RESOLUTION NO. WW-12-12-7-R

AUTHORIZATION OF OPERATING AND DESIGN AND CONSTRUCTION AGREEMENT FOR THE USE OF RECLAIMED WATER BETWEEN CPV SHORE, LLC. AND MIDDLESEX COUNTY UTILITIES AUTHORITY

WHEREAS, MCUA is organized pursuant to N.J.S.A. 40:14B-1 et seq. to provide sewage services and owns and operates a plant at 2571 Main Street Extension, Sayreville, New Jersey (the "MCUA Property") for the collection, treatment and disposal of sewerage from portions of Middlesex, Union and Somerset Counties; and

WHEREAS, 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 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 (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, CPV Shore, LLC has made application to the MCUA to use reclaimed water from the MCUA for the CPV Shore electric plant; and

WHEREAS, the Service Fee Schedule adopted by the MCUA contemplates a Design/Construction Agreement and an Operating Agreement between MCUA and industrial users; and

WHEREAS, the Executive Director and General/Construction Counsel for the MCUA have negotiated a Design and Construction Agreement and an Operating Agreement with CPV Shore, LLC and recommend to the Commissioners that they approve said agreements.

NOW THEREFORE BE IT RESOLVED by the Commissioners as follows:

1. For all future reference the title of this Resolution shall be "Authorization of Operating and Design and Construction Agreement for the Use of Reclaimed Water Between CPV Shore, LLC. and Middlesex County Utilities Authority" and all subsequent documents shall reference this title.

2. The Commissioners approve the Design and Construction Agreement between the Middlesex County Utilities Authority and CPV Shore, LLC in substantially the form annexed hereto.

3. The Commissioners approve the Operating Agreement between the Middlesex County Utilities Authority and CPV Shore, LLC for the use of reclaimed water in substantially the form annexed hereto.

4. The Chairman is authorized to execute the agreements on behalf of the Middlesex County Utilities Authority in final form approved by the Executive Director and General and Construction Counsel.

5. This Resolution shall take effect upon expiration of the Freeholder veto period in accordance with law.

OPERATING AGREEMENT
FOR THE USE OF RECLAIMED WATER

by and between

MIDDLESEX COUNTY UTILITIES AUTHORITY
("MCUA")

and

CPV SHORE, LLC
("CPV")

__________________, 2012

#6374097.7

OPERATING AGREEMENT
FOR THE USE OF RECLAIMED WATER

This **OPERATING AGREEMENT FOR THE USE OF RECLAIMED WATER** made as of this _______________ day of ____________, 2012 (the "Agreement") by and between

Middlesex County Utilities Authority, a body corporate and politic of the State of New Jersey, having an office at 2571 Main Street Extension, Sayreville, NJ 08872 ("MCUA") and

CPV Shore, LLC, a limited liability corporation having an office at 50 Braintree Hill Office Park, Suite 300, Braintree, MA 02184 ("CPV").

MCUA and CPV are hereinafter sometimes collectively referred to as the "Parties" and individually referred to as a "Party".

W I T N E S S E T H :

WHEREAS, MCUA is organized pursuant to N.J.S.A. 40:14B-1 et seq. to provide sewage services and owns and operates a plant at 2571 Main Street Extension, Sayreville, New Jersey ("MCUA plant") for the collection, treatment and disposal of sewerage from portions of Middlesex, Union and Somerset Counties; and

WHEREAS, 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 pursuant to NJPDES Reuse Permit 0142581; and

WHEREAS, MCUA has an ongoing supply of Reclaimed Water that is not utilized by MCUA and is discharged by MCUA into Raritan Bay and Raritan River pursuant to the New Jersey Department of Environmental ("NJDEP") NJPDES / DSW Permit No. NJ0020141; and

WHEREAS, CPV is in the process of planning and constructing a nominally rated 700$\pm$ 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 (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, CPV applied to MCUA to use Reclaimed Water at the CPV Electric Plant, and MCUA has approved CPV's application and desires and is willing to provide Reclaimed Water for use at the CPV Electric Plant on the terms and conditions hereinafter set forth; and

WHEREAS, MCUA, after public notice and a public hearing, adopted a Service Fee Schedule for the sale of Reclaimed Water for beneficial reuse at the CPV Electric Plant subject to all applicable approvals and/or authorizations, a copy of which Service Fee Schedule is attached hereto and incorporated herein as **Exhibit "A"**; (the "Service Fee Schedule"), and

WHEREAS, the Parties have also entered into the Design and Construction Agreement (as defined hereinafter); and

WHEREAS, the Parties wish to enter into this Agreement pursuant to which MCUA shall Deliver Reclaimed Water by means of the Project to CPV and CPV will use the same at the CPV Electric Plant;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01 Recitals. The Recitals set forth above are incorporated into this Agreement as if set forth herein, in full.

