an award to the responsible respondent whose offer conforms to the solicitation and is most advantageous to the NHA (i.e. that which represents the best value to the NHA), cost or price and other factors considered. The Procurement process complied with 24 C.F.R. 85.36, and was conducted in accordance with the guidelines provided in the HUD Procurement Handbook 7460.8, Rev.2.

### EVALUATION

The proposals submitted on Friday, October 29, 2010 will be subject to the standard procurement evaluation and procedures outlined in NHA procurement policy. The successful firm will be based on the highest ranked respondent according to the criteria outlined in the solicitation. The file will be properly documented and the Board will be properly notified of the successful firm at a follow-up Board of Commissioners Work Session meeting.

## **RECOMMENDATION**

Accordingly, it is recommended that the Board adopt the following resolution:

**Resolution:** That the Newark Housing Authority Board of Commissioners authorize the Executive Director to negotiate, execute and make any necessary corrections to a finance agreement to fund the Water and Energy Services Agreement between Constellation Energy and NHA at a cost of \$49,560,203 with a guaranteed annual savings of \$3,850,486 to be applied to amortizing payments during the 15-year term of the agreement pursuant to the October 15, 2010 memorandum from Allison Durham, Executive Assistant to Keith Kinard, Executive Director.



Board Meeting Date: October 21, 2010

**RESOLUTION OF THE  
HOUSING AUTHORITY OF THE CITY OF NEWARK**  
RESOLUTION NO. H-10-10-21-04

Factual Content Certified By



Approved for Legality Based on Facts Stated:

  
Chief Legal Officer

Commissioner



submitted the following resolution

**Resolution:** That the Newark Housing Authority Board of Commissioners authorize the Executive Director to execute a Water and Energy Services Agreement and make any necessary corrections with CLT Efficient Technologies d/b/a Constellation Energy Projects & Services Group, Inc. (CEPS) to reduce energy consumption and increase efficiency at a cost of \$49,560,203 with an annual savings of \$3,850,486 contingent upon the execution of a construction cost financing agreement and HUD approval pursuant to the October 12, 2010 memorandum from Allison Durham, Executive Assistant to Keith Kinard, Executive Director.

Commissioner



seconded the motion.

**BOARD OF COMMISSIONERS VOTE OF FINAL PASSAGE**

X – Indicates vote

AB – Absent

NV- Not Voting

COMMISSIONERS	AYE	NAY	AB	NV	COMMISSIONERS	AYE	NAY	AB	NV
BUTLER			<u>X</u>		PEREZ	<u>X</u>			
CARTWRIGHT	<u>X</u>				CRUZ	<u>X</u>			
PALMER			<u>X</u>		CASEY	<u>X</u>			

I HEREBY CERTIFY THAT THE ABOVE RESOLUTION WAS ACCEPTED AT THE BOARD OF COMMISSIONERS MEETING OF THE HOUSING AUTHORITY OF THE CITY OF NEWARK, NJ ON 10-21-2010.

  
Keith D. Kinard  
Secretary/Executive Director

## Request For Board Agenda Item

1. **Brief Description of Proposed Item**

Authorize the execution of the authority-wide Water and Energy Services Agreement between NHA and with CLT Efficient Technologies d/b/a Constellation Energy Projects & Services Group, Inc. (CEPS).

2. **Date of Board Meeting:** October 21, 2010

3. **Proposed Board Resolution:**

**Resolution:** That the Newark Housing Authority Board of Commissioners authorize the Executive Director to execute a Water and Energy Services Agreement and make any necessary corrections with CLT Efficient Technologies d/b/a Constellation Energy Projects & Services Group, Inc. (CEPS) to reduce energy consumption and increase efficiency at a cost of \$49,560,203 with an annual savings of \$3,850,486 contingent upon the execution of a construction cost financing agreement and HUD approval pursuant to the October 12, 2010 memorandum from Allison Durham, Executive Assistant to Keith Kinard, Executive Director.

4. **All Backups attached?**

☒ Yes

x

☐ No

*If no, what is missing and when will it be submitted:*

5. **Chief Approval**

Signature



Date:

10/21/10

Print Name

Allison Durham

6. **Contract & Procurement Approval Signature**

Date

10/21/10

Print Name

SHARON G. HAMILTON

7. **Statement regarding availability of funds by CFO**

Funds Budgeted and Available

☐

yes

☐

no

Source

Account #

**CFO Approval**

Signature

Date:

Print Name

If Source is CFP Funds

**CAD&P Approval**

Signature

Date:

Print Name

8. **Executive Director Approval**

Signature

Date:

Print Name Keith Kinard

10/21/10



500 Broad Street • Newark, NJ 07102  
tel. (973) 273-6000 • fax (973) 642-1242

## BOARD MEMORANDUM

**TO:** Keith Kinard, Executive Director  
**FROM:** Allison Durham, Executive Assistant  
**DATE:** October 12, 2010  
**RE:** Energy Services Agreement – Constellation Energy

---

This memorandum recommends that the Newark Housing Authority (NHA) Board of Commissioners authorize the Executive Director to execute a Water & Energy Services Agreement with CLT Efficient Technologies d/b/a Constellation Energy Projects & Services Group, Inc. (CEPS) to reduce energy consumption and improve equipment efficiency authority-wide.

### BACKGROUND

In compliance with HUD regulations, the Newark Housing Authority procured the services of MRG in 2006 for the purpose of conducting an energy audit of all NHA's facilities. Federal regulations require an audit to be performed once every five years. Subsequently, the NHA procured for a company to implement an energy conservation program to reduce energy (water, gas, electric) consumption and cost. As such, the NHA issued a Request for Proposals for qualified firms to submit proposals on conducting an energy conservation program including energy efficient equipment and other relevant devices authority-wide.

The NHA advertised RFP #09-S-017 from May 12 through June 9, 2009 in the Star-Ledger, Jersey Journal, Bergen Record, Trenton Times, NOAAH, and El Nuevo Coqui. Specifications were picked up by eight firms. The NHA received two (2) proposals from Honeywell, Morristown, NJ and Constellation Energy, St. Petersburg, FL. The evaluation committee reviewed the proposals for qualifications, experience, technical approach, capacity & project financing approach, construction unburdened cost percentage, with extra ten (10) points for M/WBE and Section 3 participation plan.

The following represents the firms and their rank:

FIRM	Total Points	Average	Rank
Constellation	256.00	85.33	#1
Honeywell	227.00	75.67	#2

The evaluation committee consisted of Ralph R. Waller, Manager of Housing Production, Nitin Patel, Operations Engineer, and Allison Durham, Executive Assistant/Project Management. The evaluation team determined that Constellation Energy ranked highest based on the evaluation criteria outlined in the Request for Proposals. Constellation



Energy's proposal demonstrated the firm's extensive experience with energy conservation projects, implementing programs in the State of New Jersey and working with other public housing authorities of similar size. Constellation Energy's technical approach and project plan, financial capacity and other relevant items ranked highest. Constellation Energy provided a very detailed plan and resident training program and demonstrated their energy conservation experience with other housing authorities in State of New Jersey. In addition, references for Constellation Energy were favorable. As a result of this solicitation, and Board approval of Resolution H-09-07-23-01, an Energy Services Agreement was negotiated between NHA and CEPS. In further compliance with New Jersey State law, CEPS utilized the results of the completed energy audit performed by MRG as their basis including performing their own due diligence to verify the information contained in the report to ensure recommended measures will generate the savings necessary to offset the cost of the program. CEPS, in conjunction with NHA staff, worked to determine the best course of action and plan for the energy conservation program including the selection of the energy efficient measures to employ. Furthermore, the ESA includes a savings guarantee from CEPS during the full 15-year term of the contract.

## **COST REASONABLENESS**

### **Soft Costs**

Agreements of this nature are not based on the lowest bid; therefore, an average percentage of unburdened cost was developed to determine reasonable cost from proposers. The unburdened cost outlined by CEPS was determined to be within range and consistent with market prices for similar work.

### **Hard Costs**

The hard cost for performing an energy conservation program varies tremendously and is dependent on the scope of work to be implemented. Two Requests for Bids were issued on May 17, 2010 for firms to submit bid proposals to install energy efficient equipment. RFP #10 requested bids from firms for heating, water, electrical, plumbing and appliance replacements. RFP #11 requested bids from firms for renewable improvements such as cogenerations, solar, wind, and geothermal technologies. The Agency received three bids on RFP #10 and two bids on RFP #11 on June 17, 2010. The Procurement process complied with 24 C.F.R. 85.36, and was conducted in accordance with the guidelines provided in the HUD Procurement Handbook 7460.8, Rev.2.

The project costs are as follows:

ECM #	ECM	Contractor Installation Costs	Consumption Decrease (Increase)			Savings			
			Water & Sewer M Gallons	Electric kWh	Natural Gas Therms	Water & Sewer	Electric	Natural Gas	Total
1	High Efficiency Lighting (1) Savings Summary	\$ 5,018,794		5,916,310		\$ -	\$ 1,084,805	\$ -	\$ 1,084,805
2	Low Flow/Flush Equipment (2) Savings Summary	\$ 3,965,204	101,792		491,467	\$ 537,423	\$ -	\$ 740,112	\$ 1,277,533
10	Window Replacement (10) Savings Summary	\$ 4,311,604			60,111	\$ -	\$ -	\$ 97,272	\$ 97,272
11	Outside Air Reset (11) Savings Summary	\$ 5,620,840	906		488,390	\$ 4,812	\$ -	\$ 773,558	\$ 778,369
13	Boiler Stack Economizer (13) Savings Summary	\$ 3,596,000			112,226	\$ -	\$ -	\$ 177,095	\$ 177,095
15	Boiler Decentralization (15) Savings Summary	\$ 6,900,000			338,680	\$ -	\$ -	\$ 212,223	\$ 212,223
23	Cogeneration (23) Savings Summary	\$ 2,591,600		1,595,406	(31,802)	\$ -	\$ 273,127	\$ (49,938)	\$ 223,189
		\$ 31,804,042	102,698	7,512,716	1,259,253	\$ 542,233	\$ 1,357,932	\$ 1,950,322	\$ 3,850,486

PROJECT COSTS					
Soft Costs			Project Totals		
Const. & PM/Admin.	9.92%	3,375,808	Contractor Cost		\$31,804,042
Design & Specifications	4.39%	1,493,570	Contingency		\$ 2,223,072
MAV / Commissioning	0.32%	110,000	Installation Costs		\$34,027,114
Contract Preparation	0.33%	111,408	Project Soft Costs		\$ 5,150,912
Training	0.18%	60,000			\$39,178,028
Total Soft Costs		\$ 5,150,912	Overhead (ESCO)	15.00%	\$ 5,876,704
					\$45,054,730
			Profit (ESCO)	10.00%	\$ 4,505,473
			Project Total		\$49,560,203

## RECOMMENDATION

Accordingly, it is recommended that the Board adopt the following resolution:

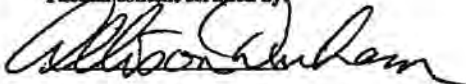
**Resolution:** That the Newark Housing Authority Board of Commissioners authorize the Executive Director to execute a Water and Energy Services Agreement and make any necessary corrections with CLT Efficient Technologies d/b/a Constellation Energy Projects & Services Group, Inc. (CEPS) to reduce energy consumption and increase efficiency at a cost of \$49,560,203 with an annual savings of \$3,850,486 contingent upon the execution of a construction cost financing agreement and HUD approval pursuant to the October 12, 2010 memorandum from Allison Durham, Executive Assistant to Keith Kinard, Executive Director.



Board Meeting Date: June 23, 2011

**RESOLUTION OF THE  
HOUSING AUTHORITY OF THE CITY OF NEWARK**  
RESOLUTION NO. H-11-23-06-11

Factual content certified by:



Approved for legality based on facts stated:

  
Acting Chief Legal Officer


Commissioner



submitted the following resolution

**Resolution:** That the Newark Housing Authority Board of Commissioners authorize the Executive Director to amend Resolution H-10-10-21-03 to further authorize the Executive Director to negotiate, execute and make any necessary revisions, approve and enter into all legal documents required as part of the Energy Performance Contract Financing, including but not limited to the Equipment Lease-Purchase Agreement and the Water/Energy Services Agreement, and enter into or otherwise permit the imposition of all security interest, liens or encumbrances required in connection with the EPC financing pursuant to the June 22, 2011 memorandum from Allison Durham, Executive Manager, to Keith Kinard, Executive Director.

Commissioner



seconded the motion.

**BOARD OF COMMISSIONERS VOTE OF FINAL PASSAGE**

X - Indicates vote					AB - Absent					NV - Not Voting				
COMMISSIONERS	AYE	NAY	AB	NV	COMMISSIONERS	AYE	NAY	AB	NV	COMMISSIONERS	AYE	NAY	AB	NV
BUTLER	<input checked="" type="checkbox"/>				PEREZ	<input checked="" type="checkbox"/>								
CARTWRIGHT	<input checked="" type="checkbox"/>				CRUZ	<input checked="" type="checkbox"/>								
PALMER	<input checked="" type="checkbox"/>				CASEY	<input checked="" type="checkbox"/>								

I HEREBY CERTIFY THAT THE ABOVE RESOLUTION WAS ACCEPTED AT THE BOARD OF COMMISSIONERS MEETING OF THE HOUSING AUTHORITY OF THE CITY OF NEWARK, NJ ON June 23, 2011.

  
Keith D. Kinard  
Secretary/Executive Director

**REQUEST FOR BOARD AGENDA ITEM**

**1. Brief Description of Proposed Item**

Authorize the amendment of Resolution H-10-10-21-03 to undertake the EFP financing and enter into all security interest or encumbrances requested with the EPC financing.

**2. Date of Board Meeting:** June 23, 2011

**3. Proposed Board Resolution:**

**Resolution:** That the Newark Housing Authority Board of Commissioners authorize the Executive Director to amend Resolution H-10-10-21-03 to further authorize the Executive Director to negotiate, execute and make any necessary revisions, approve and enter into all legal documents required as part of the Energy Performance Contract Financing, including but not limited to the Equipment Lease-Purchase Agreement and the Water/Energy Services Agreement, and enter into or otherwise permit the imposition of all security interest, liens or encumbrances required in connection with the EPC financing pursuant to the June 22, 2011 memorandum from Allison Durham, Executive Manager, to Keith Kinard, Executive Director.

**4. All Backups attached?**

Yes ☒ No ☐

*If no, what is missing and when will it be submitted:*

**5. Chief Approval**

Signature

Date:

Print Name

**6. Contract & Procurement Approval**

Signature

Date

Print Name

**7. Statement regarding availability of funds by CFO**

Funds Budgeted and Available

☐ yes

☐ no

Source

N/A

**CFO Approval**

Signature

Print Name

Account #

Date:

If Source is CFP Funds

**CAD&P Approval**

Signature

Print Name

Date:

**8. Executive Director Approval**

Signature

Print Name

Date:





500 Broad Street - Newark, NJ 07102  
Tel. (973) 273-8000 - Fax (973) 642-1242  
www.newarkha.org

## INTEROFFICE MEMORANDUM

**TO:** Keith Kinard, Executive Director  
**FROM:** Allison Durham, Executive Manager *AD*  
**DATE:** June 22, 2011  
**RE:** Amend Resolution H-10-10-21-03 Energy Performance Contract Financing

This memorandum requests the Housing Authority of the City of Newark Board of Commissioners (the "Board") to authorize the Executive Director to amend and add a provision to Resolution H-10-10-21-03 to negotiate, execute and make any necessary revisions to all legal documents required as part of the Energy Performance Contract Financing and enter in all security interest or encumbrances requested with the EPC financing.

### BACKGROUND

The Authority desires to acquire, install, lease, finance and operate energy conservation equipment (the "Equipment") in its various housing facilities located in the City of Newark, in the County of Essex, State of New Jersey (the "City"), which Equipment will generate energy and water savings for the Authority. To facilitate the acquisition and installation of the energy conservation measures, the Authority entered into a contract for energy audit services (the "Audit") with Management Resource Group Inc., pursuant to which Management Resource Group, Inc., issued an energy audit dated May, 2006, which was later verified by the CLT Efficient Technologies, d/b/a Constellation Energy Projects & Services Group NJ (the "Contractor"), and pursuant to which the Contractor made an assessment of the energy consumption characteristics of certain Authority buildings and presented recommendations to the Authority for certain energy improvements and operational changes to be installed/implemented at various Authority housing facilities.

By Resolution H-09-07-23-11, the Authority was authorized to enter into a Water/Energy Services Agreement (the "Energy Performance Contract" [EPC]) with the Contractor for the purpose of implementing the water and energy conservation measures and reducing water and energy consumption at certain of the Authority's facilities. The Contractor will guarantee the estimated energy cost savings and performance obligations provided in the Energy Performance Contract.

As a result of RFP #10-S-101 the NHA selected Grant Capital Management, a Maryland corporation to serve as the Lessor to facilitate the financial transaction. By Resolution H-10-10-21-03 the Authority was authorized to enter into a finance agreement to fund the EPC with the selected vendor from RFP #10-S-101. NHA wishes to amend Resolution H-10-10-21-03 to reflect and add a provision related to HUD's Section 30 Public Housing Mortgages and Security Interests requirement. Section 30 of the Housing Act of 1937 states HUD must authorize a public housing agency to mortgage or otherwise grant a security interest in any public housing project or other project of the public housing agency. Essentially, the proposed Equipment

Lease-Purchase Agreement calls for the NHA to own the installed equipment for tax-exempt benefits and the Lessor and Certificate of Participants (Lenders) will have a security interest in the equipment up until final lease payment is submitted by the NHA.

By approval of this resolution the Board of Commissioners authorizes, empowers and directs the Executive Director or his designee to execute and deliver the Lease Agreement and all related and subsequent legal project documents with such changes, insertions, omissions, revisions and modifications thereto as may be approved by the Executive Director or his designee executing the Lease Agreement after consultation with Ellen Michelle Harris, Esq., General Counsel to the Authority (the "General Counsel").

## **RECOMMENDATIONS**

I recommend that the Board adopt the following Resolution:

**Resolution:** That the Newark Housing Authority Board of Commissioners authorize the Executive Director to amend Resolution H-10-10-21-03 to further authorize the Executive Director to negotiate, execute and make any necessary revisions, approve and enter into all legal documents required as part of the Energy Performance Contract Financing, including but not limited to the Equipment Lease-Purchase Agreement and the Water/Energy Services Agreement, and enter into or otherwise permit the imposition of all security interest, liens or encumbrances required in connection with the EPC financing pursuant to the June 22, 2011 memorandum from Allison Durham, Executive Manager, to Keith Kinard, Executive Director.

**CERTIFICATE OF AN AUTHORIZED OFFICER OF THE LESSEE  
DATED THE CLOSING DATE, TOGETHER WITH ALL EXHIBITS THERETO**

**THIS CERTIFICATE OF INCUMBENCY IS INCLUDED IN DOCUMENT NO. 16**



**From:** Roseanne Vega <vega@chapman.com>  
**Subject:** Newark Housing Authority - Section 3  
**Date:** September 30, 2011 12:01:33 PM CDT  
▶ 1 Attachment, 980 KB



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From: Fleischman, David [mailto:David.Fleischman@hud.gov]  
Sent: Thursday, September 01, 2011 03:22 PM  
To: Allison Durham; Keith Kinard  
Cc: Blom, Dominique G <Dominique.G.Blom@hud.gov>; Riddel, Jeffrey <Jeffrey.Riddel@hud.gov>; Longosz, Vickie S <Vickie.S.Longosz@hud.gov>; Thumar, Balu K <balu.k.thumar@hud.gov>; Sun, Shie-Fong <shiefong.sun@hud.gov>; Gallagher, Kevin J <Kevin.J.Gallagher@hud.gov>  
Subject: Newark Housing Authority - Section 30

Mr. Kinard and Ms. Durham:

Thank you for your patience during the Department's review of your EPC Section 30 application. HUD's Office of General Counsel has determined that ownership v. beneficial ownership under NJ law as outlined in the attached request for an opinion is rather nuanced as you have suggested as well. In the course of writing the HUD Notice 2011-14, we were focusing on legal ownership and that has been the construct for our interpretations under the 1937 Act, ACC and DOT. For this reason, I would agree that legal ownership of the energy equipment in the lessor/ trustee leads to the determination that Section 30 does not apply. Similarly, they are not creating a security interest in Operating Funds. They are expecting payment from the Operating Funds, but those funds would not be pledged and it would be as you suggest, merely a payment arrangement. It is also true that because the trustee is the legal owner of the equipment, in the case of default under the loan, it may remove the energy equipment from the PHA project. We should continue to require a modernization DOT in first place on the public housing project. An additional legal opinion will be required of HUD's analysis of NJ law, and that would best come from the lender and PHA counsel.

