

RESOLUTION NO. WW-5-13-7-R

**RESOLUTION APPROVING THE EDISON TUNNEL LICENSE AGREEMENT AND THE
EASEMENT AGREEMENT BETWEEN MCUA AND CPV, SHORE, LLC**

WHEREAS, the Middlesex County Utilities Authority (“MCUA”) produces reclaimed water from its treatment and disposal of sewage and encourages the use of reclaimed water for beneficial uses for non-potable applications such as electric generating plants; and

WHEREAS, MCUA has an ongoing supply of reclaimed water that is not utilized and is discharged into Raritan Bay; and

WHEREAS, MCUA, after public notice and a public hearing, has approved a Service Fee Schedule which permits the sale of reclaimed water for beneficial reuse in a permitted process; and

WHEREAS, CPV Shore, LLC (“CPV”) is in the process of planning and constructing a nominally rated 700+ MW electric plant on land located at Industrial Avenue in the Township of Woodbridge, Middlesex County, New Jersey, across the Raritan River from the MCUA plant and more particularly known as, or to be known as, Block 93, Part of Lot 100 and Block 62, Part of Lots 2 and 3 on the Official Woodbridge Township Tax Map (the “CPV Electric Plant”); and

WHEREAS, the reclaimed water generated by MCUA is suitable for use (after further treatment) at the CPV Electric Plant; and

WHEREAS, the parties have entered into a Design/Construction Agreement and an Operating Agreement relating to the construction of facilities and the transmission of reclaimed water to the CPV Electric Plant.

WHEREAS, pursuant to the Operating Agreement, the MCUA agreed to grant a Tunnel License Agreement and Easement Agreement to permit CPV to use the Edison Tunnel and other lands owned by the MCUA to place, maintain and operate a CPV pipeline for reclaimed water from the MCUA plant to the CPV Electric Plant and to permit the return of the unused reclaimed water to the Woodbridge sewer system; and

WHEREAS, the MCUA’s Executive Director and Counsel have negotiated a Tunnel License Agreement and Easement Agreement between the MCUA and CPV; and

WHEREAS, the Easement Agreement provides for a payment of \$230,000 from CPV to MCUA for the use of the Easements; and

WHEREAS, the Tunnel License Agreement provides for an annual license fee of \$143,500 for the right to place a 16” circumference pipe in the tunnel and the option to place an additional 16” circumference pipe within five (5) years from the date of completion of the original pipe for the option price of \$607,366; and

WHEREAS, the Executive Director and Counsel recommend that the Commissioners approve the Tunnel License Agreement and the Easement Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Commissioners of the Middlesex County Utilities Authority as follows:

1. For all future reference, the title of this Resolution shall be "Resolution Approving the Edison Tunnel License Agreement and the Easement Agreement Between MCUA and CPV, Shore, LLC." and all subsequent documents concerning the matters addressed herein shall reference this title.
2. The Tunnel License Agreement and the Easement Agreement ("Agreements") between the MCUA and CPV are approved in substantially the form annexed hereto.
3. The Executive Director is authorized to execute the Agreements on behalf of the MCUA.
4. This Resolution shall take effect upon the expiration of the Freeholder review period in accordance with law.

TUNNEL LICENSE AGREEMENT

THIS TUNNEL LICENSE AGREEMENT ("License Agreement") is made this ____ day of _____ 2013, by and between **MIDDLESEX COUNTY UTILITIES AUTHORITY**, a body politic and corporate of the State of New Jersey, having an office at 2571 Main Street Extension, Sayreville, New Jersey 08872, (referred to herein as "**MCUA**" or "**Grantor**"), and **CPV SHORE, LLC**, a Delaware limited liability company, with an address of 8403 Colesville Road, Suite 915, Silver Spring, Maryland 20910, (referred to herein as "**CPV**" or "**Grantee**").