SECTION 1.02 Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

"AAA" shall have the meaning set forth in **Section 9.02** hereof.

"Agreement" shall have the meaning set forth in the **Recitals**.

"Accept, "Accept Delivery", "Acceptance" or Acceptance of Delivery" shall mean CPV's taking of Reclaimed Water from the Delivery Point and CPV using that Reclaimed Water as Cooling Tower Make Up Water within the CPV Electric Plant.

"Additional Commercial Quantity" shall have the meaning set forth in Section 2.03(a) of the Design and Construction Agreement.

"Back-up Water" shall have the meaning set forth in **Section 3.03** hereof.

"Business Day" means Monday through Friday, excluding weekends and federal holidays.

"Commercial Quantity" shall mean not less than Three Hundred Thousand U.S. gallons per hour (300,000 gph) of Reclaimed Water.

"Cooling Tower Make-up Water" shall mean water used by CPV for the operation of the CPV Electrical Plant mechanical draft cooling tower.

"CPV Electric Plant" shall have the meaning set forth in the **Recitals**.

"CPV Indemnitees" shall have the meaning set forth in **Section 5.01(a)** hereof.

"CPV Pipeline" shall mean a pipeline and other equipment from the Delivery Point to the CPV Electric Plant (including any treatment facility connected to the CPV Electric Plant), constructed by CPV at its sole cost and expense.

"Delivery Point" shall mean the agreed point of connection from the Project to the CPV Pipeline, as indicated on **Exhibit "B"** attached hereto.

"Deliver," "Delivery" or "Delivered" shall mean making the Commercial Quantity of Reclaimed Water available at the Delivery Point for discharge into the CPV Pipeline.

"Delivery Commencement Date" shall mean the date on which all of the following have occurred: (1) the Project has been Substantially Completed as that term is defined in the Design and Construction Agreement; (2) CPV has fulfilled its obligations to MCUA under the Design and Construction Agreement through and including the date of Substantial Completion; and (3) the CPV Pipeline is sufficiently complete and interconnected to the Project such that it is physically and lawfully able to accept Reclaimed Water.

"Design and Construction Agreement" shall mean the Design and Construction Agreement executed by the Parties, for the design, development, construction and installation of structures, infrastructure and equipment allowing MCUA to Deliver (as defined hereinafter) Reclaimed Water to CPV for use in the CPV Electric Plant, which Design and Construction Agreement is separate and apart from this Agreement.

"Development Approvals" shall mean all approvals required to be received from any Governmental Authority for the construction and operation of the Project.

"Effective Date" means the date upon which this Agreement is executed and delivered by both of the Parties hereto.

"Effective Rate" means the charge for Reclaimed Water set forth in the Service Fee Schedule.

"Effluent Rate" means the charge for Reclaimed Water set forth in the Service Fee Schedule and in this Agreement.

"Environmental Laws" means and includes any federal, state or local law, statute, regulation, charter, fire rule, code or ordinance, concerning environmental, health or safety matters all as presently in effect and as the same may hereafter be amended, including, without limitation, the Industrial Site Recovery Act, as amended, N.J.S.A.

13:1K-6 et seq., the Spill Compensation and Control Act, as amended, N.J.S.A. 58:10-23.11 et seq., the New Jersey Underground Storage of Hazardous Substances Act, as amended, N.J.S.A. 58:10A-21 et seq., the Toxic Catastrophe Prevention Act, N.J.S.A. 13:K-19, et seq., the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1, et seq., the Pollution Prevention Act, N.J.S.A. 13:1D-35, et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1, et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq., the Sanitary Landfill Closure and Contingency Fund Act, N.J.S.A. 13:1E-100, et seq., the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1, et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1, et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1, et seq., the Flood Hazard Control Act, N.J.S.A. 58:16A-50, et seq., the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1, et seq., the Coastal Area Facility Review Act, N.J.S.A. 13:19-1, et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1, et seq., the Waterfront and Harbor Facilities Act, N.J.S.A. 12:5-1, et seq., the Noise Control Act, N.J.S.A. 13:1G-1, et seq., and the Pesticide Control Act, N.J.S.A. 13:1F-1, et seq., and any rule, regulation, binding interpretation, binding policy, permit, order, directive, court order or consent decree issued pursuant to any of the following activities: (A) the emission, discharge, release or spilling of any substance into the air, surface water, groundwater, soil or substrata, (B) the manufacturing, processing, sale, generation, treatment, storage, disposal, transportation, labeling or other management of any waste, Hazardous Substance, Hazardous Waste, Pollutant or Contaminant (as hereinafter defined), or (C) any activity which involves any Hazardous Substance (as hereinafter defined).