Best regards,

David Fleischman  
US Department of Housing and Urban Development  
Office of Capital Improvements  
451 7<sup>TH</sup> Street SW  
Washington, DC 20410

Office: 202 402 2071  
Email: [David.Fleischman@hud.gov](mailto:David.Fleischman@hud.gov)

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From: Gallagher, Kevin J  
Sent: Thursday, August 25, 2011 7:58 AM  
To: 'Allison Durham'  
Cc: Riddel, Jeffrey; Fleischman, David  
Subject: RE: Newark Housing Authority - Section 30 Authorization

Good Morning Alison,

Let me start by stating that I understand and appreciate the sense of urgency associated with your transaction and share your desire to enable the Newark Housing Authority to proceed to a financial closing and begin construction. I received your email of last Saturday transmitting the letter dated August 17<sup>th</sup>. David received the letter on Friday from Toni Logan and forwarded it on to our counsel. The letter was clear and comprehensive and, I believe, reflected an understanding of the issues involved. After reviewing the letter on Monday, I consulted with our counsel. Once we hear back from counsel I will have a better sense of timeline for providing a response. I have followed up with counsel to see if they can provide a sense of timing, and either David or I will follow up with you as soon as we hear back from them.

Regards,

Kevin

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From: Allison Durham [mailto:ADurham@NewarkHA.org]  
Sent: Wednesday, August 24, 2011 1:12 PM  
To: Gallagher, Kevin J  
Subject: Newark Housing Authority - Section 30 Authorization

Hello Mr. Gallagher,  
I understand Mr. Riddel is out of town on business today and will be back in the office tomorrow. I left a voicemail for him but I wanted to touch base with you as well. As you can imagine we are quite anxious to get rolling with the financial closing and construction of our project. The Newark Housing Authority essentially started down this path in 2007 and we've now got all the players in place and are ready to go. We've been working with our funders since November of 2010, our ESCo (Constellation Energy) for two years now and their sub-contractor for about a year now. The Section 30 authorization is essentially the very last action item before closing and construction can begin.

I hope the narrative we submitted provided a clear understanding of our financial structure but should there be any questions we are available to discuss. I'm attempting to manage expectations from our partners and my Executive Director and wonder if you have some sense as to a timeline we might receive feedback on our Section 30 request. Any guidance you can provide would be greatly appreciated.

Regards,

**Allison**

Allison Durham  
Executive Manager  
Executive Office  
Newark Housing Authority  
500 Broad Street  
Newark, NJ 07102  
(973) 273-6600 /phone



Executive Office  
500 Broad Street • Newark, NJ 07102  
t (973) 273-6000 • f (973) 642-1242  
www.newarkha.org

August 17, 2011

**VIA ELECTRONIC MAIL**

Mr. Jeffrey Riddel, Director of Capital Improvements  
United States Department of Housing and  
Urban Development  
Office of Public Housing Investments  
451 Seventh Street, SW  
Room 4130  
Washington, DC 20410

**Re: Section 30 and Lease/Purchase Financing of Energy Improvement Project**

Dear Mr. Riddel:

The Newark Housing Authority (the "Authority") is currently preparing to embark on a comprehensive energy management and energy improvement project through a guaranteed energy performance contract pursuant to which various energy conservation measures will be installed at several of the public housing sites owned by the Authority (the "Project") and held in trust for the benefit of the United States Department of Housing and Urban Development ("HUD") under declarations of trust (collectively, the "Declarations of Trust").

The purpose of this correspondence is to offer a narrative of the Authority's financing structure to fund our energy improvement project. Upon your review of this structure, we seek guidance and clarification regarding: (1) whether or not the Authority is required to obtain HUD's written authorization in accordance with Section 30 of the U.S. Housing Act of 1937 ("Section 30") in order to enter into the Agreement for third-party bank financing of the Project as described in detail below; (2) whether or not the Agreement (including rights of repossession of the Equipment) would violate the Authority's covenants with respect to its property that is held in trust for the benefit of HUD under the Declarations of Trust; and (3) if HUD determines that Section 30 authorization is not required, will HUD treat the Agreement as a financing that is not secured by the Authority's public housing assets for purposes of, and subject to compliance with, Notice PIH 2011-14(HA) issued on February 24, 2011.

***I. Lease/Purchase Financing of the Project***

The Authority anticipates financing the Project pursuant to an Equipment Lease Purchase Agreement (the "Agreement") to be entered into between the Authority and a financing intermediary acting as the initial equipment lessor (in such capacity, the "Initial Lessor"). Simultaneously with the financing, the Initial Lessor will assign all of its right, title and interest under the Agreement to a trustee (the "Trustee") pursuant to a trust agreement (the "Trust Agreement") under which certificates of participation ("COPs") will be sold

to bank lenders (the “Bank Lenders”). Pursuant to the provisions of the Agreement, the Authority will agree to make installment payments over an expected 17-year term, including interest, to purchase the energy and water conservation equipment comprising the Project (the “Equipment”) on a lease/purchase (*i.e.*, installment) basis. The Authority’s lease/purchase financing pursuant to the Agreement and the Trust Agreement will be structured to qualify as a tax-exempt obligation under the Internal Revenue Code of 1986, as amended (the “Code”).

In connection with the lease/purchase financing, the Authority provides in the Agreement for the creation of two separate trust funds, the Equipment Acquisition Fund and the Rent Payment Fund (together referred to herein as the “Pledged Funds”), that are to be held and administered by the Trustee under the Trust Agreement. The Authority will pledge and grant a security interest in the moneys, investments and income held from time to time in the Pledged Funds to secure the Authority’s obligations under the Agreement. The funds that the Authority borrows from the Bank Lenders pursuant to the lease/purchase financing are the only funds (together with investment earnings) that will be deposited into the Equipment Acquisition Fund and applied as directed by the Authority, with the approval of the Bank Lenders, to pay or reimburse the costs to acquire and install the Equipment as the project progresses. Revenues that the Authority receives from its operations and has on hand during the term of the Agreement (including operating fund subsidy payments that the Authority receives from HUD) that are legally available and sufficient to pay rent payments when due under the Agreement will be deposited into the Rent Payment Fund to make such payments when due. The Authority does not pledge any operating fund subsidy payments or other amounts to be received by the Authority from HUD, but will use such funds once received from HUD to pay its rent payments when due under the Agreement.

## ***II. Section 30 and Related HUD Notices and Guidance***

Section 30 provides that “[t]he Secretary may, upon such terms and conditions as the Secretary may prescribe, authorize a public housing agency to mortgage or otherwise grant a security interest in any public housing project or other property of the public housing agency.” On July 8, 2011, HUD issued its Notice PIH-2011-36(HA) regarding Guidance on Energy Performance Contracts in which Section 22 (titled “Section 30 of the 1937 Housing Act”) provides as follows:

“Where any financing transaction involves a security interest or other encumbrance in public housing property, PHAs are required to obtain written approval from HUD of the security interest or encumbrance pursuant to Section 30 of the U.S. Housing Act of 1937 (1937 Act). HUD approval of EPCs and associated ESAs do not constitute approval of the security interest, and a separate approval must be obtained. Under some lease-purchase agreements (otherwise known as municipal leases, the typical financing structure for an EPC), ownership of the equipment may reside with the third party, *e.g.*, a bank, ESCo, etc. Under this scenario, where the ownership resides with a third party, a section 30 approval is not required. Where ownership of the equipment

resides with the PHA and a lien or other encumbrance exists on the equipment, a section 30 approval is required." [emphasis in original]

Notice PIH-2011-36(HA) adopted the position that HUD had previously taken in draft guidance titled "Guidance for Section 30 Proposals Related to EPC Transactions," which is now presumably superseded by such Notice.

On February 24, 2011, HUD issued its Notice PIH 2011-14(HA) regarding Guidelines for Undertaking Financing Unsecured by Public Housing Assets, which requires that financing documents contain certain non-recourse language and establishes a method for resolving conflicts between the financing documents and applicable public housing requirements. If HUD concludes that Section 30 authorization is not required for the Agreement, such conclusion would presumably be based on a determination that since ownership of the Equipment is not in the Authority that the Agreement is not secured by public housing assets. To assure compliance with the requirements of Notice PIH 2011-14(HA), if HUD concludes that Section 30 authorization is not required, the Authority is seeking written clarification whether HUD is of the view that Notice PIH 2011-14(HA) would be applicable to the Agreement.

### ***III. Meaning of Ownership for Different Legal Purposes***

The crux of the issue is what HUD intends by its use of the term "ownership" as the basis on which Section 30 authorization is or is not required. The meaning of "ownership" varies depending on the legal context, which may be generally described as the difference between legal ownership and beneficial ownership.

Pursuant to the requirements of Section 40A:11-4.6.c.(1)<sup>1</sup> of the New Jersey Local Public Contracts Law (the "New Jersey Contracts Law"), ownership of the Equipment under the Agreement may not pass to the Authority until such time that all lease payments have been made. Accordingly, the Agreement provides that during the term of the Agreement legal title in the Equipment will be vested in the Lessor (*i.e.*, the Trustee by virtue of the assignment from the Initial Lessor, for the benefit of the Bank Lenders as owners of the COPs) to the extent required by the New Jersey Contracts Law; *provided* that during the term of the Agreement and so long as the Authority is not in default under the Agreement, all beneficial right and interest in and to, and duties and obligations with respect to, the use and possession of the Equipment are in the Authority. During the term of the Agreement, the Authority will agree at all times to protect and defend, at its own cost and expense, the Lessor's legal title and the Authority's beneficial rights and interests in and to the Equipment from and against all claims, liens and legal processes of the Lessor's or the Authority's creditors and other persons and keep the Equipment free

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<sup>1</sup> An energy savings improvement program may be financed through a lease-purchase agreement between a contracting unit and an energy services company or other public or private entity. *Under a lease-purchase agreement, ownership of the energy savings equipment or improved facilities shall pass to the contracting unit when all lease payments have been made.* Notwithstanding the provisions of any other law to the contrary, the duration of such a lease purchase agreement shall not exceed 15 years, except that the duration of a lease purchase agreement for a combined heat and power or cogeneration project shall not exceed 20 years.

and clear of all such claims, liens and processes except the Declarations of Trust. Under the Agreement, the Authority will pledge not to create, incur, assume or permit to exist any pledge, lien, security interest or other encumbrance, directly or indirectly, on any of the Equipment, subject to the rights and interests of HUD.

If an event of default occurs under the Agreement, full and unencumbered legal and beneficial title to the Equipment will, at the Lessor's option, vest in the Lessor, and the Authority will have no further interest in the Equipment. In addition, the Trustee would be entitled for the benefit of the owners of the Certificates (*i.e.*, the Bank Lenders) to exercise its remedies under the Agreement, including requiring the Authority to return the Equipment (which the Authority agrees to do) and the Trustee may sell, lease or otherwise dispose of the Equipment, in whole or in part, in one or more public or private transactions. In substance, the Agreement encumbers the Equipment to secure the Authority's lease/purchase financing of the Equipment pursuant to the Agreement.

Upon payment or prepayment of all amounts due under the Agreement, the Lessor's legal title will automatically transfer to the Authority without any additional consideration, at which point the Authority will own all legal and beneficial interest in the Equipment free and clear of the Agreement.

Except for the New Jersey Contracts Law requirement that ownership of the Equipment may not pass to the Authority until all amounts are paid under the Agreement, the Authority has all beneficial rights and interests in the Equipment during the term of the Agreement and will automatically acquire full legal and beneficial ownership of the Equipment so long as all rent payments and other amounts are paid pursuant to the Agreement. The Authority is required as a condition to the Agreement to provide evidence to the Lessor that the Lessor's legal title to the Equipment for purposes of the New Jersey Contracts Law will not result in a New Jersey State sales tax or *ad valorem* property tax as a result of such legal title in the Lessor. The Authority's beneficial rights and interests under the Agreement will support New Jersey sales and property tax exemptions with respect to the purchase and holding of the Equipment for use and consumption by the Authority.

Notwithstanding State law legal ownership in the Lessor, for Federal income tax purposes, the Authority must be deemed to own the Equipment in order to finance its acquisition of the Equipment on a federally tax-exempt installment purchase basis under the Agreement. For Federal income tax purposes, ownership of the Equipment means that the Authority must have the most significant burdens and benefits of ownership with respect to the Equipment. The manner of determining tax ownership is not specified in the Code, but exists under a long line of interpretive cases and rulings. Examples of the burdens of ownership include the Authority being obligated to pay costs to operate, maintain and insure the Equipment and bearing the risk of loss as a result of damage to or destruction of the Equipment and loss in value of the Equipment through depreciation or obsolescence. Examples of the benefits of ownership include exclusive use, possession and control of the Equipment and accumulation of equity in the Equipment. Legal title, in and of itself, does not mean ownership for Federal income tax purposes. Accordingly,



for Federal income tax purposes only, based on the existence of certain indicia of ownership, the Authority will be deemed to own the Equipment during the term of the Agreement, subject to the Declarations of Trust and the Lessor's rights and remedies under the Agreement. Since the Authority will be deemed to own the Equipment for Federal income tax purposes, the Lessor will not be entitled to any Federal income tax benefits that are based on ownership of the Equipment.

#### ***IV. Statement of Legal Issues***

Simply stated, the primary legal issue is whether HUD interprets "ownership" of the Equipment and the Pledged Funds for purposes of Section 30 and the related Notices and guidance as based on State law ownership, federal income tax law ownership or other standard of ownership that serves HUD's interests as trust beneficiary with respect to public housing property.

An equally significant and related legal issue is the extent to which, if at all, the Authority's entering into and performing the Agreement (including returning the Equipment upon an event of default under the Agreement) would violate its covenants to HUD under the Declarations of Trust. The Authority covenants under the Declarations of Trust to "remain seized of the title to" the subject property and "refrain from transferring, conveying, assigning, leasing, mortgaging, pledging, or otherwise encumbering or permitting or suffering any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of [the subject property] or any part thereof, appurtenances thereto, or any rent, revenues, income, or receipts therefrom or in connection therewith" subject to exceptions not relevant to this request. If HUD determines that Section 30 authorization is not required because the Authority does not own the Equipment during the term of the Agreement, HUD would presumably have concluded that the Authority's covenants in the Declarations of Trust are not violated since the Equipment and the Pledged Funds would not be the Authority's public housing property. If HUD determines that Section 30 authorization is required, the Authority requests written clarification that the Authority's covenants to HUD in the Declarations of Trust would not be violated by the Agreement notwithstanding the absence of an applicable exception on the face of the Declarations of Trust.

#### ***V. Request for Written Clarification***

The Authority desires to enter into the lease/purchase financing of the Equipment pursuant to the Agreement as described above in compliance the requirements of Section 30 and the related Notices and guidance. The Authority, therefore, requests written clarification from the Secretary of HUD, or his appropriate designee, with respect to the following:

1. whether or not the Authority is required to obtain HUD authorization under Section 30 in connection with the ownership and security arrangement of the Lessor and the Authority with respect to the Equipment under the Agreement as described above;

2. if HUD determines that Section 30 authorization is not required as described under item 1 above because ownership of the Equipment is not in the Authority during the term of the Agreement within the meaning of Section 30 and the applicable Notices and guidance, confirmation that (a) HUD has no interest in the Equipment to which the Lessor has legal title; (b) the Equipment may be acquired and installed on the Authority's public housing property, facilities and buildings with the proceeds of the lease/purchase financing pursuant to the Agreement; and (c) upon the occurrence and during the continuation of an event of default under the Agreement, the Lessor may enforce its rights and remedies as a secured party with respect to the Equipment, subject to applicable State law, including the Lessor's rights to repossession of the Equipment;

3. whether or not the Authority is required to obtain HUD authorization under Section 30 in connection with the pledge and security interest to be granted by the Authority in each of the Pledged Funds as described above;

4. if HUD determines that Section 30 authorization is not required as described under item 3 above because moneys and investments in the Pledged Funds are not owned by the Authority within the meaning of Section 30 and the applicable Notices and guidance, confirmation that (a) HUD has no interest in the moneys and investments held from time to time in either of the Pledged Funds; and (b) upon the occurrence and during the continuation of an event of default under the Agreement, the Lessor may enforce its rights and remedies as a secured party with respect to the Pledged Funds, subject to applicable State law;

5. whether or not the Agreement (including its ownership and security provisions, and rights of repossession, with respect to the Equipment) would violate the Authority's covenants with respect to its property that is held in trust for the benefit of HUD under the Declarations of Trust; and

6. if HUD determines that Section 30 authorization is not required as described under item 1 or item 3 above, will HUD treat the Agreement as a financing that is not secured by the Authority's public housing assets so that the Agreement must contain the provisions required by Notice PIH 2011-14(HA) as described above.

We appreciate your continued assistance with this Project.

Please feel free to contact me at (973) 273-6600 if you require any additional information with respect to this request.

Sincerely,



Allison Durham  
Executive Manager

**EVIDENCE THAT THE LESSEE HAS ADOPTED ITS  
ENERGY SAVINGS PLAN, SUBMITTED ITS  
ENERGY SAVINGS PLAN TO THE NEW JERSEY  
BOARD OF PUBLIC UTILITIES AND POSTED ON ITS OWN WEBSITE**

**DELIVERED SEPARATELY TO INVESTORS AND THEIR COUNSEL**

**EVIDENCE THAT THE LESSEE HAS OBTAINED  
FROM THE SUPPLIER AN ENERGY SAVINGS GUARANTEE**

**INCLUDED IN SECTIONS 5.1 AND 5.2 OF THE  
ENERGY SERVICES AGREEMENT, AS DEFINED IN THE ELPA**



**State of New Jersey**  
DEPARTMENT OF THE TREASURY  
DIVISION OF TAXATION  
PO Box 269  
TRENTON NJ 08695-0269

TAX ID  
22-6002507

JON S. CORZINE  
Governor

BRADLEY J. ABELOW  
State Treasurer

IN REPLY RESPOND TO:

May 25, 2006

City of Newark Housing Authority  
500 Broad Street  
Newark, NJ 07102


Dear Purchasing Officers and Vendors:

The **City of Newark Housing Authority** is a public authority of a political subdivision of the State of New Jersey and is exempt from sales and use taxes, pursuant to Section 9 (a)(1) of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.). An exempt organization certificate (ST-5) or number is not required for the **City of Newark Housing Authority** to make tax exempt purchases. Your official letterhead or official purchase order signed by a qualified officer is sufficient proof for your vendor that you are exempt from paying the sales tax. Payment must be made by government check or voucher.

Federal agencies, New Jersey state agencies and municipal agencies making purchases in the amount of one hundred fifty dollars (\$150) or less from imprest funds may use the Exempt Use Certificate (Form ST-4) to be relieved of making such purchases by government check or voucher. The Exempt Use Certificate must be signed by a qualified officer of the agency.

In the block marked "Purchaser's Certificate of Authority Number" on the Exempt Use Certificate, the words "Governmental Entity" should be inserted. In the block provided for the exempting citation, the indicia "9(a)" should be written. The name and position of the person dealing with the vendor must be given at the bottom of the certificate. We are enclosing a copy of the Exempt Use Certificate for your convenience.

Very truly yours,

  
Arthur J. Guenther  
Assistant Chief  
Regulatory Services Branch

AJG:np  
Enclosure



ST-4 (2-00, R-12)

State of New Jersey  
DIVISION OF TAXATION

## SALES TAX

## FORM ST-4

ELIGIBLE NONREGISTERED  
PURCHASER: SEE INSTRUCTIONS \*\*PURCHASER'S NEW JERSEY  
CERTIFICATE OF AUTHORITY NUMBER

## EXEMPT USE CERTIFICATE

To be completed by purchaser and given to and retained by seller.  
Please read and comply with the instructions given on both sides of this certificate.

TO \_\_\_\_\_ Date: \_\_\_\_\_  
(Name of Seller)

Address

City

State

Zip

The undersigned certifies that there is no requirement to pay the New Jersey Sales and/or Use Tax on the purchase or purchases covered by this Certificate because the tangible personal property or services purchased will be used for an exempt purpose under the Sales & Use Tax Act.