RECITALS:

WHEREAS, Grantor is the owner of the Edison Force Main Tunnel and Access Shafts (the "**Tunnel**") running from the MCUA Central Treatment Plant located in Sayreville, New Jersey (the "**MCUA Sayreville Plant**") under the Raritan River to the MCUA Edison Pump Station located in Edison, New Jersey (the "**MCUA Edison Pump Station**"); and

WHEREAS, pursuant to that certain license, as may be amended, recorded on January 8, 2007, Deed Book 05769, Page 530, with the Middlesex County Clerk's Office, granted to the Grantor from the Tideland Resource Council in the Department of Environmental Protection, the Grantor was granted a license to construct, install and operate the Tunnel across the Raritan River; and

WHEREAS, a cross section drawing of the existing Tunnel, as well as a legal description of the Tunnel is attached to this License Agreement as **Exhibit A** which depicts the circumference of the Tunnel and the size and location of the two existing

shafts located within the Tunnel; and

WHEREAS, Grantee has expressed an interest in purchasing from Grantor reclaimed water produced by the Grantor which will be transported from the MCUA Sayreville Plant through a 16" pipe to be constructed and installed by Grantee within the Tunnel to the CPV gas fired power plant contemplated to be located in Woodbridge, New Jersey (the "**CPV Plant**") on that certain land legally described in Exhibit "A"; and

WHEREAS, subject to the terms and conditions set forth in this License Agreement, Grantor agrees to grant to Grantee, its successors and assigns an, (a) irrevocable (except as may be terminated pursuant to the terms of this License Agreement) non-exclusive license ("**License**") to install a pipeline having a 16" circumference (the "**Pipeline**") at such location agreed upon between the Grantor and Grantee within the Tunnel and a non-exclusive three foot (3') wide area access area within which the Grantor will not place or construct any permanent improvements which would materially interfere with Grantee's use (the "**Pipeline License Area**"), and (b) irrevocable (except as may be terminated pursuant to the terms of this License Agreement) non-exclusive construction, installation and maintenance license within the Tunnel ("**Construction License**") within which Grantee shall be permitted to perform the "Grantee's Work" (as said term is herein defined); and

WHEREAS, the Grantee was afforded the opportunity to access the Tunnel pursuant to that certain Pre-Construction Tunnel Access Agreement between Grantor and Grantee dated May 1, 2013 (which Pre-Construction Tunnel Access Agreement shall terminate upon the execution of this License Agreement) for the purpose of inspecting the Tunnel to determine its suitability for the installation of the Pipeline within

the Pipeline License Area (“CPV Project”); and

WHEREAS, Grantee has determined that the installation of the Pipeline within the Tunnel is feasible and wishes to proceed with the CPV Project; and

WHEREAS, the Pipeline to be installed by Grantee in the Tunnel shall be for the sole purpose of transporting reclaimed water from the MCUA Sayreville Plant to the CPV Plant; and

WHEREAS, the Grantor and Grantee desire to set forth in this License Agreement the terms and conditions of the License, the Construction License, the option to expand the License for an additional pipeline as set forth in Section 18 of this License Agreement, the limitations on the work to be performed by Grantee in the Tunnel as well as the compensation to be paid by the Grantee to Grantor in consideration for the License granted by Grantor to Grantee herein.

NOW, THEREFORE, IN CONSIDERATION of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals by Reference.** All of the Recitals set forth above are incorporated into this License Agreement at this location by reference as if more fully set forth herein at length.
2. **Grant of License; Term; Consideration.** Subject to the terms and conditions set forth in this License Agreement, Grantor hereby grants to Grantee, its consultants and the contractors retained by Grantee, an irrevocable (except as may be terminated pursuant to the terms of this License Agreement) non-exclusive License to construct, install, remove, inspect, lay, improve, maintain, repair, replace, use and operate the

Pipeline within the Pipeline License Area for the sole purpose of transporting reclaimed water from the MCUA Treatment Plant to the CPV Plant. The specifications, details, and manner of installation of the Pipeline shall be submitted in writing by Grantee (the **"Pipeline Specifications"**) to Grantor for its written approval prior to the commencement of Grantee's Work within the Tunnel, which approvals shall not unreasonably be withheld, and which written response shall be provided within ten (10) business days after the date of submission by CPV. The License shall commence on the date of execution of this License Agreement and continue for a term expiring thirty (30) years (**"Initial License Term"**) following the date the installation of the Pipeline is completed unless otherwise extended pursuant to the terms of this License Agreement. At such time as the installation of the Pipeline is completed, Grantor and Grantee agree to execute a document acknowledging the date the Pipeline was completed. The Grantee shall have the option to exercise up to two (2) ten (10) year extensions of the License (each a **"Renewal Term"** and together with the Initial License Term, the **"License Term"**), upon providing the Grantor no less than 60 days written notice prior to the expiration of the then scheduled expiration of the License Term, for such amount as reasonably agreed upon by the parties but in no event less than the Annual License Fee.