"Expiration Date" shall have the meaning set forth in **Section 2.02 (a)** hereof.

"Extension Amendment" shall have the meaning set forth in **Section 2.02 (b)** hereof.

"Extension Date" shall have the meaning set forth in **Section 2.02 (b)** hereof.

"Extension Notice Date" shall have the meaning set forth in **Section 2.02 (b)** hereof.

"Force Majeure" shall have the meaning set forth in **Section 6.01** hereof.

"Governmental Authority" means any federal, state, county or local agency, department, commission, authority, court or tribunal and any successor thereto, of competent jurisdiction, exercising executive, legislative, judicial or administrative functions of or pertaining to government.

"Hazardous Substances" means and includes any material or substance that, whether by its nature or use is subject to regulation under any Environmental Laws (including, without limitation, lead paint, asbestos, urea formaldehyde foam insulation and polychlorinated biphenyls).

"Major Repair" shall mean any individual repair and/or equipment replacement within the Project whose cost of labor, materials, and equipment is in excess of the Major Repair Amount, after application of the value of any goods and services pertaining to the repair or replacement to which MCUA is entitled under any applicable contractual or manufacturer warranty or repair obligation.

"Major Repair Amount" shall mean a cost of $17,500 or more for Major Repairs.

"MCUA Indemnitees" shall have the meaning set forth in **Section 5.01(b)** hereof.

"NJDEP" shall mean the New Jersey Department of Environmental Protection.

"NJPDES Permits" shall mean NJPDES Reuse Permit No. NJ0142581 and the / NJPDES / DWS Permit No. NJ 0020141 issued to the MCUA, as the same are in place as of the Effective Date, and as they may be amended, modified or superseded during the Term.

"Notice of Amount Due" shall have the meaning set forth in Section 4.02(a) hereof.

"Notice" shall have the meaning set forth in **Section 9.02** hereof.

"Operation Manager" shall have the meaning set forth in **Section 3.04** hereof.

"Party" or "Parties" shall mean the parties to this Agreement.

"Processed Water" shall mean such water, including the Reclaimed Water, that has been utilized by CPV for Cooling Tower Make-up Water, and other MCUA approved purposes, at the CPV Electric Plant.

"Project" shall mean the facilities to be constructed on MCUA property pursuant to the Design and Construction Agreement to convey Reclaimed Water to the Delivery Point on MCUA property as indicated on **Exhibit "B"** attached hereto.

"Reclaimed Water" or "Effluent" shall mean treated wastewater to be Delivered by MCUA and meeting all discharge requirements under NJDEP Reuse Permit NJ0142581.

"Service Fee Schedule" shall have the meaning set forth in the **Recitals**.

"Substantial Completion" shall have the meaning set forth in **Section 5.01** of the Design and Construction Agreement.

"Term" shall have the meaning set forth in **Section 2.02** hereof.

"Transition Period" shall have the meaning set forth in **Section 2.02 (c)** hereof.

"Water Meter" shall have the meaning set forth in **Section 4.01** hereof.

ARTICLE II

AGREEMENT OF THE PARTIES

SECTION 2.01 **Agreement.** MCUA agrees to Deliver the Commercial Quantity of Reclaimed Water to the Delivery Point, and CPV agrees to accept and pay for the same, as set forth in this Agreement. If requested by CPV by written notice to MCUA, MCUA shall thereafter provide the Additional Commercial Quantity of Reclaimed Water. In no event shall CPV re-sell the Reclaimed Water. Both Parties shall, at all times, exercise due care, diligence and effort in the performance of their respective responsibilities under this Agreement.

SECTION 2.02 **Term.**

(a) This Agreement shall be effective upon execution by both Parties and shall expire thirty (30) years from the Delivery Commencement Date (the "Term," the end of which shall be the "Expiration Date") unless extended in accordance with this **Section 2.02** and applicable law.

(b) If permitted by applicable law, at least six (6) months before the Expiration Date, (the "Extension Notice Date"), CPV shall have the option to provide MCUA with written notice of its election to extend the Term beyond the Expiration Date (an "Extension Notice"). The Parties agree to use commercially reasonable efforts to negotiate an extension of this Agreement in good faith and upon mutually agreeable terms to be documented in an amendment to this Agreement (an "Extension Amendment"). If CPV fails to provide an Extension Notice to MCUA on or before the Extension Notice Date or the Parties are unable to negotiate and execute an Extension Amendment on or before the Expiration Notice Date, the Term will expire effective as of the Expiration Date.