The tangible personal property or services will be used for the following exempt purpose:

The exemption on the sale of the tangible personal property or services to be used for the above described exempt purpose is provided in subsection N.J.S.A. 54:32B- \_\_\_\_\_ (See reverse side for listing for principal exempt uses of tangible personal property or services and fill in the block with proper subsection citation).

I, the undersigned purchaser, have read and complied with the instructions and rules promulgated pursuant to the New Jersey Sales and Use Tax Act with respect to the use of the Exempt Use Certificate, and it is my belief that the seller named herein is not required to collect the sales or use tax on the transaction or transactions covered by this Certificate. The undersigned purchaser hereby swears under the penalties for perjury and false swearing that all of the information shown in this Certificate is true.

Newark Housing Authority

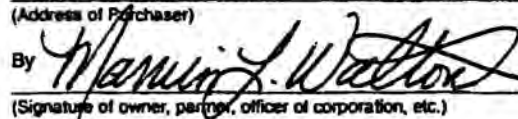
NAME OF PURCHASER

(as registered with the New Jersey Division of Taxation)

500 Broad Street Newark, NJ 07102

(Address of Purchaser)

By



Chief Financial Officer

(Signature of owner, partner, officer of corporation, etc.)

(Title)

MAY BE REPRODUCED  
(Front & Back Required)

**From:** Juliet H Huang <jhuang@chapman.com>  
**Subject:** Fwd: NJ Tax Exemptions  
**Date:** September 29, 2011 11:35:17 AM CDT  
**To:** Roseanne Vega <vega@chapman.com>



Juliet Huang  
Chapman and Cutler LLP  
111 West Monroe Street  
Chicago, Illinois 60603-4080  
Tel: (312) 845-3414  
Fax: (312) 516-3214  
Email: [jhuang@chapman.com](mailto:jhuang@chapman.com)

Begin forwarded message:

**From:** "O'Brien, Joy C. (Phila)" <[OBrienJC@ballardspahr.com](mailto:OBrienJC@ballardspahr.com)>  
**Date:** September 29, 2011 11:00:11 AM CDT  
**To:** "[larsen@chapman.com](mailto:larsen@chapman.com)" <[larsen@chapman.com](mailto:larsen@chapman.com)>, "[jhuang@chapman.com](mailto:jhuang@chapman.com)" <[jhuang@chapman.com](mailto:jhuang@chapman.com)>  
**Cc:** "DeLapenha, Monique Y. (Phila)" <[DeLapenhaM@ballardspahr.com](mailto:DeLapenhaM@ballardspahr.com)>, "[ADurham@NewarkHA.org](mailto:ADurham@NewarkHA.org)" <[ADurham@NewarkHA.org](mailto:ADurham@NewarkHA.org)>  
**Subject:** NJ Tax Exemptions

Buzz and Juliet,

Monique asked me to provide you the following additional information with respect to the NJ sales tax exemption and the ad valorem property taxes.

#### **NJ Sales Tax Exemption**

NHA is exempt from both the sales and use taxes under the NJ Sales and Use Tax Act. Section 9(a)(1) of the statute exempts "[t]he State of New Jersey, or any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact with another state) or political subdivisions where it is the purchaser, user or consumer" from the sales and use taxes imposed on "any sale, service or amusement charge ... or any use or occupancy." NJSA 54:32B-9.

#### **Ad Valorem Taxes**

NJSA 54:4-3.6 exempts from ad valorem taxes property used by a non-profit entity subject to the provisions of Section 15A of the New Jersey Statutes, the New Jersey Nonprofit Corporation Act, which includes NHA. The property used by such entities that is exempt from ad valorem taxes includes buildings owned by such entities that are used for charitable purposes, the land whereon such buildings are erected, and "the furniture and personal property in said buildings if used in and devoted to the purposes above mentioned".

Please let us know if you have any further questions.

Thanks,  
Joy

**Joy C. O'Brien**  
Ballard Spahr LLP  
1735 Market Street  
51st Floor  
Philadelphia, PA 19103-7599  
Direct 215.864.8856  
Fax 215.864.8999  
[obrienjc@ballardspahr.com](mailto:obrienjc@ballardspahr.com) | [www.ballardspahr.com](http://www.ballardspahr.com)

**From:** Juliet H Huang <jhuang@chapman.com>  
**Subject:** Fwd: NJ Tax Exemptions  
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Juliet Huang  
Chapman and Cutler LLP  
111 West Monroe Street  
Chicago, Illinois 60603-4080  
Tel: (312) 845-3414  
Fax: (312) 516-3214  
Email: [jhuang@chapman.com](mailto:jhuang@chapman.com)

Begin forwarded message:

**From:** "O'Brien, Joy C. (Phila)" <[OBrienJC@ballardspahr.com](mailto:OBrienJC@ballardspahr.com)>  
**Date:** September 29, 2011 11:00:11 AM CDT  
**To:** "[larsen@chapman.com](mailto:larsen@chapman.com)" <[larsen@chapman.com](mailto:larsen@chapman.com)>, "[jhuang@chapman.com](mailto:jhuang@chapman.com)" <[jhuang@chapman.com](mailto:jhuang@chapman.com)>  
**Cc:** "DeLapenha, Monique Y. (Phila)" <[DeLapenhaM@ballardspahr.com](mailto:DeLapenhaM@ballardspahr.com)>, "[ADurham@NewarkHA.org](mailto:ADurham@NewarkHA.org)" <[ADurham@NewarkHA.org](mailto:ADurham@NewarkHA.org)>  
**Subject:** NJ Tax Exemptions

Buzz and Juliet,

Monique asked me to provide you the following additional information with respect to the NJ sales tax exemption and the ad valorem property taxes.

#### **NJ Sales Tax Exemption**

NHA is exempt from both the sales and use taxes under the NJ Sales and Use Tax Act. Section 9(a)(1) of the statute exempts "[t]he State of New Jersey, or any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact with another state) or political subdivisions where it is the purchaser, user or consumer" from the sales and use taxes imposed on "any sale, service or amusement charge ... or any use or occupancy." NJSA 54:32B-9.

#### **Ad Valorem Taxes**

NJSA 54:4-3.6 exempts from ad valorem taxes property used by a non-profit entity subject to the provisions of Section 15A of the New Jersey Statutes, the New Jersey Nonprofit Corporation Act, which includes NHA. The property used by such entities that is exempt from ad valorem taxes includes buildings owned by such entities that are used for charitable purposes, the land whereon such buildings are erected, and "the furniture and personal property in said buildings if used in and devoted to the purposes above mentioned".

Please let us know if you have any further questions.

Thanks,  
Joy

**Joy C. O'Brien**  
Ballard Spahr LLP  
1735 Market Street  
51st Floor  
Philadelphia, PA 19103-7599  
Direct 215.864.8856  
Fax 215.864.8999  
[obrienjc@ballardspahr.com](mailto:obrienjc@ballardspahr.com) | [www.ballardspahr.com](http://www.ballardspahr.com)

## **WATER/ENERGY SERVICES AGREEMENT**

The Water/Energy Services Agreement (hereafter referred to as "Agreement") is made and entered into as of this 31<sup>st</sup> day of March, 2011 ("Closing Date" or "Effective Date" at the Newark Housing Authority, in the County of Essex, State of New Jersey, by and between CLT Efficient Technologies, d/b/a Constellation Energy Projects & Services NJ, having an office at 2090 Greentree Road, Suite 200, Pittsburgh PA 15220 (hereafter referred to as "Constellation"), and the Newark Housing Authority with its principal offices at 500 Broad Street, Newark, NJ 07102 (hereafter referred to as "Client") for the purpose of implementing Water and Energy Conservation Measures (hereafter referred to as "ECMs") and reducing water/energy consumption by installing certain Water/Energy Conservation Equipment (hereafter referred to as "Equipment"), described in Schedule A Construction Plan Summary & Cash Flow, and providing other Related Services described in Schedules A - O (hereafter referred to as "Related Services") designed to save water/energy for the Client's public housing property, facilities and buildings listed in Schedule I (hereafter jointly referred to as "Facilities"), which are found within Client's public housing communities (hereafter jointly referred to as "Communities").

### **WITNESSETH**

WHEREAS, Client owns and operates the Facilities listed in Schedule I and is in need of Equipment and Related Services designed to save water and energy and associated costs at said Facilities; and

WHEREAS, Constellation has developed or become knowledgeable about certain procedures for controlling water/energy consumption through the use of engineering analyses and devices installed and maintained on the premises of its clients; and

WHEREAS, Constellation has made an assessment of the water/energy consumption characteristics of the Facilities, which Client has approved; and

WHEREAS, Client desires to retain Constellation to manage the installation of certain Equipment of the type or class described in the Schedule A Construction Plan Summary & Cash Flow attached, and Constellation, with Client's approval, shall select the necessary Equipment and install it using subcontractors; shall provide other Related Services for the purpose of achieving water/energy cost reductions with Clients' Facilities, as more fully set forth herein as Constellation responsibilities; and shall put forth its best efforts to assure that subcontractors meet the requirements of this Agreement; and

WHEREAS, Constellation through its advisors affiliate, Constellation Energy Projects & Services Advisors, LLC may assist Client in procuring third-party financing of the Agreement's Total Implementation Cost for the Client, as specifically set forth herein; and

WHEREAS, Client agrees to provide upon installation the necessary preventative maintenance recommended for the herein installed Equipment in accordance to the Maintenance and Operations Manual provided to Client;; and

WHEREAS, Client is authorized to enter into this Agreement for the purposes set forth herein under the Constitution and the laws of the State of New Jersey; and



## ***Water/Energy Services Agreement***

WHEREAS, Client is approved by the U.S. Department of Housing and Urban Development (hereafter, "HUD") to enter into this Agreement for an Energy Performance Contract funded by the Add-On Incentive and Resident Paid Incentive within HUD's Energy Incentive Program for Public and Indian Housing.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Client and Constellation (hereafter referred to as the "Parties") hereto covenant and agree as follows:

### **SECTION 1 WATER/ENERGY MANAGEMENT PLAN**

#### **Section 1.1 Scope of Work**

The scope of work for this project is contained within the terms of this Agreement and its corresponding schedules incorporated herein. A summary of said scope of work is the following services to be provided by Constellation to Client:

- (i) Verify and further develop engineering-based and site-specific estimated savings numbers within a comprehensive Investment Grade Audit Verification ("IGAV"). The IGAV shall be premised upon Constellation's due diligence activities in its review, verification, and analysis of Client's energy consumption and efficiency utilization. The results of Constellation's due diligence activities shall be presented to Client, outlining specific types of energy conservation measures recommended, as set forth by cost, potential energy consumption reduction, energy cost savings, and proposed project schedule for implementation.
- (ii) Serve as the general contractor for the project, install/implement the agreed-upon improvements, use an on-site project superintendent, coordinate with Client's staff, and subcontractors, and bill for the equipment installed and fees associated therewith. In serving as general contractor in this capacity under the Agreement, the Constellation shall comply with all applicable laws and regulations, procurement policies, and industry standards of practice, abide by Client's MBE/WBE policies and procedures, apply for all required permits, provide evidence of all requisite insurance and bonds, as well as take any and all necessary action in the event of a malfunction or other emergency. Further, Constellation shall consult with Client and maintain proper procedures in addressing issues dealing with concealed or unknown conditions that require modifications to the Schedule A Construction Plan Summary & Cash Flow, and obtain waivers of lien from said subcontractors and any other vendors as set forth in Section 27;
- (iii) Provide various types of training for residents, maintenance staff, and administrative staff as more specifically set forth in Schedule G of the Agreement;
- (iv) Complete the construction period for the base project within 912.5 business days (30 months), subject to the terms and conditions of the Agreement and associated Schedules;

## ***Water/Energy Services Agreement***

- (v) Provide Measurement & Verification services and other post-implementation services and provide a Savings Guarantee for Client, as more specifically set forth in the Agreement.

### **Section 1.2 Schedules**

Constellation has prepared and Client has approved and accepted the schedules set forth in Attachment 1 hereto, copies of which are attached hereto and made a part hereof. All Constellation and Client rights and responsibilities are as defined in this Agreement and the attached Schedules.

### **Section 1.3 Client's Request for Proposals and Constellation's Response**

Client's Request for Proposals dated May 2009 ("RFP"), is hereby incorporated as Attachment 2. Constellation provided a response to Client's RFP for an Energy Performance Contracting Program dated June 11, 2009 ("Constellation's Response to RFP") which is hereby incorporated as Attachment 3.

### **Section 1.4 Investment Grade Audit Verification**

Constellation has completed a detailed, Investment Grade Audit Verification ("IGAV"), dated September 1, 2010, which complies with the requirements of New Jersey Public Laws 2009, Chapter 4 as of the Closing Date. The IGAV includes the results from the Energy Audit as prepared by Management Resource Group, Inc., dated May 2006. The IGAV also provides the verification of the energy audit for this Water/Energy Savings Program, as well as updated findings regarding potential measures for an efficiency and conservation program. The IGAV has been provided to Client, reviewed, approved and accepted by Client, and is hereby incorporated as Attachment 4.

### **Section 1.5 Water and Energy Savings Program**

The entirety of the services and responsibilities of both Constellation and Client found within this Agreement shall be known as the Water and Energy Savings Program.

### **Section 1.6 Order of Precedence**

(1) In the event of a discrepancy in information contained within the documents that compose this Agreement in full, the order of precedence shall be as follows:

- (i) Any Addenda that may be executed at a later date;
- (ii) This Agreement;
- (iii) The attached Schedules;
- (iv) The IGAV;
- (v) Constellation's Response to Client's RFP;
- (vi) Client's RFP; and

## ***Water/Energy Services Agreement***

(vii) HUD Forms (including, but not limited to, 5369 and 5370).

(2) In the event of a discrepancy specifically between the terms and conditions of this Agreement and HUD Form 5370 – General Conditions- the latter shall take precedence.

### **Section 1.7 Addenda to Agreement**

Subsequent phases of the project, if any, shall supplement this Agreement via an Addendum. Any such Addendum shall be in addition to the terms set forth in this Agreement, and as such, all terms and conditions set forth in this Agreement shall be in full force and effect with respect to an Addendum hereto, except as specifically referenced and/or modified in the Addendum.

## **SECTION 2 ENERGY USAGE RECORDS, ENERGY AUDITS, AND FINANCIAL STATEMENTS**

Client has furnished or shall furnish to Constellation, upon its request, all of its records and complete data concerning an accurate portrayal of water/energy usage for the Facilities including its most recent Utility Expense Level form (HUD 52722 UEL Calculator) and the following data for the most recent forty-eight (48) month period: accurate utility cost and consumption records by Community; occupancy information by Community; descriptions of any changes in the building structure or its heating, cooling, lighting or other systems or water/energy requirements; descriptions of all water/energy consuming or saving equipment used in the Facilities; and description of water/energy management procedures presently utilized. Client also has provided or shall provide any prior water/energy audits of the Facilities and Client's audited financial statements for the three most recent years. Client has made or shall make agents and employees familiar with all such records available for consultations and discussions with Constellation.

## **SECTION 3 AGREEMENT DATES**

### **Section 3.1 Closing Date**

The Closing Date shall be the date first written above. This Agreement shall be effective and binding upon the Parties immediately upon the Closing Date.

### **Section 3.2 Term of Agreement**

The Term of this Agreement shall be The Term of this Agreement shall be fifteen (15) years from the Commencement Date of installation as indicated by this Agreement.

### **Section 3.3 Construction Period**

The period from the Closing Date until the Commencement Date shall be known as the Construction Period.

## ***Water/Energy Services Agreement***

Section 3.4 Commencement Date The Commencement Date shall be the later of:

- (i) The first day of January (January 1<sup>st</sup>) after Client has signed the Certificate of Substantial Completion, as provided in Section 9.1; or
- (ii) The first day of January (January 1<sup>st</sup>) after Client has put into effect the post-implementation tenant utility cost/consumption allowances at all facilities, as applicable.

Section 3.5 Measurement & Verification Reporting and Fee Payment Period

- (i) Constellation Measurement & Verification of Client's utilities shall begin the calendar year after the Closing Date and shall continue annually throughout the Term of the Agreement;
- (ii) Client shall report within 45 days of the close of each calendar year, all necessary data for each calendar year, beginning with the year in which the Closing Date occurs, and for each subsequent calendar year thereafter, for the duration of the contract;
- (iii) Constellation shall produce the annual Measurement & Verification reports within 45 days of receipt of data from Client, as provided in 3.5 (ii);
- (iv) Constellation shall be paid its Measurement & Verification Fee from the first day of the first quarter (i.e., January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, or October 1<sup>st</sup>, as applicable) after the Closing through the end of the Term of the Agreement. Quarterly invoices shall be issued and payable on schedule, even in the event Client does not provide the necessary data as provided in Section 3.5(ii), unless this Agreement is otherwise terminated per Sections 4.4 or 21.

Section 3.6 Interim Guarantee Year and First Full Guarantee Year Effective Date

(i) Constellation's Water/Energy Interim Guarantee Year Effective Date (hereafter "Interim Guarantee Year Effective Date"), shall be the first day of the first calendar quarter following the Interim Warranted Project Completion Part A, as set forth in Section 9.2 (3) of this Agreement. The guaranteed cost savings for the Interim Guarantee Year shall be as follows:

- a) In the event that Client secures financing for the Agreement, with a financing closing date on or before July 1, 2011, the guaranteed cost savings for the Interim Guarantee Year shall be \$2,188,395, as specifically derived from 85% of the estimated cost savings of ECMs scheduled to be installed within the Interim Warranted Project Completion Part A, including full or partial installation of the following ECMs: ECM #1; ECM #2; ECM #11; ECM #13; and ECM #23.
- b) In the event that Client secures financing for the Agreement, with a financing closing date after July 1, 2011, the guaranteed cost savings for the Interim Guarantee Year shall be



## **Water/Energy Services Agreement**

\$2,074,232, as specifically derived from 85% of the estimated cost savings of ECMs scheduled to be installed within the Interim Warranted Project Completion Part A, including full or partial installation of the following ECMs: ECM #1; ECM #2; and ECM #23.

(ii) The interim guarantee shall be in effect until all ECMs are installed and a certificate of substantial completion is executed. The First Full Guarantee Year shall be the following annual reporting year beginning with the subsequent January 1<sup>st</sup> after substantial completion.

### **Section 3.7 Guarantee Years and Annual Report in Subsequent Years**

- (i) Constellation shall provide subsequent Annual Reports pursuant to Section 5.2 within 45 days of the date the above data are received;
- (ii) Should HUD modify the Utility Year or there be any overlap in time between any two Utility Years, in no case shall Constellation be liable for Cost Savings Shortfall resulting from the same quarter of data twice. Constellation shall pay Client only once for any Cost Savings Shortfall resulting from any given year.

## **SECTION 4 COST AND FUNDING OF AGREEMENT, INCENTIVES, EQUIPMENT MAINTENANCE AND TITLE**

### **Section 4.1 Total Implementation Cost for the Project**

Constellation shall be paid for the Total Implementation Cost in the sum of forty-nine million, five hundred sixty thousand, two hundred and three dollars (\$49,560,203) as listed on the Schedule A Construction Plan Summary for the EPC project, plus an additional administration fee for any received incentives and rebates for which it applies on behalf of Client, and which are received by Client.

### **Section 4.2 Separate Tax-Exempt Municipal Lease Agreement** To finance the Total Implementation Cost, Client shall execute a Tax-Exempt Municipal Lease Agreement with a third-party lender in the amount of forty-nine million, five hundred sixty thousand, two hundred and three dollars (\$49,560,203) the terms and conditions of which to be reviewed and approved by Client and its counsel.