No less than 10 business days prior to commencement of Grantee's Work, the Grantee shall pay to Grantor a License fee in the amount of **\$143,500** (the **"Annual License Fee"**) and the same amount on each yearly anniversary date and such amount as agreed upon during any Renewal Term. In the event Grantee fails to pay the Annual License Fee or any taxes due pursuant to Section 14, in each case, within fifteen (15)

business days from the date it is due, Grantee's failure to make said payment shall be deemed an event of default hereunder ("**Event of Default**"). Upon an Event of Default, Grantor shall provide a written notice of same to Grantee (the "**Event of Default Notice**"). Grantee shall have fifteen (15) business days following receipt of the Event of Default Notice in which to make the required payment due Grantor. In the event the Grantee fails to timely cure the default this License Agreement shall cease and terminate and the Grantee shall no longer have the right to exercise any extension set forth above or the Option set forth in Section 18 herein, and Grantee shall forthwith cause the Pipeline to be disassembled and removed from the Tunnel. In the event the Grantee fails to disassemble and remove the Pipeline from the Tunnel as required herein, Grantor may do so at the Grantee's sole cost and expense which expenses shall include reasonable charges Grantor may incur in connection therewith including, but not limited to, Grantor's reasonable legal fees and court costs.

Grantor reserves the right to inspect the Grantee's Work in the Tunnel at all times. In the event Grantor reasonably believes it to be in its best interests to have an appropriately qualified and experienced MCUA employee, agent or representative present in the Tunnel to observe and monitor the Grantee's Work, Grantee agrees to reimburse Grantor for the reasonable costs of said additional employee, representative or agent. Such person shall not unreasonably interfere with Grantee's work or rights under this License Agreement.

3. Grant of Temporary Construction and Installation License. Subject to the terms and conditions set forth in this License Agreement, and provided Grantee causes no obstructions to or interference with the pipes, shafts, pipelines and/or other

equipment currently located within the Tunnel, whether owned by Grantor or others, except as reasonably necessary in accordance with the plans and specifications approved in accordance with this License Agreement by Grantor, the Grantee is hereby granted an irrevocable (except as may be terminated pursuant to the terms of this License Agreement) Construction License within the Tunnel for the sole purpose of performing Grantee's Work within the Tunnel to facilitate the installation, operation and maintenance of the Pipeline.

In the event that Grantee requires access to the Tunnel for any other purpose (other than for the purposes set forth in the immediately preceding paragraph), it shall submit a written request and proposal to Grantor describing in reasonable detail the additional work to be performed by Grantee within the Tunnel. Access for such other purpose will require the written consent of Grantor and Grantor may impose reasonable conditions upon any consent and/or approval it grants.

Grantee shall complete the installation of the Pipeline no later than December 31, 2017.

4. The Grantee's Work. Grantee and Grantee's consultants and/or contractors shall perform or cause to be performed all of the work necessary for Grantee to complete the installation of the Pipeline within the Pipeline License Area in the manner theretofore reasonably approved by Grantor (the "**Grantee's Work**"). Grantee shall deliver a written notice to Grantor at least five (5) business days prior to commencement of any Grantee's Work in the Tunnel. Any work performed at the Grantor's property or in the Tunnel by Grantee or Grantee's consultants and/or contractors shall be performed in a good and workmanlike manner and in compliance with applicable local,

county, state or federal laws, rules or regulations. The Grantee's Work shall be conducted without causing damage to the Tunnel or the contents and property therein owned by Grantor or others and without inconvenience to Grantor or obstruction to or interference with the activities conducted by Grantor within the Tunnel (except as reasonably necessary and in accordance with the plans and specifications approved in accordance with this License Agreement by the Grantor).

5. **Safety.** All activities undertaken by Grantee and Grantee's consultants and/or contractors within the Tunnel shall be performed in a safe and workmanlike manner in accordance with applicable laws and regulations and comply, in all respects, with all applicable health and safety procedures including, but not limited to, confined space entry within the Tunnel, Tunnel access and Tunnel rescue. Grantee and its agents shall make reasonable efforts to ensure the safety of all persons within the Tunnel during or in conjunction with Grantee's Work, as well as the safety of their respective employees, invitees and guests. Grantee's Work shall be performed so as not to create any hazardous condition.

6. **Information.** If Grantor shall so reasonably request, Grantee shall deliver to Grantor, or shall cause its consultants and contractors to deliver to Grantor copies of any laboratory results, data and reports which have been conducted related to Grantee's Work in the Tunnel, at no cost or expense to Grantor.