(c) In the event of expiration of the Term, either at the Expiration Date or any extension thereof, if permitted by applicable law, MCUA shall continue to provide Reclaimed Water to CPV in accordance with this Agreement for such period ("Transition Period"), not to exceed 180 days after the date the Term actually ends, so as to allow CPV to transition its operation to an alternate source of water and for CPV to make such alterations to its facilities as may be necessary to terminate receipt of Reclaimed Water from the Project and for CPV to disconnect the CPV Pipeline from the Delivery Point. CPV may terminate this Agreement at any time during the Transition Period, upon notice to MCUA that it will no longer accept Reclaimed Water as of a date and time not less than 60 days from the date of the notice, and MCUA shall not deliver Reclaimed Water to CPV after the stated date and time. CPV shall be responsible for payment of all charges in accordance with Section 4.02 hereof, for Reclaimed Water accepted during the Transition Period.

SECTION 2.03 **Exclusivity**. CPV expressly agrees that it will exclusively utilize during the Term hereof only MCUA Reclaimed Water for the Cooling Tower Make-up Water supply at the CPV Electric Plant. In the event CPV does not use MCUA Reclaimed Water for Cooling Tower Make-up Water, it agrees to pay MCUA for the amounts of Cooling Tower Make-up Water used from any other source in accordance with the Service Fee Schedule, without reduction, except as provided for in Section 3.03.

Nothing contained herein will prohibit CPV's use of potable water for any other purpose or to use Back-up Water (as hereinafter defined) from other sources if MCUA is unable to provide adequate Reclaimed Water in the amounts required for the Cooling Tower Make-up Water supply at the CPV Electric Plant. CPV shall also be permitted to obtain and use Back-up Water to blend with the Reclaimed Water in the event that the Reclaimed Water Delivered by MCUA is not of the required quality to be used as Cooling Tower Make-up Water.

SECTION 2.04 **Discharge of Processed Water.** CPV shall, at its sole discretion, either (i) return any Processed Water following its use in the CPV Electric Plant to MCUA through the sewer system of the Township of Woodbridge; (ii) return any Processed Water following its use in the CPV Electric Plant directly to MCUA (upon the consent and approval of the MCUA and the Township of Woodbridge); or (iii) discharge any Processed Water from the CPV Electric Plant as permitted by applicable State of New Jersey Statute(s) and applicable NJDEP regulation subject to MCUA's endorsement. If Processed Water is discharged into the Woodbridge sewer system by CPV, CPV shall be deemed a customer of the Township of Woodbridge sewer system for all purposes, including without limitation, the discharge of Processed Water and the payment of sewer service charges to the Township of Woodbridge in connection therewith. If Processed Water is returned directly to MCUA by CPV, CPV will become a direct participant of MCUA. In the event CPV elects to become a direct participant of MCUA, it shall execute a Participant's Agreement with MCUA and pay the applicable connection fee. CPV's discharge of Processed Water, in the manner of its sole choice, shall comply with all valid State of New Jersey statutes, NJDEP regulations, MCUA rules and regulations or Township of Woodbridge ordinances in existence on the Effective Date and, thereafter which are applicable to CPV's discharge of Processed Water.

ARTICLE III

OPERATION OF FACILITIES

SECTION 3.01 **Operation of Project.**

(a) MCUA shall design, construct and install the Project in accordance with the Design and Construction Agreement. MCUA shall obtain and maintain during the Term and any applicable extension thereof such licenses and permits and approvals as are necessary to operate the Project and make Delivery. From and after the Delivery Commencement Date, MCUA shall, subject to Section 6.01 (Force Majeure) and Section 3.02 (Maintenance and Repair), operate the Project such that Delivery is capable of being continuously achieved throughout the Term and any applicable extension thereof, and maintain the Project at a level of maintenance equal to or better than that applied at MCUA's other wastewater treatment and conveyance facilities, but in no case at less than at a level of maintenance equal to industry standard practices that publicly owned and operated sewerage treatment works would require.

(b) CPV shall, at its sole cost and expense, design, construct and install the CPV Pipeline in a manner such that CPV shall be capable of accepting Delivery throughout the Term and any applicable extension thereof, and shall maintain the CPV Pipeline at a level of maintenance equal to or better than industry standard practices require.

SECTION 3.02 **Maintenance and Repair.** MCUA shall be responsible for ordinary maintenance of the Project, Major Repairs of the Project, including the repair or replacement of portions of the Project that deteriorate as a result of ordinary wear and tear.