- (i) Client acknowledges and agrees that Constellation is not acting, and has not acted, as a municipal advisor, agent or fiduciary under Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted July 21, 2010. The information, opinions or views contained herein are not intended to be, and do not constitute, advice within the meaning of the Act. In all services to be performed for a customer, Constellation is acting solely as a principal in an arm's-length transaction for its own interests. Municipal advisory services are provided solely by Constellation's affiliate Constellation Energy Projects & Services Advisors, LLC;

## ***Water/Energy Services Agreement***

- (ii) Constellation through its advisors unit has assisted or may assist in the procurement of the third-party Tax-Exempt Municipal Lease Agreement for the Client according to Client's procurement policy by providing a draft RFP; however, Client is solely responsible for the selection of the third-party lender and for all terms and conditions of the Tax-Exempt Lease Agreement, together with any associated agreements and/or documentation, including but not limited to the lender's amortization schedule for the financing;
- (iii) Funds from the Tax-Exempt Municipal Lease Agreement may be placed into an Escrow Account with the third-party lender or some other comparable type of account;
- (iv) To pay Constellation, Client shall approve Constellation's invoices, and forward said invoices with a request for disbursement to the third-party lender. The lender, then, shall pay Constellation, accordingly;
- (v) Billing and payments shall be conducted according to Section 8 below;
- (vi) If the Parties agree to engage in additional phases of work or an expanded EPC project, then there shall be corresponding amendments to the Tax-Exempt Municipal Lease Agreement(s) or Client shall secure alternative financing for said additional EPC work;
- (vii) Client may refinance its Tax-Exempt Municipal Lease Agreements at any time, subject to Constellation's prior knowledge and written consent;
- (viii) In the event that Client chooses to prepay its debt service, Client assumes all responsibility for any alterations to its incentives caused by such prepayments.

### **Section 4.3 Tax-Exempt Municipal Lease Agreement Amortization**

Client shall amortize the debt service to the third-party lender through the approved HUD Energy Incentive formula treatments of its Operating Subsidy, except that variable HUD funding levels, over which Constellation has no control and expressly does not warrant, may cause Client to receive less Operating Subsidy than requested. Therefore, Client may have to pay some part of the Tax-Exempt Municipal Lease Agreement(s) amortization with other Client funds.

### **Section 4.4 Financing of Agreement**

(i) In the event that Client is unable to secure financing for the Agreement, via a tax-exempt municipal lease agreement, or by other means, and Client has insufficient housing authority funds for Client's payment obligations under this Agreement, then Client shall immediately notify Constellation, in writing, and this Agreement shall terminate as of the date of said notice, without penalty or expense to Client, except for any

## ***Water/Energy Services Agreement***

reasonable fees or costs due to Constellation, as more fully set forth in Schedule O of this Agreement.

(ii) Notwithstanding the foregoing, Client agrees that it will not terminate this Agreement under the provisions of this Section if any funds are appropriated to it, or by it, for the acquisition, retention, or operation, of the Equipment under this Agreement, for the corresponding Fiscal Year; and Client will not, during the term of the Agreement, give priority in the application of funds to the purchase of other equipment or services, functionally similar to those set forth in this Agreement.

### **Section 4.5     Incentives, Rebates, and Grants**

(i) On Client's behalf, Constellation shall apply for any available incentives and rebates available for the energy conservation measures/equipment being installed. Constellation shall direct the incentive/rebate provider(s) to issue the incentive(s)/rebate(s) directly to the Client. Constellation shall be paid an administrative fee for the coordination of the applications and processing of such incentives/rebates, in accordance with Section 7.3 Fees and Schedule B, Part 1.

(ii) Constellation shall receive an administrative fee for any grants, including weatherization assistance programs, for which it applies on behalf of Client. Constellation shall research available grant opportunities, coordinate applications, and process available grants, as well as manage all work associated with the administration of said grants. All such work shall be subject to Constellation's full markup, as applicable.

### **Section 4.6     Equipment Maintenance During Tenure of Agreement**

Client agrees to provide normal and emergency maintenance required to keep Equipment in good operating condition upon installation and during the term of the Agreement. Client also agrees to provide preventative maintenance required to keep Equipment in good operating condition during the term of this Agreement and according to the provisions of the owners manual for the Equipment, as more fully set forth in Section 15.2.

## **SECTION 5     WATER/ENERGY CONSUMPTION AND COST SAVINGS AND GUARANTEE**

### **Section 5.1     Estimated Water/Energy Savings Formulation, Guarantee, and Achieved Savings Measurement**

(i) Constellation has formulated the level of Estimated Water/Energy Consumption Savings which should be achieved as a result of this Water and Energy Savings Program. The Estimated Water/Energy Consumption Savings are listed on Schedule E in Table E.2;

(ii) Constellation has multiplied the average effective utility rates listed on Schedule E in Table E.2 by the Estimated Water/Energy

## **Water/Energy Services Agreement**

Consumption Savings to determine the Estimated Water/Energy Cost Savings (hereafter Estimated Cost Savings);

- (iii) Constellation shall provide a Limited Warranty of Water/Energy Guaranteed Cost Savings (hereafter "Guaranteed Cost Savings"), pursuant to the terms and conditions set forth in this Agreement, and the amount of which is set forth in Schedule E, Table E.5;
- (iv) The total amount of water and energy consumption and cost savings achieved for all asset management projects (AMPs) contained within this Agreement, each as determined pursuant to the terms and conditions of this Agreement, shall be known as the Achieved Water/Energy Consumption Savings and Achieved Cost Savings, respectively;
- (v) Constellation expressly does not warrant and/or guarantee that HUD shall fund all of the Achieved Cost Savings. Client expressly agrees that HUD's funding levels are beyond the control of Constellation and Client and shall be beyond the scope of this Agreement and its provisions as set forth herein.

### **Section 5.2 Guarantee, Annual Report, Annual Review, Excess Cost Savings, Cost Savings Shortfall,**

Constellation's parent company, Constellation Energy Projects & Services Group, Inc. ("CEPS") and its successors guarantee and fully stands behind the full payment and performance of all energy cost savings and performance obligations of its subsidiary Constellation in this Agreement, including but not limited to meeting 100% of the cost savings for the years and in the amounts shown in Schedule E, Table E.5., as evidenced by CEPS's countersignature to this Agreement. Further, CEPS will dedicate its own employees and resources to ensure all such obligations are met. No additional fee for said cost savings guarantee will be due from Client. Constellation shall prepare an Annual Report as described below; Constellation and Client shall jointly review the Annual Report, and such review shall be called the Annual Review:

- (i) In each Annual Report, Constellation shall subtract the amount of the Guaranteed Cost Savings as stated in Schedule E, Section 5, as modified by the effectuation of the terms and conditions of the Agreement from that year's Achieved Cost Savings;
- (ii) If the subtraction results in a positive number, then the Agreement has produced Excess Cost Savings during that period i.e. the Achieved Cost Savings exceed the Guaranteed Cost Savings;
- (iii) If the subtraction results in negative number, then the Agreement has produced a Cost Savings Shortfall, i.e., the Guaranteed Cost Savings exceed the Achieved Cost Savings.



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- (a) If there is a Cost Savings Shortfall, Constellation or its designee, shall pay the amount of the Cost Savings Shortfall to Client within 60 days after such determination.
- (iv) Each Annual Review shall take place within ninety (90) days of the date the then-current Annual Report is issued;
- (v) Constellation shall record the Annual Review process and its results in writing and shall keep a file of such, along with the Annual Report.

### **SECTION 6 GENERAL CONTRACTOR, PROCUREMENT OF EQUIPMENT, MATERIALS AND SUBCONTRACTORS**

#### **Section 6.1 General Contractor**

HUD Regulations 24 CFR 85.36 d (3) and 24 CFR 965.308 a (1) permit Public Housing Authorities to engage in a qualifications-based procurement for Energy Performance Contracting, which Client completed via its RFP. Constellation shall act as the general contractor of the Equipment installation, as installation was included within the Scope of Work of that procurement.

#### **Section 6.2 Procurement of Equipment, Materials and Contractors**

Subcontractors, Equipment Purchases, and Materials Purchases shall be procured by Constellation in accordance with HUD, state, and local procurement policies. Constellation shall keep records of all bids received.

- (i) Constellation shall require vendors/subcontractors to provide a minimum of a one-year warranty;

For major equipment, Constellation shall request pricing on extended warranty options for three, five and ten year extended warranties, upon written request by Client;

- (ii) Constellation shall abide by Client's MBE/WBE and Section 3 policies and procedures, and include such policies and procedures within procurement documents. Client has provided said policies to Constellation prior to the issuance of solicitations for bids.

#### **Section 6.3 Procurement of Subcontractors**

- (i) Constellation has solicited bids for subcontractors in accordance with the procurement policies of the Client, the state of New Jersey, and HUD. Constellation has recommended responsive bidders to Client and Client has made the final selection of the subcontractors and vendors.
- (ii) The bid solicitations and selections have been premised upon Constellation's pre-design work, which has been completed by Constellation and was approved by Client, prior to the issuance of the solicitations for bids. Any changes to the design after the bids have been issued and subcontractors have been selected will be

## **Water/Energy Services Agreement**

considered a Non-Standard Installation, as defined in Section 7.1 of this Agreement, such that Client will use Contingency funds to cover the costs. If costs exceed the available Contingency, Client shall need to obtain additional funds and/or shall alter the scope of work so that available funds will cover the revised work.

- (iii) It is both parties' intent to proceed with Client's selected subcontractors and vendors as procured. To that end, Constellation and Client agree to take all reasonable steps to ensure that the selected subcontractors and vendors execute a subcontract with Constellation in accordance with the solicitation for bids for subcontractors. However, both parties acknowledge that circumstances may arise which will preclude the execution of a subcontract between Constellation and the selected subcontractors and vendors.

### **SECTION 7 EQUIPMENT PRICING AND FEES**

#### **Section 7.1 Definitions.**

- (i) Agreement Pricing Structure Pursuant to the HUD 2007 Procurement Policies, this Agreement shall comply with the HUD requirements for a Firm Fixed-Price Contract for all Standard Installations on a per-unit installed basis.
- (ii) Installed Price for Standard Installation The Installed Price for Standard Installation (see definition below) as referenced in this Agreement is shown on Schedule A, which incorporates the Scope of Work for the project and the pre-design, all of which has been approved by Client. The per unit installed price for Standard Installation on Schedule A, Part 1 is applicable to all Client sites, unless otherwise stated in this Agreement.
- (iii) Standard Installation Costs for Standard Installation included in this Agreement are based upon set criteria and specifications, including but not limited to, the internal and external condition of the Client's units, as well as any of the units' existing equipment or structure that affect the implementation of the Agreement's ECMs, based on the units' inspection p during Constellation's pre-construction due diligence activities. Other set specifications upon which Standard Installation is premised are the purchase and installation of specific type and/or price of equipment utilizing identified procedures and/or methodology as listed in the Scope of Work as provided in Schedule A Construction Plan Summary, Part 3 Scope of Work. When a piece of Equipment is installed in compliance with the above, then the Standard Installation shall be effective;
- (iv) Non-Standard Installation For various reasons, as described in Allowance Authorization below and, elsewhere in this Section and Sections 12.2 and 12.3, additional labor, materials, and/or equipment may be required to complete installation, in which case such

## **Water/Energy Services Agreement**

installation shall be considered a Non-Standard Installation. Additionally, all Client upgrades to the Scope of Work, as provided in Schedule A Construction Plan Summary, Part 3 and/or the pre-design completed, which have both been approved by Client, as well as requests to use an alternate vendor/subcontractor to those which have already been agreed upon and selected, shall result in said installation being deemed a Non-Standard Installation.

- (v) Unit Cost Pricing Client shall pay for the actual number of units of the Equipment installed. The fixed unit cost prices are shown on the Schedule A Part 1 Construction Plan Summary. The quantities shown on Schedule A Part 1 Construction Plan Summary may change according to unit-specific requirements as determined during the Construction Period.
  - 1) Should the Constellation need to install more units than estimated, then Constellation shall submit an Allowance Authorization for the use of Contingency to pay for the Installed Price of the additional units, including Constellation's Overhead and Profit;
  - 2) Should the Constellation need to install fewer units than estimated, then Constellation shall submit an Allowance Authorization to transfer the unused funds (the number of units not needed multiplied by the Installed Price) to Contingency for later use by the project.
- (vi) Contingency is herein defined as a specific dollar amount of the Agreement funds to be held in escrow or comparable account by the lender as part of the total implementation cost. Contingency funds are to be allocated to any additional labor, equipment and/or materials, as more fully described below in Allowance Authorization, in order to effectuate the Agreement's ECMs and/or other energy efficiency improvements, if funds are available for such after the planned ECMs are substantially installed, as more fully defined in Schedule A, Part 4 of this Agreement. Schedule A Part 4 also provides a "Contingency Items and Amounts" listing that includes, but is not limited to, additional measures that may be implemented with Contingency funds as outlined above, after all ECMs for the energy performance project are substantially installed. There shall be only one Contingency for each phase of the project. Constellation shall manage all work completed through Contingency, except for requisite abatement which may be completed by Constellation at Constellation's sole discretion. All work completed using Contingency shall be subject to Constellation's simple markup, except any used for early payment of debt service.
- (vii) Allowance Authorization An agreement between Constellation and Client permitting debit (usage) of funds from Contingency, or credit of funds to Contingency, according to one or more of the following:

## ***Water/Energy Services Agreement***

- (a) Adjust Installed Price for increased costs due to concealed/unknown conditions as listed in Sections 7.2, 12.2 and 12.3, which result in a non-standard installation; and/or
- (b) Adjust Installed Price for increased or decreased costs due to a change in quantity;
- (c) In the instance that Client wishes to upgrade the Equipment, design, or selected Subcontractor, which result in a Non-Standard Installation due to a change in the Scope of Work; and/or;
- (d) Install additional improvements not listed on Schedule A Part 1 Construction Plan Summary;
- (e) For Client to pre-pay debt service, in which case Constellation shall not receive a fee on the amount of Contingency used to pre-pay debt service;

In proceeding with any such Allowance Authorization between Constellation and Client, the following terms and conditions shall apply:

- 1) All applicable HUD procedures shall be followed;
- 2) Constellation reserves the right to submit Allowance Authorizations as needed, as more fully described above.
- 3) Client has the right to upgrade equipment above that which is described in the Scope of Work for Standard Installation within this Agreement. If Client elects to exercise its right to upgrade equipment, Client shall execute the requisite Change in Scope of Work form prior to any action taken by Constellation in furtherance of the change. Additionally, in exercising its right to upgrade the equipment from the Scope of Work for Standard Installation, Client shall be responsible for any and all costs, charges, and/or fees associated with the upgrades. Constellation may request an Allowance Authorization for any such costs, charges, and/or fees.
- 4) In every case, all Equipment to be installed must meet or exceed the efficiency standards set forth in the Scope of Work of this Agreement.
- 5) Constellation has provided appropriate documentation for Client's evaluation of cost reasonableness;
- 6) The Total Implementation Cost of the project shall not change. In the event of the need for a change of such magnitude, a formal Change Order would have to be prepared and mutually agreed-upon by the Parties. The



## ***Water/Energy Services Agreement***

Parties hereby agree that an Allowance Authorization would not suffice in such instances;

- 7) The Scope of Work for the project or any other aspect of the Water/Energy Savings Program, as set forth in this Agreement, shall not materially and substantively change unless mutually agreed upon by the Parties, in writing.

### **Section 7.2 Unforeseen or Concealed Conditions**

If conditions and/or circumstances are encountered which are concealed physical conditions or unknown physical conditions of an unusual nature, that differ materially from that which was visually ascertained upon pre-construction walkthrough procedures, Client agrees to accept responsibility for such conditions and those circumstances outside of Constellation's control, and further agrees to pay for any costs associated therewith, including but not limited to labor and materials, as well as repair to any damaged equipment installed by Constellation or its subcontractors for this project, caused by such conditions and/or circumstances. Any such labor and materials, as well as repair associated with concealed or unknown physical conditions as stated herein, shall not be considered part of Standard Installation within the definition defined in this Section, and procedures as set forth in this Section and Sections 12.2 and 12.3 of this Agreement shall be followed. Any such concealed or unknown conditions render the installation a non-Standard Installation.

### **Section 7.3 Fees and Costs**

Client shall pay Constellation for Fees related to the installation of the ECMs and the coordination of incentives/rebates applications and processing as well as an Annual M&V fee. The Fees and Costs shall be as listed on Schedule B. Burdened Fees and Costs, included within Part 1 of Schedule B, shall be included within the Total Implementation Cost of the project and financed and paid through the Tax-Exempt Municipal Lease Agreement. Post Implementation Measurement & Verification Fees, included within Part 2 of Schedule B, shall be paid via the Client's HUD Incentives or other Client funds at Client's option.

### **Section 7.4 Open Book**

Constellation has provided Client with all procurement documentation demonstrating that bids were solicited in accordance with the Client's policies, as well as the policies of the State of New Jersey, and those of HUD. Constellation has provided Client with all solicitation materials published and all responsive bidder documentation, including but not limited to pricing for materials and labor, upon which Client has approved the final selection for subcontractors/vendors for the project. As such, Constellation has dutifully complied with its open book requirements under this Agreement.

## **SECTION 8 BILLING AND PAYMENTS TO CONSTELLATION**

### **Section 8.1 Mobilization Payment and Reimbursement of Costs Incurred**

- (i) Constellation shall receive a total Mobilization Payment in the amount of one million, four hundred eighty six thousand, eight hundred and six

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dollars (\$1,486,806), which is 3% of the total implementation cost of the project, for advance costs of preparation for on-site construction installation of the energy performance project.

(ii) Constellation shall receive a total Reimbursement of Costs Incurred in the amount of four million, nine hundred fifty nine thousand, six hundred and five dollars (\$4,959,605), which is approximately 10% of the total implementation cost of the project, for advanced costs prior to on-site installation, including but not limited to, procurement of materials and equipment, field work, IGAV, HUD submittals, engineering, certain fees as outlined in Schedule B of this Agreement, and other work performed to support the development of the project. Constellation shall provide documentation for said costs.

a. Of the total Reimbursement of Costs Incurred, the amount of one million, four hundred ninety three thousand, five hundred and seventy dollars \$ (\$1,493,570) shall be invoiced prior to the Client's closing on financing for the Agreement, pursuant to the Limited Notice to Proceed in Schedule O, for the advance costs incurred for the authorized work therein, including the unburdened cost for design and specifications work under the Agreement as set forth in Schedule B. The remaining amount of the total Reimbursement of Costs Incurred, three million, four hundred sixty six thousand, thirty five dollars (\$3,466,035), shall be invoiced separately, after Client's closing on the financing for the Agreement, for advanced costs incurred for work not included within the Schedule O, Limited Notice to Proceed.

(iii) Within approximately two weeks of the Client's closing on the financing for the Agreement, and upon its approval of Constellation's invoices for the respective Mobilization Payment and Reimbursement of Costs Incurred, pursuant to 8.2(i) and (ii) above, Client shall request a wire transfer disbursement for the Mobilization Payment and Reimbursement of Costs Incurred from the funds held by Lender or comparable account of the Tax-Exempt Municipal Lease Agreement.

### **Section 8.2 Progress Billing of the Equipment and Fees**

Constellation shall invoice on a progress basis for the Installed Price of all Equipment at installation and for associated Constellation Fees. Progress billing invoices shall normally be prepared by Constellation on a biweekly basis, but billing schedule may fluctuate according to the amount of work completed.

- (i) Constellation shall invoice for Equipment and implementation fees net 30 (payment to be made within 30 days of invoice date), and shall provide installation documentation by AMP using HUD-51001 and related documents;
- (ii) Client shall be fully reimbursed for the Mobilization Payment via a 10% credit on each invoice during the Construction phase, until the Mobilization Payment is fully credited;

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- (iii) Constellation shall invoice quarterly net 30 (payment to be made within 30 days of invoice date) for the M&V Fees.
- (iv) The retainage provisions of HUD 5370 shall be applicable to all progress payments under this Agreement.

Section 8.3 Constellation's Measurement & Verification (M&V) Fee  
Constellation's Annual M&V Fee shall be one hundred and ten thousand dollars (\$110,000) beginning with the initial construction year and shall escalate by 2% per year thereafter, effective over the full term of this Agreement, and shall be payable in four equal quarterly payments per year. The escalation shall be applied effective at the beginning of each calendar year following the first full calendar year after the effective date of the Agreement.

Section 8.4 Client Payment  
Client shall pay all Constellation invoices upon approval by Client, and Client shall not unreasonably withhold such approval. All undisputed payments shall be made in a timely manner upon receipt, but in no event later than 30 days from the invoice date. Client shall request wire transfer disbursements from the financing party to make payments.

Section 8.5 Past Due Invoices and Interest  
Any dispute regarding the amount of an invoice shall be resolved pursuant to the procedures set forth in Section 23 of this Agreement. Constellation is permitted to take action during the continuance of a Client default, whether at law or in equity or otherwise.