7. **Restoration.** Except for the Pipeline, after the completion of Grantee's Work within the Tunnel, Grantee will, at its sole cost and expense, remove any materials and/or equipment related to the installation of the improvements, brought onto the Grantor's property or into the Tunnel in connection with the Grantee's Work, and restore

any portion of Grantor's property and/or Tunnel to as close to its condition existing at the time the Grantee's Work began as is reasonably possible and either repair or replace, as the case may be, any damage done to the Grantor's property and/or Tunnel during any entry or work at Grantee's sole cost and expense.

8. **Indemnification.** Grantee agrees to indemnify, defend and hold harmless Grantor, its employees, officers, directors, consultants, agents and/or representatives from and against any loss and damage to person or property resulting from the acts or omissions of Grantee, or Grantee's employees, agents, contractors and/or consultants, including but not limited to any of their negligent acts arising from (i) their entry onto, or use of the Grantor's property and/or Tunnel, including but not limited to any claims from any of Grantor's neighboring properties resulting from the Grantee's Work performed pursuant to this License Agreement or (ii) any breach by any of them of any of the terms of this License Agreement. The foregoing indemnity shall survive termination of this License Agreement; however, Grantor shall not be entitled to indemnity hereunder to the extent that a court of competent jurisdiction renders a final decision that the Grantor's actions or omissions, were grossly negligent or constituted willful misconduct.

9. **Insurance.** Prior to commencing any work under this License Agreement and continuing throughout the term of this License Agreement, Grantee shall maintain, and shall cause its contractors, subcontractors, assignees or permittees to maintain, (1) commercial general liability insurance (ISO CG 00 01 or equivalent in effect from time to time in the State of New Jersey), from reputable insurance companies reasonably acceptable to Grantor with an aggregate limit of not less than \$5,000,000 for bodily injury and \$5,000,000 for property damage, plus an umbrella/excess liability insurance

policy of \$5,000,000. Such limits of insurance may be satisfied by a combination of commercial general liability insurance and umbrella/excess liability insurance policies applicable on a per location basis to the CPV Project location. All such insurance will include, without limitation, personal injury, property and contractual liability coverage. Such insurance shall be written on an occurrence basis, include coverage or endorsement for contractual liability covering the obligation hereunder, completed operations, so-called "XCU" hazards (explosion, collapse, blasting, undermining, and damage to underground property). and name Grantor thereon as an additional insured, and (ii) worker's compensation insurance insuring against and satisfying Grantee's obligations and liabilities under the worker's compensation laws of the State of New Jersey, including employer's liability insurance in the limits required by the laws of the State of New Jersey. To the extent not prohibited by or violating any insurance issued pursuant to this Section 9, Grantee and Grantor hereby waive and release the right to maintain a direct action against the other and any additional insured party, by way of subrogation or otherwise, for damages resulting from any cause of loss which is covered by insurance, or would have been covered by insurance under any policy required to be maintained hereunder, including damages resulting from the released party's negligence or other actionable acts or omissions. Each policy of such insurance shall, if obtainable from the insurer without material additional expense, contain a waiver of subrogation endorsement.

Grantor agrees that it and its consultants and/or contractors working at the Grantor's property or in the Tunnel shall maintain Worker's Compensation Insurance with limits of liability not less than those required by law, and Commercial General

Liability insurance with a combined single limit for bodily injury and property damage of not less than \$5,000,000 each occurrence, plus Excess/Umbrella Liability insurance in the amount of not less than \$3,000,000 each occurrence. Prior to the Grantee's Work being performed under this License Agreement or entry onto the Grantor's property or the Tunnel by anyone, Grantee and its consultants and contractors shall provide Grantor with a Certificate of Insurance listing Grantor thereon as an additional insured.

10. Assignment; Conveyance. Grantee shall have the right to assign, grant and convey any of its rights and obligations hereunder without the prior written consent of Grantor to (i) lenders for the purpose of collateral security and (ii) to any entity which succeeds to the interest of Grantee in the ownership and operation of CPV Plant, so long as in the case of this Section 10(ii) such entity has commercially reasonable experience and financial strength relative to the electric generation industry, provided financial strength and experience comparable to Grantee at that time shall be deemed to satisfy this requirement. Upon any assignment or conveyance of Grantee's entire ownership interest in this License Agreement, Grantee shall have no further liability or responsibility hereunder, provided said assignee confirms, in writing in a form reasonably satisfactory to Grantor, the assumption of all of Grantee's liability and responsibilities hereunder, whether incurred or accrued before or after such assignment or conveyance.