## **SECTION 9 CONSTRUCTION SCHEDULE**

Section 9.1 Construction Schedule  
Equipment installation shall proceed in accordance with the construction schedule approved by Client and attached hereto as Schedule D. Constellation shall prepare, print and distribute resident notification of work in units in accordance with Client's leases and its policies and procedures, which shall not be unreasonably inhibited or delayed by Client. Constellation shall schedule the installations appropriately to allow for residents to be notified of the three-day period within which work will be done. When Constellation has materially completed the installation of all equipment listed in the scope of work for a specific site, Constellation shall notify Client in writing of such site completion and request review and acceptance by Client of the installed work. Upon such acceptance, Client and Constellation shall execute a By-Site Completion Certificate. When Constellation has materially completed the installation of all equipment listed Schedule A at all sites provided in Schedule I, it shall issue a Notice to Client. When Client is satisfied with the installation of such Equipment, Client and Constellation shall execute a Certificate of Substantial Completion, at which point the Construction Period shall be materially complete.

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### **Section 9.2 Warranted Project Completion**

(1) The Final Warranted Project Completion shall be defined as the number of business days from Constellation's receipt of Notice to Proceed by Client, per Schedule O of this Agreement, that Constellation warrants it shall not exceed in the completion of the installation of all Equipment, not including additional measures and/or "Contingency Items and Amounts" as referenced in Section 7.1 (vi) and Schedule A, Part 4 of this Agreement. Final Warranted Project Completion shall be documented by a notice from Constellation to Client that it has materially completed the work listed on Schedule A. The Final Warranted Project Completion shall be 912.5 business days (30 months).

(2) An extension to the Final Warranted Project Completion date shall be granted under the following circumstances:

- (i) Delays by Client in the Procurement or Bid Acceptance processes, and other delays not caused by Constellation's lack of performance in the Procurement or Bid Acceptance processes, shall result in the addition of a corresponding number of days to the Warranted Project Completion;
- (ii) Any Force Majeure-caused, as defined in Section 20 of this Agreement, and any project delays for additional or other work that is necessary to fund via Contingency, shall result in the addition of a corresponding number of days to the Warranted Project Completion and if needed a corresponding adjustment to the General Conditions;
- (iii) the Parties may agree in writing to other schedule delays due to concealed and/unknown or other unavoidable circumstances and thus may agree to the addition of a corresponding number of days to the Warranted Project Completion, and if needed, a corresponding adjustment to the General Conditions.
- (iv) Any project delays as a result of environmental matters and/or concealed or unknown conditions as more fully set forth in Section 12.2 of this Agreement, may result in the addition of a corresponding number of days to the Warranted Project Completion, if any said delays are outside Constellation's control.

(3) There shall also be two separate Interim Warranted Project Completion dates during the construction period, to wit: Interim Warranted Project Completion Part A for the first year of construction, including mobilization, and Interim Warranted Project Completion Part B for the second year of construction. Warranted Project Completion Part A shall be 443 business days (14.5 months). Warranted Project Completion Part B shall be a further 473 business days (15.5 months). Combined, the Warranted Project Completion Part A and Part B total the Final Warranted Project Completion period as set forth in this Section 9.2(1).

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### **SECTION 10 EQUIPMENT WARRANTIES**

#### **Section 10.1 Equipment Warranties**

On behalf of Client, Constellation shall require all vendors and subcontractors to covenant and agree that all Equipment installed as part of this Agreement is new; is in good, proper working condition; and is protected by appropriate written warranties covering all parts and Equipment performance. On behalf of Client, Constellation shall require vendors and subcontractors: to deliver to Client for inspection and approval all such written warranties; to pursue rights and remedies against manufacturer and seller of the Equipment under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance; to notify Client whenever defects in Equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by Constellation. Constellation shall require subcontractors to transfer all warranties to Client/user as owner of the Equipment. Once Equipment under this Agreement is selected by Client and installed, Constellation will provide a summary schedule of warranties to Client with the O&M Manual that includes, but is not necessarily limited to, the warranty start date and term period for the ECM, and vendor/manufacturer contact information. Constellation will serve as the point of contact between Client and any such vendors and subcontractors to effectuate the above referenced requirements. All warranties required hereunder shall be in force for a minimum of two (2) years from the later of i) installation of the Equipment or ii) acceptance by Client, as documented Client's issuance of by-site completion certification of a specific ECM. Constellation provides these same warranties for all Equipment it installs with the Agreement funds except for lighting. Close-out documentation shall be provided by Constellation to Client as part of its standard operating procedures, to include a close-out book that shall contain any and all aforementioned warranties together with instructions on accessing any such warranties. Constellation shall further require all subcontractors to secure appropriate and adequate maintenance bonds for the applicable warranty period.

#### **Section 10.2 Lighting Equipment**

The manufacturers' warranty shall apply to fixtures, lamps and ballasts and shall be in force for at least one year. Following the manufacturer's warranty period, Client shall be responsible for replacing failed lamps and ballasts with comparable or lower kWh consuming Equipment. Client shall allocate a percentage of cost savings from years 6 and 12, estimated at \$258,857 and \$309,089, respectively, towards replacement of compact fluorescent light bulbs over the term of the Agreement, as shown on the Cash Flow in Part 1, Schedule A of this Agreement. Upon completion of installation of the lighting ECMs, Constellation shall provide Client with a supply of lamps, ballasts, and/or fixtures, based upon a percentage of the total quantity installed, for Client's use, for the purpose of replacing those which may fail in the course of normal usage. Failed lamps and ballasts may be returned to the manufacturer for warranty replacement if such failure occurs during the term of the applicable warranty. Constellation shall warrant workmanship for a period of one (1) year from the later of i)



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installation of the Equipment or ii) acceptance by Client, as documented by Client's issuance of by-site completion certificate of a specific ECM.

### **SECTION 11 PERMITS AND APPROVAL COORDINATION**

#### **Section 11.1 Permits and Approvals**

Obtaining all required permits and approvals for the installation and operation of the equipment shall be Constellation's responsibility. Where permits and fees are required, said costs may be included in the installed cost of equipment, if necessary, as determined by Constellation. Client shall use its best efforts to assist subcontractors and Constellation in obtaining all necessary permits and approvals (or waivers of reductions in cost of such in all instances where waiver or reduction in cost might be available) for installation of the Equipment. The Equipment and the operation of the Equipment by Constellation shall at all times conform to local code requirements. Client agrees to execute, at Constellation's request, any permit applications that require Client signature.

#### **Section 11.2 Coordination During Installation**

Client shall coordinate and Constellation shall assist in the coordination of the activities of Equipment installers with those of the Client, its employees, and agents.

### **SECTION 12 PERFORMANCE BY CONSTELLATION**

#### **Section 12.1 Performance of Tasks/Phases**

Constellation shall perform all tasks/phases under the Agreement, including management of construction, and/or installation of the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and the construction schedule. On behalf of Client, Constellation shall require subcontractors to repair and restore to its original condition any area of damage caused by subcontractors' performance under this Agreement. Client reserves the right to review and approve the work performed by Constellation and by subcontractors and to direct Constellation to take certain corrective action if, in the opinions of Client, the structural integrity of the Facilities or its operating system is or would be harmed.

#### **Section 12.2 Environmental Matters; Concealed or Unknown Conditions**

In the performance of the Scope of Work for a given ECM, if Constellation encounters conditions at the Premises that are:

- (i) Subsurface or otherwise concealed physical conditions that differ materially from those indicated on the drawings; or
- (ii) Unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Scope of Work,

then Constellation shall notify Client of such conditions promptly, prior to significantly disturbing the same, and in no event later than 24 hours after

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first observing the conditions. Such conditions may include, but are not limited to, water damage, termite damage, need for abatement and/or faulty building structure.

If such conditions differ materially and cause an increase in Constellation's cost of, or time required for, performance of any part of the work, Constellation shall submit to Client a written estimate of the material and labor increases and/or time delay, as well as other supporting documentation. If Client concurs with the need, estimate, and delay, Constellation shall be entitled to an equitable adjustment, by means of an Allowance Authorization, in the Installed Price of relevant equipment to be funded from Contingency, and/or equitable adjustment on the warranted project completion as mutually agreed upon by Constellation and Client.

Constellation shall not have any responsibility or liability for the identification, detection, encapsulation, evaluation, removal, disposal, correction, transportation, remediation, abatement, prevention, treatment, management, or similar service regarding any Hazard (as defined below) in performing any Services for Client hereunder. If, during the course of performing Services, Constellation actually becomes aware of any Hazard, Constellation shall report such matter to the Client before disturbing (or further disturbing) the Hazard and Constellation may take any actions it deems appropriate to protect its personnel from such Hazard. Work in the affected areas shall be resumed only upon the written direction of the Client when the Hazard has been removed or corrected, and then only if such continuation of work shall not violate any applicable state or federal law, statute, resolution or permit. Client shall indemnify, defend and hold harmless Constellation and its affiliates, contractors and subcontractors to the fullest extent permitted by law with respect to any claims, liability, damages, penalties, cost or expense (including but not limited to attorneys' fees) of whatever nature incurred relating to any Hazard located on Client's premises or other site where Constellation is performing services under this Agreement, except if it is finally adjudicated that any liability for damages is caused by or resulting from the sole negligence of Constellation then such damages shall not be indemnified by Client. "Hazard" means any hazardous materials, substances, or conditions, including but not limited to (a) any petrochemical or petroleum products, radon gas, asbestos, flammable explosives including but not limited to unexploded ordinances, equipment that contain polychlorinated biphenyls (PCBs), (b) any chemicals or other materials or substances which are now or hereafter become included in the definition of "hazardous" materials, substances, wastes, materials, or words of similar import under any federal, state or local law, rule or regulation pertaining to the preservation and protection of the environment, (c) air emissions, and any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any environmental law or regulation, and (d) mold or mildew.

### **Section 12.3 Known Hazards and Representations**

Client shall inform Constellation of all known Hazards in areas affected by the work. As part of its industry design activities, Constellation shall evaluate the impact of these Hazards on its Scope of Work.

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- (i) Client does not anticipate any interference of the Water and Energy Savings Program implementation due to abatement;
- (ii) Client shall identify the funds to be used for any necessary abatement. If Contingency is available after all requisite Allowance Authorizations are paid, then Client may use Contingency;
- (iii) Any delays to the original scope of the project caused by abatement, including but not limited to those caused by Client's subcontract with a third-party abatement subcontractor, shall add a mutually agreed upon number of days to the estimated construction schedule and the project completion date;
- (iv) Constellation shall not be required to perform abatement activities unless it specifically and separately agrees in writing to do so, at its sole discretion.

### **SECTION 13 OWNERSHIP**

#### **Section 13.1 Ownership of Proprietary Property Rights**

Client shall not, by this Agreement, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual, proprietary rights, or similar items of property which are or may be used in connection with the Equipment.

#### **Section 13.2 Removal of Existing Equipment**

Constellation's subcontractors shall remove existing equipment/unneeded materials, except that Client may request in writing to retain any removed materials/equipment. If Client so elects to retain equipment, Client shall further specify in writing the location at which such materials are to be deposited when no longer in use. Any and all written requests under this Section shall be made prior to the finalization of the scope of work for the EPC project. After such time, any costs associated with processing and effectuating Client's written requests may be subject to Constellation's markup, and funded by Contingency, if funds are available, or other Client funds.

### **SECTION 14 LOCATION AND ACCESS**

Client shall allow for storage units or trailers to be placed on Client property, as specified and with Client approval. Client shall provide access to the Facilities for Constellation and subcontractors to perform any function related to this Agreement during regular business hours, or such other reasonable hours as may be requested by Constellation and acceptable to the Client. Constellation and subcontractors shall be granted immediate access to make emergency repairs or corrections as it may, in its sole discretion, determine are needed. Constellation shall ensure that any subcontractors carry adequate levels of insurance for the stored equipment.

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### **SECTION 15 EQUIPMENT SERVICE**

#### **Section 15.1 Actions by Subcontractors**

During the Warranty Period, Constellation shall require all subcontractors to provide all service, repairs, and adjustments to the Equipment installed under terms of this Agreement pursuant to Schedule A Construction Plan Summary. Constellation shall assist Client in enforcing warranty responsibilities of the suppliers as needed. Client shall be responsible for Equipment service, repairs, and adjustments, after the Warranty Period. When the need for maintenance or repairs principally arises due to the negligence or willful misconduct of Client, employee, resident or other agent of Client and Constellation can so demonstrate such causal connection, subcontractors may charge Client for the actual cost of maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

#### **Section 15.2 Actions by Client**

- (i) Client agrees to provide preventative, normal, and emergency maintenance upon installation of the Equipment and through the term of the Agreement. Client shall adhere to the preventative maintenance as outlined in the Operations & Maintenance ("O&M") Manual, provided by Constellation, as it relates to the specific Equipment under this Agreement. Client agrees to provide other maintenance to assure water/energy is not wasted, including repairs and maintenance required to keep facilities and Equipment in a good operating condition;
- (ii) Client shall maintain logs of preventative maintenance activities, which shall be available to Constellation to review at least once a year;
- (iii) If Client fails to complete the preventative maintenance activities on a timely basis, Client shall have 45 days after written notice from Constellation, which shall set forth the required preventative maintenance, to correct such failure by performing the needed activities and making needed improvements;
- (iv) If Client has taken corrective action, it shall notify Constellation so that it may again review that such corrective action has brought the Equipment to a good working condition. Failure of Client to implement the corrective action shall invalidate and render of no force the Limited Warranty of the Guaranteed Cost Savings as provided in Schedule E, Limited Warranty of Guaranteed Cost Savings, to the extent that the Guaranteed Cost Savings for the given guarantee year is not met due Client's failure to implement corrective action to the Equipment for any given ECM(s);
- (v) If Client implements the necessary corrective action, and Constellation, at its reasonable discretion, determines that the failure of Client to maintain the preventative maintenance practices has adversely affected the water and/or energy savings, Constellation may adjust the savings with appropriate documentation;

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- (vi) Water line tests and water line repair, at the expense of Client, may be required by Constellation, if monthly measurement by Constellation indicates the potential for a leak in water line. Both parties acknowledge that any water leak may bear a significant impact on the efficiency of the Equipment and agree to use its respective best efforts to identify and resolve potential and/or actual leaks expeditiously;
- (vii) Client shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without prior written approval of Constellation except removal for repair or renovation to keep Equipment maintained. Notwithstanding the foregoing, Client may take reasonable steps to protect the Equipment, if, due to an emergency, it is not possible or reasonable to notify Constellation before taking such actions. In the event of such an emergency, Client shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by Constellation;
- (viii) Client agrees to maintain the Facilities and surrounding Client property in good repair and to protect and preserve all portions thereof, which may in any way affect the operation or maintenance of the Equipment.

### **Section 15.3 Malfunctions and Emergencies**

Client shall notify Constellation or its designated representative by telephone as soon as reasonably possible and at least within one business day after it becomes aware of:

- (i) Any material malfunction in the operation of the Equipment or any pre-existing water/energy related Equipment that might materially degrade the Achieved Cost Savings; or
- (ii) Any interruption or alteration to the water or energy supply to the Facilities; or
- (iii) Any alteration or modification in any water/energy-related Equipment or its operation. Where Client exercises diligence in attempting to promptly assess a malfunction, it shall not be deemed negligent or reckless in failing to correctly identify a malfunction as having a material impact upon Guaranteed Cost Savings.

### **SECTION 16 UPGRADING OR ALTERING THE EQUIPMENT AND/OR IMPROVEMENTS**

Constellation shall at all times have the right, subject to Client's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed, to change the Equipment, revise any procedures for the operation of the Equipment or implement other water/energy saving actions. Subject to Client's approval and acceptance, which shall not be unreasonably withheld, conditioned, or delayed, all replacements,



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deletions, alterations, or additions of Equipment, or revisions to the procedures shall be described in a supplemental schedule or schedules to be provided in writing to Client and to be attached to this Agreement and made part hereof.

### **SECTION 17 MATERIAL CHANGES**

#### **Section 17.1 Reported Material Changes**

Client shall deliver to Constellation a written notice describing and explaining all actual or proposed Material Changes in the Facilities or in the operations in the Facilities and their anticipated effect on energy use. Said written notice must be delivered to Constellation's representative listed in Section 37 of this Agreement, or other such representative as Constellation officially designates in writing, no less than 30 days before any actual or proposed Material Change occurs. For purposes of this provision, a Material Change is defined as any change in the following, which reasonably could be expected to increase or decrease water/energy used at the Facilities by more than five percent (5%):

- (i) Manner of use of the Facilities by Client;
- (ii) Hours of operation of any Equipment or Facilities or energy systems contained in the Facilities;
- (iii) Occupancy of the Facilities;
- (iv) Structure of the Facilities;
- (v) Types of Equipment used in the Facilities;
- (vi) Conditions affecting energy use in the Facilities; and/or
- (vii) Demolition and/or disposition of the Facilities.

#### **Section 17.2 Unreported Material Changes**

In the absence of any reported Material Changes in the Facilities or in their operations, water/energy consumption should not change from year to year after the Water and Energy Savings Program has been implemented. Therefore, if water or energy consumption for any year increases by five percent (5%) or more from the water or energy consumption for the preceding Agreement year, then such increase shall be deemed to result from an unreported Material Change, except where such increase is due to Equipment malfunction, faulty repair or other acts of negligence by Constellation or its subcontractor.

#### **Section 17.3 Adjustment for Material Changes**

- (i) In the event of any increase or decrease in water or energy consumption for any year resulting from a reported or unreported Material Change, the amount of that increase may be subtracted from or that decrease may be added to the total water/energy consumption, as appropriate according to Constellation, for that year prior to the calculation of Water/Energy Savings; and/or an adjustment may be made

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to the Constellation's Guaranteed Cost Savings. Necessary adjustments are to be made as mutually agreed upon between the Parties, in writing, and shall be made in accordance with the terms in this Section. Dispute resolution procedures as provided for in this Agreement shall be utilized for any disputes that may arise as a result of a Material Change.

(ii) In the event of a reported material change pre-construction, Constellation shall use the same engineering calculations it used for its initial savings projections to account for any adjustments as referenced in subsection (i) above. Such adjustments shall be subject to agreement by Client, whose agreement shall not be unreasonably withheld, conditioned, or delayed.

(iii) In the event of a reported material change post-construction, Constellation shall use the same engineering calculations it used for its initial savings projections to account for any adjustments as referenced in subsection (i) above, if application. Such adjustments shall be subject to agreement by Client, whose agreement shall not be unreasonably withheld, conditioned, or delayed. If no satisfactory adjustment method can be agreed upon between the Parties, the affected site shall be excluded from energy performance project's savings calculations and estimated and guaranteed savings will be reduced accordingly.

(iv) If a reported or unreported Material Change affected water or energy consumption in the same calendar month in the preceding year, the next preceding Agreement year where a Material Change has not occurred shall be used to compute the Water/Energy Savings for the current month.

(v) If the Client demolishes, sells, or otherwise disposes of any of the Facilities or units, the estimated annual savings, and the Constellation's Guaranteed Cost Savings shall be reduced accordingly to reflect the change.

### **SECTION 18 PROPERTY/CASUALTY INSURANCE/INDEMNIFICATION AND SAVINGS GUARANTEE INSURANCE**

#### **Section 18.1 Insurance Requirements for Constellation**

At all times during the term of this Agreement, Constellation shall maintain in full force and effect, at its expense:

(i) Workers' compensation insurance, with limits of liability at least equal to the statutory requirements therefor;

(ii) Employer's liability insurance of not less than \$1,000,000;

(iii) Liability insurance against liability for injury to or death of any person or damage to property in connection with the use, operation or condition of the Facility of not less than \$6,000,000 combined single limit per occurrence and annual aggregate. Client shall be included as an additional insured under this liability insurance;

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(iv) Builder's Risk, Installation Floater property insurance the equivalent thereof covering the Work to the extent of the full completed value thereof, during construction or installation of the Work.

(v) During any and all periods of construction of the Facility, Constellation shall cause its general contractors (including all contractors who contract directly with Constellation) to obtain (i) commercial general liability insurance with a minimum limit of liability of \$1,000,000 combined single limit for bodily injury, personal injury and property damage and include Constellation as an additional insured and (ii) workers' compensation insurance, with limits of liability at least equal to the statutory requirements there for and employer's liability insurance of not less than \$1,000,000; and

(vi) Excess liability umbrella coverage of at least \$3,000,000 covering over (ii) above.

(vii) Constellation may satisfy the insurance requirements contained in this agreement though any combination of primary and/or excess coverage

(viii) Constellation may elect to self insure any or all of the insurance requirements contained in this agreement.

Prior to commencement of work under this Agreement, Constellation shall be required to provide Client with current certificates of insurance specified above. These certificates shall contain a provision that coverage afforded under the policies shall not be canceled or changed until at least thirty (30) days prior written notice has been given to Client.

### **Section 18.2 Insurance Requirements for Subcontractors**

Constellation shall ensure that all subcontractors shall maintain the following minimum coverage throughout the project's duration and 30 calendar days thereafter:

<u>Commercial General Liability</u>	\$1,000,000 combined single limit per occurrence with a deductible or SIR not to exceed \$25,000
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<u>Business Auto Liability</u>	\$1,000,000 combined single limit per accident, including coverage for all owned, non-owned, hired and leased automobiles.
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<u>Workers' Compensation</u>	Coverage shall comply with any statutory obligation imposed by workers compensation, occupational disease or similar laws, including U.S. Longshore and Harbor Workers' Act.
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<u>Federal</u>	Employers' Liability Act and Jones Act if applicable.
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<u>Employers Liability</u>	\$1,000,000 (each accident) \$1,000,000 (disease-policy limit) \$1,000,000 (disease-each employee)
<u>Professional Liability</u>	\$3,000,000 per occurrence. <i>Professional Liability or Errors and Omissions insurance</i> – Required if any of the work performed by the Contractor or its Contractors includes the rendering of professional services including, but not limited to, architectural, engineering, design, or consulting services.
<u>Excess Umbrella</u>	\$3,000,000 with coverage in excess of the limits required above

### **Section 18.3 Damage/Injury Responsibility**

Constellation or its subcontractor shall be responsible, if found to be legally liable, for:

- (i) Any damages to the Equipment or other property on the Facilities;  
and
- (ii) Any bodily injury where such damage or injury which occurs as a result of Constellation's performance or failure to perform under this Agreement.

### **Section 18.4 Payment and Performance Bonding**

Payment and Performance bonds shall only cover completion of the actual construction and installation work included in the project between Constellation and Client. Further, these Bonds shall not provide any coverage for Constellation's Water/Energy cost savings guarantee for this project.

### **Section 18.5 Guaranteed Cost Savings**

Constellation's parent company, Constellation Energy Projects & Services Group, Inc. and its successors shall provide a guarantee of the cost savings for the years and in the amounts shown in Schedule E, Table E.5., pursuant to the terms and conditions in this Agreement. No additional fee for said cost savings guarantee will be due from Client.

## **SECTION 19 CASUALTY OR CONDEMNATION OF PREMISES**

Any construction or restoration of Facilities following or necessitated by fire, flood, or other casualty, or any condemnation affecting any portion of Facilities, shall be deemed a Material Change, and the provisions of Section 17 of this Agreement shall be applicable. If casualty or condemnation renders fifty percent or more of Facilities uninhabitable or unusable and, in the case of a casualty, the affected portion is not reconstructed or restored within one hundred and eighty (180) days from

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the date of such casualty, Constellation shall have the option to terminate this Agreement by a Notice to Client.

### **SECTION 20 FORCE MAJEURE, CONDITIONS BEYOND REASONABLE CONTROL OF THE PARTIES**

Except for Client's payment obligations, if a party shall be unable to reasonably perform any of its obligations under this Agreement due to acts of God, insurrections or riots, or similar events beyond such party's reasonable control, then such party's obligations shall be suspended until the said events shall have ended.

### **SECTION 21 EVENTS OF DEFAULT**

#### **Section 21.1 Events of Default by Client**

The following events or conditions shall each constitute an "Event of Default" by Client:

- (i) Failure by Client to pay undisputed amounts when due;
- (ii) The filing of a bankruptcy petition whether by Client or its creditors against Client which proceeding shall not have been dismissed within one hundred twenty (120) days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of Client, or its dissolution or inability to pay debts as they become due;
- (iii) Any other material failure by Client to perform or comply with terms and conditions of this Agreement, including but not limited to breach of any covenant contained herein, except if such failure is corrected or cured within ninety (90) days after notice to Client;
- (iv) Any representation or warranty furnished by Client in this Agreement was knowingly false or misleading in any material respect when made.

#### **Section 21.2 Events of Default by Constellation**

Each of the following events or conditions shall constitute an "Event of Default" by Constellation:

- (i) Any material failure by Constellation to perform or comply with the terms and conditions of this Agreement, including but not limited to breach of any covenant contained herein except if such failure is corrected or cured within ninety (90) days after notice to Constellation; and
- (ii) The filing of a bankruptcy petition whether by Constellation or its creditors against Constellation which proceeding shall not have been dismissed within one hundred twenty (120) days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of Constellation, or its dissolution or inability to pay debts as they become due.



## ***Water/Energy Services Agreement***

### **Section 21.3 Termination for Default**

Upon the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement by written Notice.

### **Section 21.4 Termination for Convenience**

Client may terminate this Agreement in whole, upon thirty days written notice to Constellation, if Client determines that such termination is in its best interest. Any such termination shall be effected by delivery of a written Notice of Termination specifying the extent to which the performance of the work under the Agreement is terminated, and the date upon which such termination becomes effective.

(i) If the performance of the work is terminated by Client in whole, Client shall be liable to the Constellation for reasonable fees and costs resulting from such termination, including but not limited to:

(a) the total cost of the work performed to date of termination less the total amount of contract payments made to the Constellation;

(b) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the Client to the Constellation or by the Constellation to the subcontractor or supplier;

(c) the cost of preserving and protecting the work already performed until the Client takes possession thereof or assumes responsibility therefore;

(d) the actual or estimated cost of legal and accounting services reasonably necessary; and

(e) an amount constituting a reasonable overhead and profit on the value of the work performed by the Constellation, the overhead profit rates being set forth in Schedule B, Part 2 of the Agreement.

**Section 21.5 Effects of Early Termination.** In the event of early termination of this Agreement pursuant to Sections 21.3 or 21.4 above, each Party's liabilities and obligations under the Agreement shall also terminate, except for obligations or liabilities arising under this Agreement and not discharged prior to the date of such termination. Constellation shall have no obligation or liability to perform M&V services or provide any aspect of the cost savings guarantee after the date of termination. Client shall have no obligation to pay M&V fees incurred after the date of termination, but shall remain liable to Constellation for payment of amounts owed to Constellation for work performed and for payment of the applicable termination fee as referenced in Section 21.4.

## **SECTION 22 REMEDIES UPON DEFAULT**

Upon a termination for default, the terminating party may exercise any remedies available at law or in equity.

## **Water/Energy Services Agreement**

### **SECTION 23 DISPUTES**

In the event of any dispute between the parties, the parties will escalate the matter to higher management levels within their respective organizations and use good faith efforts to resolve the dispute in such manner. If the dispute is unable to be resolved in such manner after good faith efforts and within a reasonable timeframe, each party is free to pursue all remedies available at law and equity.

### **SECTION 24 NO OTHER WARRANTIES**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CONSTELLATION MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **SECTION 25 REPRESENTATIONS AND WARRANTIES**

Each party warrants and represents to the other that:

- (i) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (ii) Its execution, delivery, and performance in accordance with its original instruments, and this Agreement have been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (iii) Its execution, delivery and performance of this Agreement shall not result in a breach or violation of, or constitute a default under any Agreement, Tax-Exempt Municipal Lease Agreement or instrument to which it is a party or by which it or its Facilities may be bound or affected; or
- (iv) It has not received notice, nor to the best of its knowledge is there pending or threatened notice, of violation of applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

### **SECTION 26 ADDITIONAL REPRESENTATIONS OF THE PARTIES**

Client hereby warrants, represents and promises that:

- (i) It has provided or shall provide in a timely manner to Constellation all available records relating to water/energy usage of Facilities requested by Constellation, and if not available, it has provided proper authorization for Constellation to acquire such records, and information set forth therein is and all information in other records to be subsequently provided pursuant to this Agreement is or shall be true and accurate in all material respects, to the best of Client's knowledge; and
- (ii) It has not entered into any Tax-Exempt Municipal Lease Agreement, subcontracts or Agreements with other persons or entities regarding

## ***Water/Energy Services Agreement***

the leasing of water/energy efficiency Equipment or the provision of water/energy management services for the Facilities or with regard to servicing any of the water/energy related Equipment located on the Facilities, except those as noted otherwise in this Agreement, Client shall provide Constellation with copies of any successor or additional Services Agreements of water/energy efficiency Equipment and subcontracts for management or servicing of pre-existing Equipment at Facilities, which may be executed from time to time hereafter within thirty (30) days after execution thereof, upon reasonable request of Constellation.

Constellation hereby warrants, represent and promises that:

- (i) Before commencing performance of this Agreement:
  - (a) It is licensed or otherwise permitted to do business in the State of New Jersey;
  - (b) It shall have provided proof and documentation of liability insurance pursuant to Section 18.1 of this Agreement;
- (ii) It shall make available, upon reasonable request, a list of all subcontractors used hereunder;
- (iii) It shall use subcontractors and delegates who are qualified and licensed in the applicable state to perform the work so subcontracted.

### **SECTION 27 WAIVER OF LIENS**

Constellation shall obtain and furnish to Client a waiver of lien from each Vendor, material man and laborer in the furnishing, installation and servicing of each piece of Equipment, provided that such lien waiver shall be conditioned upon payment.

### **SECTION 28 COMPLIANCE WITH LAW AND STANDARD PRACTICES**

Constellation shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with industry standard engineering and safety practices, and in compliance with any and all reasonable rules of Client relative to the Facilities which are provided to Constellation within fifteen (15) days of the Closing Date.

### **SECTION 29 INDEPENDENT CONTRACTOR**

Constellation, and any agents and employees of Constellation, in the performance of this Agreement, is an independent contractor and not an officer, employee or agent of the Client.

### **SECTION 30 NO WAIVER**

The failure of Constellation or Client to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the

## ***Water/Energy Services Agreement***

same in accordance with this Agreement in the event of a continuing or subsequent default on the part of Constellation or Client.

### **SECTION 31 SEVERABILITY**

In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or unconscionable.

### **SECTION 32 INDEMNITY**

Constellation agrees to indemnify, defend and hold harmless Client and its officers, directors and employees from and against any and all claims of Residents of Client or any other party for personal injury, damages, or losses of any kind or description arising out of this Agreement or its implementation to the extent caused by Constellation. Client will promptly notify Constellation of any such claim. Notwithstanding any contrary provision herein, Constellation shall not be liable for any indirect—or consequential damages.

### **SECTION 33 COMPLETE AGREEMENT**

This Agreement, when executed, together with all Schedules, Addenda, IGAV, Request for Proposals and Response Request for Proposals attached hereto or to be attached hereto shall constitute the entire Agreement between both Parties and this Agreement may not be amended, modified, or terminated except by a written Addendum signed by the Parties hereto.

### **SECTION 34 FURTHER DOCUMENTS**

The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

### **SECTION 35 REQUIRED CLAUSES**

The Parties shall ensure compliance with all federal, state and local statutes, executive orders, and their implementing regulations. HUD-5370 and HUD-5370C are hereby incorporated by reference into this Agreement as Attachment 5 and have effect in the order of precedence as set forth in Section 1.6 of this Agreement.

### **SECTION 36 APPLICABLE LAW**

This Agreement and the construction and enforceability thereof shall be interpreted under laws of the State of New Jersey.

### **SECTION 37 NOTICE**

Any notice required or permitted hereunder shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered via a nationally recognized express mail service, charges prepaid, receipt obtained, for delivery to the address shown below or to such other persons or addresses as are specified by similar notice.

## ***Water/Energy Services Agreement***

### To Constellation:

Constellation Energy Projects & Services NJ  
100 Constellation Way; Ste. 1000C  
Baltimore, MD 21202  
Attn: President

### With copies to:

Constellation Energy Projects & Services NJ  
360 Central Avenue, Suite 250  
St. Petersburg, FL 33701  
Attn: John Hendrick

Constellation Energy Projects & Services NJ  
100 Constellation Way; Ste. 1200C  
Baltimore, MD 21202  
Attn: Counsel

### To Client:

Newark Housing Authority  
500 Broad Street  
Newark, NJ 07102  
Attn: Mr. Keith Kinard, Executive Director

### With copy to:

Newark Housing Authority  
500 Broad Street  
Newark, NJ 07102  
Attn: Ellen M. Harris, General Counsel

## **SECTION 38 CLIENT'S COMPLIANCE WITH CHECKLIST**

- Section 38.1 The Parties acknowledge and agree that Constellation has entered into this Agreement in reliance upon the prospect of earning compensation based on Client's records regarding water/energy used at its Facilities, and its analysis and recommendations to install certain Equipment at Client's Facilities to reduce water/energy consumption.
- Section 38.2 The Parties further acknowledge and agree that the said Guaranteed Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy conservation shall be implemented, and followed by Client on a regular and continuous basis.
- Section 38.3 Client agrees that it shall adhere to, follow and implement water/energy conservation procedures and methods of operation of the installed equipment.



## ***Water/Energy Services Agreement***

Section 38.4 Client agrees that Constellation shall have the right once a month, with reasonable prior notice, to inspect Facilities to determine if Client is complying, and shall have complied with its obligations as set forth above. For the purpose of determining Client's said compliance, the checklist to be set forth at Schedule H as completed and recorded by Constellation during its annual inspection, shall be used to measure and record Client's said compliance. Client shall make the Facilities available to Constellation for and during each inspection, and shall have the right to witness each inspection and the recordation on the checklist.

Section 38.5 Client agrees that if it builds or purchases additional public housing apartments and Client agrees to incorporate the Water/Energy Savings improvements recommended in this Agreement, Constellation shall implement and be compensated accordingly for those Water/Energy Savings improvements, as well as a separate M&V fee, as if they were included in the initial Agreement, subject to prior HUD approval. To do this, Client and Constellation shall meet to agree on base period consumption, which shall also be subject to prior HUD approval.

Section 38.6 Client and Constellation agree that it is crucial for Client to submit accurate and compliant operating budgets, net rent rolls and other related administrative reporting documents to the U.S. Department of Housing and Urban Development in order for Client to receive the highest allowable level of Incentive funding for this Agreement. Client and Constellation agree that the sole responsibility for preparation and submission of these documents is and shall be Client's, notwithstanding Constellation's right to review them for accuracy and any assistance Constellation may offer with the preparation of Client's operating subsidy forms.

### **SECTION 39. HEADINGS**

Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be construed to interpret the text of any section.

### **SECTION 40. APPROVALS**

Prior to closing, this Agreement was subject to the approval of Client's legal counsel. Further, the related Tax-Exempt Municipal Lease was subject to an opinion letter describing the tax-exempt status of Client by Client's bond counsel, if applicable.

This Agreement and the Tax-Exempt Municipal Lease Agreements have been approved by Client's Board of Directors. As stated above, this Agreement was subject to HUD's review and unconditional approval prior to the Closing Date.

### **SECTION 41. LIMITATION OF LIABILITY**

Notwithstanding any other provision of this Agreement to the contrary, in no event shall Constellation be liable for any special, indirect, incidental or

## ***Water/Energy Services Agreement***

consequential damages, under any theory of recovery, whether based in contract, warranty, tort, negligence, strict liability, indemnity or otherwise, and Constellation's maximum liability under this Agreement shall in no case exceed the amounts paid to Constellation hereunder.

### **SECTION 42. SURVIVAL**

The following sections shall survive any termination of this Agreement: 13.1, 21.4, 23, 24, 31, 32, 36, 37, 39 and 41.

**Water/Energy Services Agreement**

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Agreement by their duly authorized officers on the date first written above.

CLIENT:

Attest:

By:



Keith Kinard  
Newark Housing Authority  
Executive Director



Ellen M. Harris  
Newark Housing Authority  
General Counsel

(Corporate Seal)  
CONSTELLATION:

Attest:

By:



Joshua Udler  
Constellation Energy Projects & Services NJ  
Assistant Secretary



Gregory S. Jarosinski  
Constellation Energy Projects & Services NJ  
President



***Water/Energy Services Agreement***

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**NEWARK HOUSING AUTHORITY  
SERVICES AGREEMENT**

**ATTACHMENT 1  
LIST OF SCHEDULES:**

- A CONSTRUCTION PLAN SUMMARY AND CASH FLOW
- B FEE PAYMENT SCHEDULE
- C \*RESERVED\*
- D CONSTRUCTION SCHEDULE
- E CERTIFICATE OF LIMITED WARRANTY
- F \*RESERVED\*
- G TRAINING PROVIDED
- H ANNUAL COMPLIANCE CHECKLIST
- I LIST OF FACILITIES AND METERING STATUS
- J MEASUREMENT & VERIFICATION
- K COMMISSIONING PLAN
- L DESIGN AND SPECIFICATIONS PROCESS
- M COORDINATION OF INCENTIVES AND REBATES APPLICATIONS  
AND PROCESSING
- N HUD EPC CHECKLIST ATTACHMENT C – BASELINE BY FACILITY BY AMP

**Water/Energy Services Agreement**

**NEWARK HOUSING AUTHORITY  
SERVICES AGREEMENT**

Schedule A  
Construction Plan Summary and Cash Flow

Part 1: Construction Plan Summary and Cash Flow (ATTACHED)

Constellation has prepared and Client has approved the attached Construction Plan Summary and Cash Flow. The firm fixed price is for List of Facilities included in Schedule I, and is premised upon Standard Installation, as described in Section 7 of the Agreement and in Part 3, Scope of Work below.

Part 2: HUD Cost Summary Detail Form – Energy Conservation Measures (ECM) Cost Summary Form (ATTACHED)

To be compliant with the HUD EPC Field Office Review Checklist, Constellation has prepared, and Client has approved, the attached ECM Cost Summary Form. The installation cost, which corresponds to the firm fixed price for the estimated number of units, is premised upon Standard Installation of all ECMs, as described in Section 7 of the Agreement and in Part 3, Scope of Work below.

Part 3: Scope of Work for Standard Installation (ATTACHED)

To more fully describe the work being undertaken for each ECM and the Standard Installation which premises all prices in Part 1 and Part 2 above, Constellation has prepared, and Client has approved, the attached Scope of Work for Standard Installation for each ECM.

Part 4: Contingency Items and Amounts (ATTACHED)

Client has established, which Constellation acknowledges, an itemization of energy related measures for which Contingency amounts under the Agreement may be utilized, if funds are available for such after the planned ECMs are installed, as more fully set forth in Section 7.1(vi) of this Agreement. The attached Client "Contingency Items and Amounts" is not all-inclusive; rather, said list provides the Parties with examples of additional types measures together with the estimated costs associated with each.

In the event of a discrepancy in information contained within the Parts of this Schedule A of this Agreement in full, the information within Part 1 of Schedule A shall prevail by order of precedence.



## Water/Energy Services Agreement

### NEWARK HOUSING AUTHORITY SERVICES AGREEMENT

#### Schedule B Fee Schedule

#### Part 1. IMPLEMENTATION FEES:

The following fees shall be paid to Constellation from the proceeds of the Tax-Exempt Municipal Lease Agreement and apply only to the work being done in the Agreement for the project. Payments shall be due as indicated for each line item below. Should (an) Addendum(a) for additional Phases be executed, additional fees shall be included in said Addendum(a).

Item for Fee/Cost	Unburdened Cost	Overhead (15%)	Profit (10%)	Burdened Cost	Due and Payable
Construction and Project Management and Administration (General Conditions)	\$3,375,936	\$506,390	\$388,233	\$4,270,559	Total due at loan closing <i>*This amount is included within the mobilization and/or reimbursement costs in Section 8.1(i) and (ii)</i>
Design & Specifications	\$ 1,493,570	\$ 224,036	\$ 171,761	\$ 1,889,366	The unburdened cost due upon ESA signing and issuance of Schedule O Limited Notice to Proceed with the remainder (totaling the "burdened cost" due at loan closing <i>*This amount is included within the reimbursement costs in Section 8.1(ii)(a)</i>
M&V Start-up	\$110,000	\$16,500	\$12,650	\$139,150	At loan closing <i>*This amount is included within the mobilization and/or reimbursement costs in Section 8.1(i) and (ii)</i>
Contract Negotiation, EPC Checklist Preparation, Assistance with Finance Procurement	\$111,406	\$16,711	\$12,812	\$140,929	At loan closing <i>*This amount is included within the mobilization and/or reimbursement costs in Section 8.1(i) and (ii)</i>
Training	\$ 60,000	\$ 9,000	\$ 6,900	\$ 75,900	Training, resident and maintenance, shall be payable when initial training is complete
Contractor Cost and Contingency	\$34,027,114	\$5,104,067	\$3,913,118	\$43,044,299	Per progress billing upon equipment installation
<b>Total</b>	<b>\$39,178,026</b>	<b>\$5,876,704</b>	<b>\$4,505,473</b>	<b>\$49,560,203</b>	

For Constellation's coordination of incentives and/or rebates, including applications and processing, Constellation shall be paid an additional fee of 15% of the rebate amount,

## ***Water/Energy Services Agreement***

payable when said amount is received from the rebate provider. Constellation's overhead and profit shall not apply to said 15% fee of the rebate amount.