11. Grantor's and Others' Use of the Tunnel License Area. Grantor shall have the right to continue to use and to grant others the right to use the Tunnel (collectively, the "Other Use") so long as such Other Use does not materially interfere with Grantee's use and enjoyment of the rights granted to it hereunder. Grantee covenants that except as required during periods of construction in accordance with the plans and specifications

approved by the Grantor in accordance with this Agreement, it will not store any equipment or materials upon the Tunnel License Area. Grantee will obtain, at its expense, any and all licenses, permits and approvals required for the installation and use of its improvements to, on, under, over or across the Tunnel License Area and will use and operate such improvements in accordance with the requirements of all applicable law. Grantee shall not cause any hazardous materials to be stored, discharged, deposited, dumped, spilled, leaked or placed upon any part of the Tunnel License Area except as may be customary in the normal course of its business and then in compliance in all material respects with all applicable laws, codes, ordinances and regulations, including environmental laws.

12. Installation of Improvements. No Storage. All improvements made to or installed in the Tunnel by or on behalf of Grantee, and the repair, replacement or removal thereof, shall be done in a good and workmanlike manner and in accordance with all applicable permits, laws, codes, ordinances and regulations, pursued with reasonable diligence and using reasonable precautions for the safety of persons and property and performed at such times so as to avoid unreasonable interference with the enjoyment of the Tunnel License Area by Grantor and others currently having a right to use the Tunnel or may have such right in the future, provided Grantor first provides the names of and information regarding the use thereof by such third parties having a right to use the Tunnel to Grantee. Following completion of Grantee's Work in the Tunnel, Grantee shall remove from the Tunnel License Area and/or the Tunnel any of Grantee's materials and equipment and shall restore the Tunnel to substantially the same condition in which it was prior to the commencement of such activity by Grantee, at its sole

expense. Notwithstanding the foregoing to the contrary, if any of the improvements initially installed by Grantee as part of Grantee's Work, require repair, maintenance, or relocation within the Tunnel License Area during the Term hereof, Grantee shall be entitled to bring in materials, equipment and workers in order to accomplish the repair, maintenance and/or relocation but, once completed, must remove all equipment and materials from the Tunnel and/or the Tunnel License Area. The rights granted to Grantee pursuant to this License Agreement does not include Grantee's right to store or cause to be stored any materials and/or equipment within the Tunnel or to obstruct the entrance way into or exit way out of the Tunnel, unless in accordance with the plans and specifications approved by the Grantor, or otherwise approved by the Grantor.

13. Mechanic's Liens. Grantee shall not cause or suffer the imposition of any mechanic's liens upon or against the Tunnel as the result of any labor or materials furnished for or on behalf of Grantee. If Grantee does cause or suffer the imposition of any such mechanic's liens, Grantee shall discharge such mechanic's liens in full or by bond at its expense within ten (10) business days after notice of the existence of the lien has been given to Grantee. However, if Grantee fails to discharge the lien within such ten (10) business day period, then Grantor shall have the right to do so on its behalf by deposit or bonding, and the amount so paid shall be repaid to the Grantor upon demand together with interest thereon at the rate of twelve percent (12%) per annum. Grantee shall defend, indemnify and hold Grantor harmless from and against all liability, loss, cost or expense (including reasonable attorneys' fees) arising out of any such liens.

14. Taxes. Grantor shall pay, in a timely fashion, all property taxes assessed against the Grantor's property, if any. To the extent that any of the Grantee's Work or the

Pipeline (collectively, "**Grantee's License Improvements**") result in any new or additional taxes payable by Grantor, Grantee shall pay such taxes within ten (10) business days (or such later date as they may be due and payable but not delinquent) of receipt from Grantor of notice therefor, or shall pay to or reimburse (as appropriate), Grantor for same (provided that Grantor shall then timely pay the same as and when due). Grantee shall have the right, without any obligation, to contest or appeal any tax it is otherwise responsible to pay under this License Agreement, at Grantee's own expense, after providing Grantor with advance written notice. In the event Grantee fails to pay such taxes in accordance with this Section 14, Grantee's failure to make said payment shall be deemed an Event of Default hereunder, in which case, subject to the rights and obligations of Section 2 of this License Agreement, the Grantor may either pay same in which case the Grantee shall reimburse Grantor for the amounts advanced together with interest at the rate of twelve percent (12%) per annum until reimbursed, or, at Grantor's option, Grantor shall have the right to terminate this License Agreement, including the Option contained in Section 18 herein.

15. Cooperation; Consent. The parties hereto hereby agree to cooperate in good faith with each other to effect the purposes of this License Agreement. Unless expressly otherwise provided herein, whenever consent is required by the terms of this License Agreement, such consent shall not be unreasonably withheld, conditioned or delayed.

16. Counterparts. This License Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which taken together shall be deemed one agreement.

17. Applicable Law; Partial Invalidity. The rights and obligations of the parties

hereunder shall be construed in accordance with the laws of the State of New Jersey. If any term, section, subsection, provision or condition contained in this License Agreement shall, to any extent, be invalid or unenforceable, the remainder of this License Agreement (or the application of such term, section, subsection, provision or condition to persons or circumstances other than those in respect to which it is invalid or unenforceable) shall not be affected thereby, and each and every other term, section, subsection, provision and condition of this License Agreement shall be valid and enforceable to the fullest extent possible permitted by law.

18. Option For Additional License. Grantor hereby grants to Grantee an option to acquire an additional license to install an additional pipeline with an up to 16" circumference at such location agreed upon between the Grantor and Grantee within the Tunnel (the "**Additional Pipeline License**") in consideration for the additional payment by Grantee to Grantor in the amount of **\$607,366** ("**Option Price**") provided said option, subject to the rights and obligations of Section 2 of this License Agreement, is exercised by Grantee, if at all, within five (5) years following the Pipeline Completion Date (the "**Option Term**"). The Grantor shall provide the Additional Pipeline License as a new license upon substantially the same terms, conditions and restrictions set forth in this License Agreement and shall have an expiration date no later than the remaining Initial Term of this License Agreement, plus all Renewal Terms as set forth in Section 2 of this License Agreement. The option rights granted to Grantee in this License Agreement shall not be assigned to any third party not otherwise permitted hereunder, or otherwise reasonably approved by the Grantor. The Option Price shall be paid by Grantee to Grantor as follows: the non-refundable sum of **\$121,500** shall be paid to

Grantor at the time this License Agreement is fully executed by Grantor and Grantee, and an additional sum of **\$485,866** shall be paid to Grantor in the form of a certified, cashier's or bank check at the time Grantee exercises the option. Upon full payment of the Option Price to the Grantor, the Additional Pipeline License shall become effective subject to the execution of a new license agreement for the Additional Pipeline License and there will be no annual fee charged or due under or for the Additional Pipeline License, during the initial term of thereof, provided that upon any renewals or extension of the Additional Pipeline License, an annual fee or lump sum fee shall be agreed upon by the parties, which amount shall be no less than the Annual License Fee.

19. Lenders' Rights. Notwithstanding anything to the contrary in this License Agreement, Grantee may at any time, and from time to time, grant to any of Grantee's Lenders (including their designated agents or trustees) mortgages, security interests, and other collateral assignments (each, an "**License Mortgage**"), encumbering all or a portion of Grantee's right, title, and interest in this License Agreement, the licenses granted to Grantee hereby, and any of Grantee's improvements located on or within the Tunnel at any time, Grantee's equipment now or hereafter thereon or therein or on or within the CPV Plant. Grantor shall simultaneously send to the beneficiary of any License Mortgage of which Grantor has notice, a copy of any default notices that Grantor sends to Grantee pursuant to this License Agreement. In the event of any default or Event of Default by Grantee hereunder, Grantor shall accept any cure thereof by any of Grantee's Lenders as if such cure had been effected by Grantee. If this License Agreement is terminated for any reason (including without limitation, any applicable foreclosure, bankruptcy or insolvency proceeding), then, upon any of

Grantee's Lenders' request, Grantor shall grant and enter into a new license agreement to and with the most senior of Grantee's Lenders which request such new license agreement, which new license agreement shall be effective as of the date of such termination, and shall contain the same terms, provisions, covenants and agreements as are contained in this License Agreement. Notwithstanding anything to the contrary in this License Agreement, no consent shall be required from Grantor in connection with any of Grantee's Lenders' exercise of any of its rights against Grantee, including, without limitation, under any License Mortgage. The rights granted to any of Grantee's Lenders pursuant to this Section shall survive any termination of this License Agreement. "**Grantee's Lenders**" shall mean any financial institution or other entity that provides financing which is secured in whole or in part by the Pipeline, this License Agreement, the License, the Construction License, the CPV Plant, or any real property (or interest therein) upon which the CPV Plant is located, and which has been identified to Grantor in writing by name and address.