### **Part 2. CONSTELLATION'S POST-IMPLEMENTATION M&V FEE AND OVERALL OVERHEAD AND PROFIT:**

- (a) Measurement & Verification Fee. Constellation's Annual M&V Fee shall be one hundred and ten thousand dollars (\$110,000) beginning with the initial construction year and escalate by 2% per year thereafter, effective over the full term of this Agreement, and shall be payable in four equal quarterly payments per year. The escalation shall be applied effective at the beginning of each calendar year following the first full calendar year after the effective date of the Agreement.
- (b) Overhead and Profit. Overhead for the project shall be 15% and for its work under this Agreement, Constellation shall receive a profit of 10%. Overhead and Profit shall be applied to the unburdened hard and soft costs/fees as shown in Part 1 of this Schedule B.

***Water/Energy Services Agreement***

**NEWARK HOUSING AUTHORITY  
SERVICES AGREEMENT**

Schedule C  
"RESERVED"

## **Water/Energy Services Agreement**

### **NEWARK HOUSING AUTHORITY SERVICES AGREEMENT**

#### **Schedule D Construction Schedule\***

##### **Complete Design**

10 days from receipt of "Notice to Proceed" for Water Savers, Upgrade Lighting, and Shower Inserts

##### **Start Construction**

10 days after Design approved by the HA for Resident Training

45 days after Design approved by the HA for Water Savers and Toilets

45 days after Design approved by the HA for Upgrade of Lighting

30 days after Design approved by the HA for Upgrade of HVAC

30 days after Design approved by the HA for Windows

##### **Complete Construction**

14.5 months after Construction Start for Water Savers and Toilets

14.5 months after Construction Start for Upgrade of Lighting

30 months after Construction Start for Upgrade of HVAC

30 months after Construction Start for Windows

Due to the significant number of variables associated with this project, the following disclaimers are affixed to the Schedule:

- 1) Constellation shall update the schedule when actual start date is determined.
- 2) Any changes in the ECMs and/or Scope of Work shall require the schedule to be updated.
- 3) The schedule does not account for other construction projects that may be started by the Authority independently of this project. The schedule shall be updated if conflicts result from these projects.
- 4) The schedule does not account for unforeseen environmental factors. The schedule shall be updated if asbestos, lead base paint or other toxic materials are uncovered.
- 5) The schedule does not account for concealed/unknown and undocumented conditions, which may delay construction. The schedule shall be updated if any such conditions occur.

If the schedule must be updated, then an extension to the Agreement time and Warranted Project Completion may be required pursuant to Section 9.2 of the Agreement.

*\*All "days" referenced in this Construction Schedule are hereby defined as "business days."*

## **Water/Energy Services Agreement**

### **NEWARK HOUSING AUTHORITY SERVICES AGREEMENT**

#### **Schedule E Limited Warranty of Guaranteed Cost Savings**

##### **Section 1: Incentives and Asset Management Projects (AMPs)**

The facilities according to the Asset Management Project Groups are those as provided in Schedule I of this Agreement. The HUD Add-on Incentive is utilized for each utility at these sites.

For reference and convenience, the word "Site" used throughout this Schedule refers to the same facilities as the word "Facility," defined in the Agreement, for the purposes of the Agreement.

##### **Section 2: Baseline and Occupancy Considerations**

1. Baselines by-site, by-month, shall be as stated in Schedule N of this Agreement as further explained in the Analysis to HUD Attachment C baseline data. Those baselines by-site, by-month sum to the applicable baseline shown in Table E.2. Only the water and the natural gas baselines shall be used for Authority Paid (AP) utilities for this Agreement, which will be determined using whole-building baseline, as shown above and further detailed in HUD Attachment C.
2. In the event that occupancy adjustments, based upon resident count and/or occupied units by site, are greater than 3%, a corresponding adjustment to the applicable baseline may be made by Constellation, at Constellation's option, prior to savings calculations.
3. Utility consumption for any new properties added after the Closing Date of the Agreement shall be excluded from all calculations pertaining to this Agreement's Achieved Cost Savings and Guaranteed Cost Savings and shall be reported to HUD in (a) separate report(s) of utility consumption and costs, on a separate Form HUD-52722 or the then-equivalent form. Further, any new facilities shall be placed in a separate AMP from those containing the sites above, so as to facilitate proper record-keeping.
4. If additional water/energy consuming Equipment as to water and/or natural gas is installed in the site after this project is completed, and if such additional Equipment increases the water/energy consumption by greater than 5%, a corresponding adjustment shall be made by Constellation prior to savings calculations.
5. The number of heating or cooling degree-days will be verified and compared to the baseline period. If the number of degree days changes by greater than 3% in the year being evaluated, an adjustment may be made to the energy consumed for heating.

## ***Water/Energy Services Agreement***

6. If Constellation does not implement (a) baseline adjustment(s) upon discovery of the need for such, it shall not waive its right to implement such adjustment(s) at a later time.
7. Client shall be afforded an opportunity for a thirty-day review of Constellation's proposed adjustment(s), and Constellation must receive Client's pre-approval, which shall not be unreasonably withheld, conditioned, or delayed, prior to implementation of such adjustment(s). If Client does not provide a written response to the Constellation personnel listed in Section 37 within the allotted time, then Client shall have approved such adjustment(s) by default.
8. As of the Closing Date, the baseline occupancy percentages were understood to be 83%, based on information provided by Client, so no occupancy adjustments were completed for this project for the baseline data.
9. Constellation has done its due diligence in compiling an accurate distribution of the annual baseline values by month. In the event that further information becomes available after execution of this Agreement, which would necessitate adjustments to the monthly baseline distribution, Constellation reserves the right to adjust the baseline distribution by month accordingly, at its sole option, for modifications less than 5%. Constellation further reserves the right to adjust the monthly baseline distribution upon the mutual agreement of Constellation and Client for modifications greater than 5%.
10. In the event of a discrepancy in information contained within this Schedule E and that contained within Schedule N of this Agreement in full, the information within Schedule E shall prevail by order of precedence.

### **Section 3: Estimated Consumption and Cost Savings**

1. The Estimated Post Consumption for water and natural gas is the amount of annual utility consumption Constellation expects the Client's sites within this Agreement to use (in the case of AP utilities) after implementation of all of the ECMs in this Agreement, in the instance that all Client and Constellation responsibilities as set forth in this Agreement are fulfilled. The Estimated Post Consumption is stated in Table E.2.
2. The Estimated Annual Consumption Savings is the annual amount of electricity, natural gas and water savings that the Constellation estimates Client will achieve after implementation of all of the ECMs in this Agreement. The Constellation expressly does not warrant any amount of Estimated Annual Consumption Savings.
3. The Average Net Effective Rate shown in Table E.2 is the net effective rate, including all charges, taxes, and fees for UY 2009 (HUD Utility Year, i.e., July 1, 2008-June 30, 2009).
4. The Estimated Annual Cost Savings is the amount of the Estimated Annual Consumption Savings for each respective utility multiplied by the applicable Average Net Effective Rate. Where "not applicable" is stated, there is no estimated



## Water/Energy Services Agreement

consumption or cost savings for that utility, and such utility shall be excluded from all savings measurement.

5. The Total Estimated Annual Cost Savings sums the Estimated Annual Cost Savings for each utility, for both the AP and RP components.
6. The Total Estimated Annual Cost Savings and the amount of Guaranteed Cost Savings originating from the savings for each site shall only be effective while such site is in full operation. If any sites are demolished or disposed, there shall be a corresponding adjustment to the Total Estimated Annual Cost Savings and the Guaranteed Cost Savings.
7. Option A: Retrofit Isolation, Key Parameter Measurement shall be used to measure electricity ECMS, per Section 4 of this Schedule E of the Agreement.

OPTION C SAVINGS Authority Paid	Baseline Consumption	Estimated Future Consumption	Estimated Consumption Savings	Effective Rate	Estimated \$\$ Savings
Natural Gas (AP) (Therms)	4,654,844	3,627,608	1,027,236	\$1.5733	\$1,616,112
Water (AP) (MGal)	1,193,208	1,090,510	102,698	\$5.2799	\$542,233
				SUBTOTAL:	\$2,158,345
OPTION A SAVINGS – Authority Paid			Estimated Consumption Savings	Effective Rate	Estimated \$\$ Savings
Electricity (AP) (kWh)			5,386,105	\$0.1737	\$935,737
				SUBTOTAL AP:	\$3,094,082
TOTAL ESTIMATED ANNUAL COST SAVINGS (AP)					\$3,094,082
OPTION A SAVINGS - Resident Paid			Estimated Consumption Savings	Effective Rate	Estimated \$\$ Savings
Electricity (RP) (kWh)			2,126,611	\$0.19850	\$422,194
Natural Gas (RP) (Therms)			232,016	\$1.44050	\$334,210
Water (RP) (MGal)			n/a	n/a	n/a
				SUBTOTAL RP:	\$756,404
TOTAL ESTIMATED ANNUAL COST SAVINGS (RP)					\$756,404
TOTAL ESTIMATED ANNUAL COST SAVINGS (AP and RP)					\$3,850,486

**Table E2. Total Estimated Annual Consumption and Cost Savings  
for the First Year**

### **Section 4: Achieved Consumption and Cost Savings**

1. Constellation shall use this method for annual savings measurements by substituting "the annual period being measured," as appropriate, for the words "the period being measured" below.

## **Water/Energy Services Agreement**

2. For AP water and natural gas utilities, Constellation shall utilize the consumption on the actual utility invoices for the period being measured as the achieved post consumption for that period, except that Constellation shall make the following adjustments, at Constellation's sole option, to provide for (a) valid comparison(s) between the applicable baseline consumption, as adjusted as needed per Section 2: Baselines and Occupancy Considerations, and the corresponding achieved post consumption:
  - a) If additional water/energy usage occurs during that period due to a line break or some other reason not related to the installed Equipment itself, such additional usage shall be removed from that same invoiced consumption for purposes of the Achieved Cost Savings calculation for that period; and
  - b) Client shall be afforded an opportunity for a thirty-day review of Constellation's proposed adjustment(s), and Constellation must receive Client's pre-approval, which shall not be unreasonably withheld, conditioned, or delayed, prior to implementation of such adjustment(s). If Client does not provide a written response to the Constellation personnel listed in Section 35 within the allotted time, then Client shall have approved such adjustment(s) by default.
3. For AP electricity utilities, Constellation shall utilize the pre- and post-consumption as measured at the ECM level for the representative sample, after closing, multiplied appropriately to represent the entire quantity of equipment being installed, as the baseline and post-consumption, respectively, as more fully described in Schedule J.
4. For RP gas and electricity utilities, the Sum of the Post Consumption Allowances shall be treated as the post consumption for all sites/utilities;
5. For water and natural gas utilities, Constellation shall calculate the *Achieved Consumption Savings by Utility by Site* by subtracting the by site post consumption, as adjusted, for the period being measured from the corresponding by site baseline consumption, as adjusted.
6. For electricity utilities, Constellation shall calculate the *Achieved Consumption Savings by Utility by Site* by subtracting the measured post-consumption from the measured ECM baseline consumption.
7. Constellation shall sum the Achieved Consumption Savings by Utility by Site to determine the *Achieved Consumption Savings by Utility by AMP* for that period.
8. For water and natural gas utilities, Constellation shall compute the *Average Effective Rate by Utility by AMP* for the period being measured by dividing the total cost for that utility at that AMP, including all base meter charges, taxes and fees, by the total consumption for that utility at that AMP, for that period.
9. Constellation shall then compute the *Achieved Cost Savings by Utility by AMP* by multiplying the Achieved Consumption Savings for the period being measured by the Average Effective Rate by AMP by Utility for the period being measured or by the applicable floor rate for that utility and that Repayment Year as provided in Table E.3, at Constellation's sole option. Table E.3 provides said floor rates for AP and RP utilities by AMP and is included as an attachment to this Schedule E.

## ***Water/Energy Services Agreement***

10. Constellation shall sum Achieved Cost Savings for each AMP for both AP and RP utilities to determine the *Total Achieved Cost Savings* for the period being measured.
11. The *Total Annual Achieved Cost Savings*, i.e., the Total Achieved Cost Savings when performed for the then-current Annual Report, shall be the only official determination of the Agreement's savings performance for that annual period.

### **Section 5: Guaranteed Cost Savings**

The Guaranteed Cost Savings for the first year in which the guarantee is in effect shall cover the projected savings from the ECMs that will be completed by Interim Warranted Project Completion Part A, in accordance with Section 3.6 of this Agreement. For every year thereafter, the Guaranteed Cost Savings shall be for the projected savings of all ECMs implemented under this Agreement.

Table E.5 shows the expected Guaranteed Cost Savings for each Guarantee Year. The Guarantee covers the amortization and project costs for each guarantee year, as shown on the Cash Flow project chart in Schedule A, Part 1 of this Agreement, based upon Client securing financing for the Agreement with an interest rate of 4.92%. As Client's closing on the financing will occur subsequent to the closing of this Agreement, both Parties acknowledge and agree that the Guaranteed Cost Savings below, as premised upon the estimated 4.92% interest rate, may change if Client secures financing at an interest rate other than the 4.92% estimated in the Cash Flow. In such a circumstance, the Parties agree that after Client's closing on the financing, corresponding adjustments to the Table E.5, Guaranteed Cost Savings chart may be made via a duly executed Addendum to this Agreement.

## **Water/Energy Services Agreement**

<b>Guarantee Year</b>	<b>Guaranteed Cost Savings</b>
Interim (if financing closed before 7/1/11)	\$2,188,395
Interim (if financing closed after 7/1/11)	\$2,074,232
1	\$3,850,486
2	\$4,014,132
3	\$4,184,732
4	\$4,362,584
5	\$4,547,993
6	\$4,741,283
7	\$4,942,788
8	\$5,152,856
9	\$5,371,852
10	\$5,600,156
11	\$5,838,163
12	\$6,086,285
13	\$6,344,952
14	\$6,614,612
15	\$6,895,733

**Table E.5. Guaranteed Cost Savings for Guarantee Years 1 - 15**

Constellation does hereby warrant, subject to all terms, conditions, and limitations of the Agreement, Schedules, and any Addenda which are executed, that the Water and Energy Savings Program shall provide the amount of Guaranteed Cost Savings listed in this section for each given Guarantee Year.

### **Section 6: Limitations and Exclusions**

THIS LIMITED WARRANTY OF GUARANTEED COST SAVINGS SHALL BE INVALIDATED AND RENDERED OF NO FORCE AND EFFECT UNDER ANY ONE OF THE FOLLOWING CONDITIONS, EXCEPT THAT CLIENT SHALL HAVE SIXTY (60) DAYS TO CORRECT SUCH FAILURE TO CONFORM AFTER RECEIVING WRITTEN NOTICE FROM CONSTELLATION:

1. Alteration or modification of the Water and Energy Savings Program in any way by any person other than a person authorized by Constellation. Any such alterations or modifications which increase the water/energy consumption shall result in (a) corresponding adjustment to calculated savings.

## **Water/Energy Services Agreement**

2. Failure of Client to provide preventative, normal, and emergency maintenance as required in Section 15.2 of this Agreement.
3. Failure of Client to supply Constellation or its successor or authorized agent each month with utility bill summaries by site, occupancy information and any other information Constellation deems requisite to measure the water/energy consumption and cost savings. The information should be summarized by site, unless otherwise specified by Constellation.
4. The addition, deletion or modification of Equipment located in, or operation of, the facility which modifies the water/energy consumption at the facility by an amount equal to or greater than 5% of the post-installation consumption, without first notifying Constellation and Warrantor in writing of such addition, deletion or modification. Any such change, which increases the water/energy consumption at the facility, shall result in a corresponding adjustment to calculated savings.
5. Failure of Client to promptly notify Constellation of any apparent material malfunction in the Water and Energy Savings Program.
6. Any other Material Change by the Client which would negatively impact the Total Achieved Cost Savings.

It is expressly agreed that Constellation shall only provide a Limited Warranty of Guaranteed Cost Savings as provided above which shall only be compared against the Total Annual Achieved Cost Savings for all utilities included in the scope as set forth in Section 1 of this Schedule E above, for all sites included, for all AMPs. Constellation liability for the Guaranteed Cost Savings shall be expressly limited to the payment of the Cost Savings Shortfall, if any, in accordance with Section 5.2, for each individual year of this Agreement. It is further expressly agreed that Constellation shall not provide any other warranty or guarantee of cost or consumption savings, including but not limited to by quarter, by site, by utility, and/or by AMP, and that the Constellation's Limited Warranty of Guaranteed Cost Savings shall be subject to all terms and conditions of this Agreement, Schedules, and Addendums which are executed.

### **Section 7: Action to Be Taken in the Event of Disagreement over Existence/Amount of Cost Savings Shortfall, as Provided in Section 5.2 of the Agreement**

If the Parties do not agree on the amount of Cost Savings Shortfall, either may make written demand for an appraisal of the Cost Savings Shortfall. In this event, each Party shall select a competent and impartial appraiser, who shall be an expert in the Measurement & Verification of Energy Performance Contract (EPC) savings. The two appraisers shall select an umpire who shall also be an expert in the Measurement & Verification of EPC savings. If they cannot agree on the selection of an umpire, either may request that selection be made by a judge of a court having jurisdiction. Each appraiser and the umpire shall be given a copy of the terms and conditions of the Agreement, the schedules, and any executed Addenda, as well as all relevant utility, occupancy and other data, and their determinations shall follow the terms and conditions of this Agreement, the schedules, and any executed Addenda. The appraisers shall

### ***Water/Energy Services Agreement***

state separately the value of the savings and amount of Cost Savings Shortfall, by calculating the Annual Achieved Cost Savings and subtracting that from the Guaranteed Cost Savings Amount for the then-current year. If the Appraisers fail to agree, they shall submit their differences to the umpire. A decision agreed to by any two shall be binding to the Parties.

Each Party shall:

- a) Pay its chosen appraiser; and
- b) Bear the expenses of the umpire equally.

The appraisal shall be completed within sixty (60) days of the selection of the independent appraisers.

***Water/Energy Services Agreement***

**NEWARK HOUSING AUTHORITY  
SERVICES AGREEMENT**

Schedule F  
\*RESERVED\*



## **Water/Energy Services Agreement**

### **NEWARK HOUSING AUTHORITY SERVICES AGREEMENT**

#### **Schedule G Training Provided**

##### **RESIDENT WATER/ENERGY CONSERVATION TRAINING**

- 1) Constellation and Client shall coordinate locations and times of conservation orientation training sessions within ten (10) days of Notice to Proceed. Training will be provided at locations provided by client at a time mutually agreeable to both parties.
- 2) Constellation shall provide Client with a plan for conservation orientation and training sessions within twenty days of Constellation's receipt of Notice to Proceed from Client.
- 3) Constellation shall distribute a conservation booklet to residents at the conservation orientation training sessions. The conservation booklet shall be available in English and Spanish.
- 4) Constellation shall provide conservation orientation sessions with residents prior to the commencement of construction or at the beginning of construction for each property.
- 5) Refreshments for conservation orientation session and water/energy conservation training sessions shall be coordinated by Constellation and paid for by Constellation. Cash and/or other prizes, paid for by Constellation, shall be awarded at each session to motivate residents to attend the sessions.
- 6) Constellation shall provide an electronic version of the invitation to sessions to be posted in elevators and other locations where notices to residents are posted. Client shall print and distribute an Invitation to each unit and to other locations.

##### **MAINTENANCE STAFF TRAINING**

- 1) Constellation and Client shall coordinate locations and times of maintenance staff training sessions within thirty (30) days of Notice to Proceed. Training will be provided at a location provided by client at a time mutually agreeable to both parties. Training will be provided at the locations of the installed ECMs at a time mutually agreeable to both parties.
- 2) The Constellation shall provide the maintenance staff with training on the operations and maintenance of the new equipment and systems. The training will be conducted by a combination of personnel representing the Constellation, manufacturers of the equipment being installed and/or installing contractors as applicable for the equipment and systems installed. There will be two training sessions. The initial training session will occur during construction to familiarize the maintenance personnel with the equipment and systems. A follow up session will occur within three (3) months after all equipment and systems have been installed and

### ***Water/Energy Services Agreement***

commissioned. The purpose of the later training session is to review the initial training and to answer questions that are generated from the staff's direct interaction with the equipment and systems.

- 3) The initial training manuals will primarily consist of the manufacturer's equipment information sheets and operation & maintenance manuals augmented with schematics and general operating information of the systems.
- 4) The follow up training will utilize the information contained in the final as-built documentation that will be provided at the completion of construction and commissioning, which will include warranty implementation instructions; equipment cut sheets; operations & maintenance manuals; as-built drawings, and other necessary information as applicable to each ECM.

#### **ADMINISTRATIVE STAFF TRAINING**

- 1) Constellation and Client shall coordinate locations and times of administrative staff training sessions within ten (10) days of Notice to Proceed. Training will be provided at a location provided by client at a time mutually agreeable to both parties.
- 2) Constellation shall provide a one-time training to administrative staff on the impact of the Agreement on Operating Budget calculations, and other budgeting matters.

***Water/Energy Services Agreement***

**NEWARK HOUSING AUTHORITY  
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Schedule H  
Annual Compliance Checklist

Constellation shall visit the Client at least annually and review the following for Compliance with the Water and Energy Savings Program.

- 1) Have budgets submitted to HUD reflected the Add-On Incentive correctly?
- 2) As part of their due diligence in implementing this EPC, Client was required to affirm that it has reviewed and approved the allowances. Have the post-allowances been implemented?
- 3) Have there been any significant changes to the apartments, offices or other facilities, which would have increased or decreased water and/or energy consumption?
- 4) Has the number of apartments increased or decreased?
- 5) Have all maintenance procedures prescribed in this Agreement been followed?
- 6) Is Client submitting utility and other required data on time?

***Water/Energy Services Agreement***

**NEWARK HOUSING AUTHORITY  
SERVICES AGREEMENT**

Schedule I  
List of Facilities

The Client's Facilities included in this Agreement are provided in the attached Property Listing

## ***Water/Energy Services Agreement***

### **NEWARK HOUSING AUTHORITY SERVICES AGREEMENT**

#### **Schedule J MEASUREMENT & VERIFICATION (M&V)**

##### **MEASUREMENT & VERIFICATION SERVICES**

Ongoing monitoring and analysis of utility consumption will help ensure that savings targets are achieved. Effective monitoring and analysis will require a coordinated effort involving Constellation and Client staff. Client will compile utility bill information as utility bills are received. Client shall designate a point person from their Accounting Department to interface with the Constellation's Operations Engineer, or other staff designated by Constellation, for record keeping and/or billing related assistance. Additionally, the Client shall designate a point person within the Operations/Maintenance Department to interface with the Constellation's Operations Engineer, or other staff designated by Constellation, to investigate site consumption anomalies and assess equipment functionality.

Within 45 days of Client's issuance of a Notice to Proceed, Constellation and Client shall work towards solidifying operating procedures and those for monthly consumption analysis reports.

- 1) A Constellation energy conservation analyst will work with Client on a regular basis. They will perform the following activities:
  - a. Analyze utility cost and consumption data to identify the following:
    - i. Errors and/or omissions in NHA's utility cost and consumption worksheets.
    - ii. Billing errors / abnormalities.
    - iii. Analyze consumption data to identify usage anomalies. Any anomalies discovered will be investigated to determine if they are the result of a record keeping error, billing error, or equipment malfunction.
  - b. Conduct site inspections of installed equipment to ensure proper functionality.
- 2) The Client shall provide Constellation with the following information:
  - a. A summary of utility consumption and cost data in MS Excel® format:
  - b. Occupancy % by project, by month;
  - c. Copies of utility bills when requested and/or permission to contact utility provider on Client's behalf;
  - d. Any changes to AMP designations;
  - e. Notification of any capital improvements or modernization efforts that potentially impact savings;

## ***Water/Energy Services Agreement***

- f. A copy of consumption and cost allowances in place and their supporting documentation upon request;

### **M&V POST-INSTALLATION METHODOLOGY**

Constellation's intent is to employ IPMVP Option C in accordance with HUD recommendations whenever practical.

Constellation shall employ IPMVP Option C for Measurement and Verification of water/sewer and natural gas. However, due to the inability to effectively manage residential plug load, Constellation shall utilize IPMVP Option A for Measurement and Verification of electricity, except for cogeneration.

For Cogeneration equipment, electricity production, Constellation shall employ IPMVP Option B: Savings will be the difference between the pre-installation consumption established by the existing baseline, and the post-installation output measured by the Cogeneration running kWh meter. For this option, the meters will be read monthly and the data will be collected for the duration of the Agreement.

The Client shall allocate a percentage of cost savings from years 6 and 12, estimated at \$258,857 and \$309,089, respectively, shall be allocated towards replacement of compact fluorescent light bulbs over the term of the Agreement, as shown on the Cash Flow in Part 1, Schedule A of this Agreement.

Refer to the IGAV for ECM specific savings calculations and measurement and verification plans.

### **MEASUREMENT & VERIFICATION REPORTS**

Constellation shall prepare and send M&V reports for each calendar year to the Client within ninety (90) days of the end of each calendar year pursuant to Section 3.5 of the Agreement.

Utility data and savings achieved shall be reported by Asset Management Project (AMP) to be compliant with HUD's asset management initiative. However, it is specifically noted that the savings guarantee applies only to total cost savings achieved for all AMPs combined. Each annual report submitted by Constellation shall consist of the following documents:

- 1) Report Letter: Contains a narrative summary of EPC results for the year of report. Content of the report letter will depend on actual findings, but will include discussion of AMPS and utilities for which project targets are not being achieved. The annual report letter will contain a statement of comparison of total cost savings achieved with pre-project estimated and guaranteed cost savings.
- 2) Annual Savings Summary: A table format presentation of baseline consumption, current consumption, current cost and savings achieved for each AMP and utility. Consumption and cost values used for these tables are taken directly from the Utility Bill Summary described in item 4) below.

### ***Water/Energy Services Agreement***

- 3) **Average Daily Water Usage per Resident:** These values are presented in table format by project to illustrate concisely the level of success achieved in water conservation.
- 4) **Utility Bill Summary:** Summarizes baseline and current utility consumption and cost exactly as reported to Constellation by Client. Utility bill summary shall serve as the primary source of all baseline and current data used in savings calculations.
- 5) **Miscellaneous Charts and Graphs:** Custom charts, tables and graphs shall be included as necessary as determined by Constellation to illustrate conclusions or clarify and quantify problems.

Further definition of the services has been provided by Constellation as M&V Services, as well as estimated costs for services, in line-item format and made available for reference for Client, as well as for authorized HUD representatives. Said services are intended to contribute to Client's realization of intended water/energy savings under the Agreement.



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### **NEWARK HOUSING AUTHORITY SERVICES AGREEMENT**

#### Schedule K Commissioning Plan

##### Subcontractors Equipment Submittals

- a) Constellation shall evaluate subcontractors' equipment for compliance with specified capacities, sizes and efficiency ratings, given what is to be installed per Schedule A:
- b) Constellation shall approve all subcontractor submissions or note any discrepancies or items of non-compliance and return to subcontractor, who shall revise and correct as needed until Constellation is satisfied with their accuracy.

##### Plans and Drawings

- a) Constellation shall provide copies of all plans and drawings prepared as a result of this Agreement to Client.

##### Site Supervision

- a) Constellation shall inspect work progress along with compliance to specified products and manufacturers' installation instructions;
- b) Constellation shall require commissioning and testing of equipment and shall witness such and provide Client with Certification of Installation and documentation of testing completed.

##### Training of Client's Maintenance Staff

- a) Constellation shall provide or shall require its subcontractors to provide training for Administrative/Maintenance Staff in operation of all equipment specified for this project. Constellation shall provide or shall require its subcontractors to provide all appropriate engineering and maintenance manuals.

## ***Water/Energy Services Agreement***

### **NEWARK HOUSING AUTHORITY SERVICES AGREEMENT**

#### **Schedule L Design and Specifications Process**

- 1) Constellation has completed its initial evaluation of Site Audit Information, which included:
  - a) Building construction, wall, roof, and perimeter insulation "U" values;
  - b) Types of windows and thermal transmission;
  - c) Water conservation measures, toilets, showers, etc;
  - d) Base electrical consumption, lighting, refrigerators, ranges and miscellaneous electrical appliances;
  - e) Evaluation of metering systems, where applicable.
- 2) Constellation has completed Heating and Cooling Load Calculations, where applicable:
  - a) Performing pre- and post-study heat loss engineering analyses to determine annual energy consumption and to indicate savings due to implementation of HVAC energy conservation measures;
  - b) Determining building cooling load requirements based on existing equipment and options to replace with higher efficiency equipment.
- 3) With Client's input, Constellation has completed the determination of appropriate HVAC, electrical, and water conservation devices, equipment selection, and sizes.
  - a) Provided data sheets on equipment;
  - b) Researched manufacturers' recommendations for installation;
  - c) Prepared cost estimates of equipment, including installation and demolition.
- 4) Constellation has completed the solicitation for bids in accordance with Client's procurement policies, state procurement policies, and HUD procurement policies, as well as HUD-5370 and Section 6 of Agreement. Bid documentation, which was approved by Client, contained drawing schematics and pre-design details, where applicable, to obtain competitive pricing for final construction estimates, and to determine final payback value so that overall project savings can be justified. As a result of the procurement process, Client has selected subcontractors for the project.

***Water/Energy Services Agreement***

**NEWARK HOUSING AUTHORITY  
SERVICES AGREEMENT**

**Schedule M**

**Coordination of Incentives/Rebates Applications and Processing**

- 1) Constellation shall research available incentives and rebates for the Equipment being installed through this Agreement.
- 2) Constellation shall provide Client with a list of the available incentives/rebates, if any.
- 3) Constellation shall apply for the available incentives/rebates in a timely manner.
- 4) Constellation shall coordinate all walk-throughs by the incentives/rebates provider(s).
- 5) Constellation shall direct the incentives/rebates providers(s) to send the checks directly to Client.

It shall be understood that the incentive/rebate provider(s) may or may not issue incentives/rebates for the full amount possible, subject to their funding availability and their discretion.

- 6) It shall be understood that the incentives/rebates amounts are not listed on Schedule A Construction Plan Summary because it is unknown at this point how much the incentive/rebate providers may fund, if any.

***Water/Energy Services Agreement***

**NEWARK HOUSING AUTHORITY  
SERVICES AGREEMENT**

Schedule N

HUD EPC Checklist Attachment C, Baseline by Facility by AMP

Per the requirements of the HUD EPC Checklist the following attachment is hereby included and made part of this services agreement as Schedule N (ATTACHED).

HUD Form Attachment C – Energy Conservation Measures (ECM)

Baseline Data Format, completed for each. Baseline for electricity utilities are for reference only.

Parties agree that Constellation has done its due diligence in compiling accurate baseline data. In the event that further information becomes available after execution of this Agreement, which would necessitate implementation of and/or adjustments to the monthly baseline distribution, Constellation reserves the right to adjust the baseline distribution by month accordingly, at its sole option, for modifications less than 5%. Constellation further reserves the right to adjust the monthly baseline distribution upon the mutual agreement of Constellation and Client for modifications greater than 5%.

In the event of a discrepancy in information contained within this Schedule N and that contained within Schedule E of this Agreement in full, the information within Schedule E shall prevail by order of precedence.

## **Water/Energy Services Agreement**

### **NEWARK HOUSING AUTHORITY SERVICES AGREEMENT**

#### **Schedule O Limited Notice to Proceed**

Prior to the Client's closing on the financing for this Agreement, the Parties have hereby agreed that Constellation shall begin work under the Agreement via a Limited Notice to Proceed ("LNTP") as set forth in this Schedule O.

Pursuant to the terms of the Agreement, Constellation is authorized and notified to commence the work, as specified below, on March 31, 2011:

#### **A. Work Authorized under LNTP**

1. Engineering Services. Constellation shall proceed with all engineering services under the Agreement from 30% design to 100% design documents, to include the following:
  - a. Decentralization of the Stephen Crane Village site (NJ2-06);
  - b. Outside Air Reset at the Stephen Crane Elderly sites (NJ2-22D; NJ2-16; and NJ2-22C), James Baxter Terrace Elderly (NJ2-22B), Seth Boyden Elderly (NJ2-21F and NJ2-21E), Millard E. Terrell Homes (NJ2-09), John W. Wyatt Court (NJ2-07), Joseph P. Bradley Court I (NJ2-14), Otto E. Kretchmer Elderly (NJ2-17 and NJ2-21A), and Seth Boyden Terrace (NJ2-01);
  - c. Boiler Stack Economizers at the Seth Boyden Terrace site (NJ2-01), John W. Hyatt Court (NJ2-07), Joseph P. Bradley Court I (NJ2-14); Stephen Crane Elderly (NJ2-16), James Baxter Terrace Elderly (NJ2-22B), Millard E. Terrell Homes (NJ2-09), and Otto Kretchmer (NJ2-17); and
  - d. Cogeneration at the Seth Boyden Elderly sites (NJ2-21E and NJ2-21F) and the Otto E. Kretchmer (NJ2-21A) site.

#### **B. Fees and Costs for Work Under LNTP**

The total amount of fees and costs for the work authorized under the LNTP shall not exceed two million dollars (\$2,000,000). This amount includes costs for the above referenced engineering services and those Reimbursement Costs as more fully set forth in Section 8.1(ii)(a) of the Agreement.

1. Payment Terms. The payment terms of Section 8 in the Agreement shall be applicable to the authorized work under the LNTP. Client shall be billed on a progress basis for engineering services completed and for corresponding Constellation fees incurred under the LNTP.

2. Extension of Credit. In the event that Client has not secured financing for the Agreement and does not have other Client funds with which to make the progress payments under the LNTP, Constellation agrees to extend to Client a

## **Water/Energy Services Agreement**

line of credit up to the two million dollars (\$2,000,000) for the authorized work under the LNTP. In consideration for the extension of credit by Constellation, Client agrees that if payment of an invoice under the LNTP is not received within thirty (30) days after such invoice is delivered to Client, then Client will pay, when funds are available, 1.50% per month on the unpaid balance of such invoice for the period from the date of such invoice through and including the date of payment thereof, and shall be calculated using actual days elapsed. Constellation agrees to continue the authorized work under the LNTP during any period of non-payment during the LNTP phase, while the 1.50% interest accrues. At the time financing is closed and said funds are available for disbursement by the lender, Client shall initiate payment, within ten (10) business days, any and all past due invoices and any outstanding interest accrued as a result of Client's utilizing Constellation's extension of credit.

3. Financing. If for any reason whatsoever, Client is unable to secure financing for the Agreement and Client terminates the Agreement pursuant to Section 4.4 herein, Client shall pay Constellation for any and all reasonable fees and costs incurred for the work completed under this LNTP up to the date of termination, as well as for reasonable fees and costs resulting from such termination, as more fully set forth in Section 21.4 (i)(a)-(e) of the Agreement.

Any modifications to the terms of this LNTP shall be agreed upon, in writing, between the Parties, and shall be made a formal part of this Agreement. Both Parties acknowledge and agree to the terms and conditions of this LNTP, as well as the receipt thereof, by dating and signing on the following page.

*[The remainder of this page is intentionally left blank]*

**Water/Energy Services Agreement**

IN WITNESS WHEREOF, the Parties hereto subscribe their names to this Limited Notice to Proceed as Schedule O to the Agreement by their duly authorized officers on the date first written above.

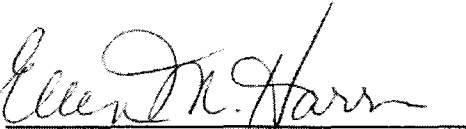
CLIENT:

Attest:

By:



Keith Kinard  
Newark Housing Authority  
Executive Director

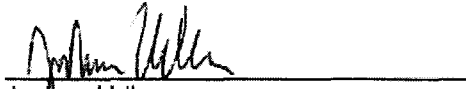


Ellen M. Harris  
Newark Housing Authority  
General Counsel

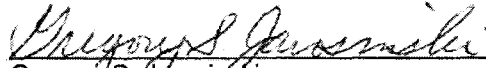
(Corporate Seal)  
CONSTELLATION:

Attest:

By:



Joshua Udler  
Constellation Energy Projects & Services  
NJ  
Assistant Secretary



Gregory S. Jarosinski  
Constellation Energy Projects & Services  
NJ  
President



## AMENDMENT TO WATER/ ENERGY SERVICES AGREEMENT

**THIS AMENDMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by and between the following parties:

NEWARK HOUSING AUTHORITY, located in the State of New Jersey, with its principal offices at 500 Broad Street, Newark, NJ 07102 (hereinafter referred to as the "Client").

And

CLT EFFICIENT TECHNOLOGIES, d/b/a Constellation Energy Projects & Services NJ, with an office located at 2090 Greentree Road; Suite 200; Pittsburgh, PA 15220 (hereinafter referred to as "Constellation").

This Amendment amends the Water/Energy Services Agreement (hereinafter referred to as "Agreement"), dated March 31, 2011. To the extent any inconsistencies exist between the terms of the Agreement and the terms of this Amendment, the terms of this Amendment shall govern.

### 1. AMENDED TERMS AND CONDITIONS TO THE ORIGINAL AGREEMENT

- a. Delete the Table E.5 "Guaranteed Cost Savings for Guarantee Years 1-15," in Schedule E, page 49, and replace with the chart as provided below.

Guarantee Year	Guaranteed Cost Savings
Interim	\$2,594,341
1	\$3,850,486
2	\$4,014,132
3	\$4,184,732
4	\$4,362,584
5	\$4,547,993
6	\$4,741,283
7	\$4,942,788
8	\$5,152,856
9	\$5,371,852
10	\$5,600,156
11	\$5,838,163
12	\$6,086,285
13	\$6,344,952
14	\$6,614,612
15	\$6,895,733

Table E.5. Guaranteed Cost Savings for Guarantee Years 1 – 15




IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Amendment to the Water/Energy Services Agreement dated March 31, 2011, by their duly authorized persons on the date first written above.

By:

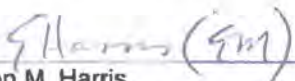
CLIENT:

Attest:

By

  
Modia Butler  
Chairman  
Housing Authority of the City of Newark

  
Keith Kinard  
Housing Authority of the City of Newark  
Executive Director

  
Ellen M. Harris  
Housing Authority of the City of Newark  
General Counsel

CONSTELLATION:

Attest:

By:

  
Joshua Usher **CHRISTOPHER P. NIEMIEC**  
Constellation Energy Projects & Services NJ  
Assistant Secretary

  
Gregory S. Jarosinski  
Constellation Energy Projects & Services NJ  
President



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 803  
TRENTON, NJ 08625-0803

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**LORI GRIFA**  
*Commissioner*

September 2, 2011

Ms. Allison Durham, Executive Manager  
Newark Housing Authority  
500 Broad Street  
Newark, NJ 07102

**RE: ESIP Lease Agreement Term**

Dear Ms. Durham:

I am receipt of your August 9, 2011 correspondence requesting confirmation from this agency that a seventeen (17) year term lease agreement structure for the Project financing is in compliance with Section 40A:11-4.6.c.(1)(the "Section") of the New Jersey Local Public Contracts Law due to the existence of the cogeneration component.

We understand that the project in question has a two year construction period, at the end of which all improvements will have been placed in service and the authority will make lease payments over a 15 year period. Together, the project construction and payback, and the lease will run for 17 years.

With regard to the specific circumstances presented to us, in response to your request please accept this letter as confirmation that the Newark Housing Authority's project financing lease term agreement of 17 years is in compliance with the Section. Additionally, the statute allows for the duration of lease purchase agreements up to 20 years with the inclusion of combined heat and power or cogeneration as part of the project.

Should you need any further guidance please feel free to contact my office.

Sincerely,

Marc H. Pfeiffer, Deputy Director  
Division of Local Government Services

c: Sh-Keer Evans, Bureau of Authority Regulation  
Gordon Ball, Bureau of Local Management Assistance