20. Estoppel Certificates. Grantor and Grantee shall, within thirty (30) days after written notice to the other, deliver a written statement certifying (a) that this License Agreement is unmodified and in full force and effect (or if there have been any modifications that this License Agreement is in full force and effect as modified, identifying the modifications) and (b) whether or not the other party is then in default under any provision of this License Agreement, and if such default is known, the nature of such default. Grantor shall not be required to deliver a written certification as contemplated herein more than once in any twelve (12) month period during the Term of this License Agreement

21. **Notices.** All notices to be delivered hereunder shall be in writing and shall be delivered personally or by prepaid nationally recognized courier service, or mail by certified United States Mail, postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the address set forth herein or at such address as a party may designate from time to time in accordance with the terms hereof. The same shall be deemed to have been received on the day it is delivered, postmarked or deposited with courier service, as the case may be, or if delivery is refused, as of the date of such refusal. Notices may be given by counsel on behalf of a party.

22. **Headings.** The headings in this License Agreement are for convenience and reference only and in no way affect or define the contents of this License Agreement.

23. **Modifications.** This License Agreement may not be modified, amended or discharged except by an instrument in writing signed by both parties hereto.

24. **Severability.** In the event that any provision of this License Agreement is held to be unenforceable or invalid by any court or regulatory agency of competent jurisdiction, the validity and enforceability of the remaining provisions hereof shall not be affected by such holding.

25. **Entire Agreement.** This License Agreement contains the entire understanding between the parties hereto and shall not be amended or modified unless in writing executed by both parties. This License Agreement shall not constitute any admission of liability for environmental contamination of the Property by Grantee or a waiver by Grantor of any right or remedy it has, or may have, at law.

26. **Choice of Law.** This License Agreement shall be governed by the laws of the

State of New Jersey.

27. Binding on successors. This License Agreement is binding upon and inures to the benefit of Grantor and Grantee, and their respective heirs, executors, administrators, personal representatives, and successors, shall be appurtenant to and for the benefit of the CPV Plant.

28. Construction. Grantor and Grantee acknowledge that this License Agreement has been negotiated at arm's length, and therefore, agree that any rule of construction of contracts resolving any ambiguities against the drafting party is waived and shall be inapplicable to this document. If any part of this License Agreement is for any reason found to be unenforceable, all of the remaining portions shall nevertheless remain enforceable.

29. Waiver or Breach of Term. The waiver of any breach of any term or condition of this License Agreement does not waive any other breach of that term or condition or of any other term or condition.

30. Effective Date. This License Agreement may be executed in parts and shall be effective on the date that the last party executes this License Agreement.

31. Authorization to execute. Each person executing this License Agreement represents that the execution of this License Agreement has been duly authorized by the party on whose behalf the person is executing this License Agreement and that such person is authorized to execute this License Agreement on behalf of such party.

32. Memorandum. Grantee may record a memorandum of this License Agreement in any applicable recorder's office. Grantor shall countersign and properly acknowledge any such memorandum submitted to it by Grantee for such purpose and return original

counterparts of the same to Grantee within five (5) business days after Grantor's receipt thereof.

(signatures appear on the following page)

IN WITNESS WHEREOF, the undersigned have executed this License Agreement as of
the day and year first above written.

Grantor:

**MIDDLESEX COUNTY UTILITIES
AUTHORITY,**
a body politic and corporate of the State of
New Jersey

By: _____
Name: _____
Title: _____

Grantee:

CPV SHORE, LLC,
a Delaware Limited Liability Company

By: _____
Name: _____
Title: _____

STATE OF NEW JERSEY)
) S.S.
COUNTY OF MIDDLESEX)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of **MIDDLESEX COUNTY UTILITIES AUTHORITY**, a municipal authority of the State of New Jersey, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said entity.

WITNESS under my hand and notarial seal this _____ day of _____, 2013.

Notary Public
My Commission Expires:

STATE OF _____)
) S.S.
COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of **CPV SHORE, LLC**, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

WITNESS under my hand and notarial seal this _____ day of _____, 2013.

Notary Public
My Commission Expires:

9769387v3