(a) CPV shall reimburse MCUA for the cost of Major Repairs, as evidenced by purchase orders and/or contractor payment requisitions and/or MCUA labor costs for the labor, materials, and equipment furnished by outside contractors and suppliers in the implementation of the Major Repair. No Major Repair shall be bid by MCUA without prior consultation between MCUA and CPV as to the most expeditious means of repair, MCUA's review of the specifications and design for the Major Repair, and CPV's express written consent to the procurement, none of which shall be unreasonably withheld, delayed, or conditioned by CPV. CPV shall not be obligated to reimburse MCUA for any repair or equipment replacement as to which MCUA has not reasonably exhausted remedies available to it under all contractual and manufacturer warranties or obligations of repair, or which is necessitated by the gross negligence or willful misconduct of MCUA or its agents, contractors or representatives. Alterations or modifications to the Project requested by CPV to accommodate its operations and approved by MCUA will be deemed Major Repairs.

(b) In the case of the loss or failure of Project equipment which necessitates immediate repair work to maintain Delivery or prevent additional harm to Project equipment ("Emergency Repair"), MCUA shall immediately notify CPV of the need to make Emergency Repair, act to protect Project Equipment, and initiate any necessary Emergency Repair without obtaining CPV's approval to make the Emergency Repair. The Parties will confer as to the means, specifications and design of the repair work in accordance with Section 3.02(a) as soon as practicable after the need for the Emergency Repair is discovered.

(c) All maintenance or repair work will be procured according to law and MCUA policy and shall be planned and carried out such that any shutdown or curtailment of Delivery is avoided, and where unavoidable, minimized. CPV shall reimburse MCUA for all costs incurred by MCUA for maintenance and repairs of the Project.

SECTION 3.03 **Cooling Tower Make-up Water & Back-up Water.** In the event of a failure of or in the Project, resulting in a failure to Deliver, either in quantity or temporary quality necessitating the blending of water by CPV as contemplated by Section 2.03, CPV may procure water from any source, including a potable water source, to replace the loss of Reclaimed Water caused by the Delivery failure ("Back-up Water"). If the Delivery failure is caused by MCUA's willfulness or gross negligence, MCUA's liability to CPV shall be to pay to CPV an amount equal to the per/gallon difference between the then current Effluent Rate and CPV's cost for Back-up Water, multiplied by the total gallons of Back-up Water purchased by CPV during the period of Delivery failure. Payment by MCUA for Back-up Water shall be made as an offset against future Reclaimed Water charges owed by CPV, or in the case the Term has ended or terminated, as a direct payment to CPV; provided, however, that MCUA shall have no obligation to pay for Back-up Water: (i) to the extent the Back-up Water supply was serving the CPV Electric Plant prior to the Delivery failure (the Back-up Water being the incremental volume needed to correct deficiency), and (ii) during a period where Delivery is excused due to an event of Force Majeure. In the event of a failure of or in the Project, not caused by MCUA's willfulness or negligence, including Force Majeure, CPV shall not be obligated to pay MCUA for amounts of Cooling Tower Make-up Water used by the CPV Electric Plant from any other source, and MCUA's liability shall be limited to damages MCUA recovers from responsible third parties, provided MCUA pursues its remedies against third parties to the fullest extent permitted by law at CPV's direction and expense.

SECTION 3.04 **Operations Managers.** MCUA and CPV shall provide each other with the name and contact information for their respective employees or agents who will be engaged in the daily operations of the Plant and CPV Pipeline (each, together with their respective replacements, an "Operations Manager") for the purpose of coordinating maintenance work, repairs and outages. The Operations Managers will have authority to operate their respective portions of the Plant or Pipeline, including taking action to respond to shutdown/startup requests, and shall have direct communication to one or more of their respective managers/officers who has capacity to make determinations for and bind a Party; the Operations Managers shall not by themselves have the authority to bind their principal or amend or revise any terms of this Agreement.

ARTICLE IV

USAGE AND PAYMENT

SECTION 4.01 **Metering.** MCUA shall provide a Reclaimed Water flow meter (the "Water Meter") at the Delivery Point which will be used to measure the amount of Reclaimed Water flowing into the CPV Pipeline at the Delivery Point. The design, calibration, and placement of the Water Meter shall be subject to the approval of both Parties, which approval shall not be unreasonably withheld, delayed or conditioned. The Water Meter shall be used for the sole purpose of measuring the amount of Reclaimed Water flowing into the CPV Pipeline at the Delivery Point. The Water Meter shall provide electronic flow data on a continuous basis, which data shall be made available to both MCUA and CPV in real time. The amount invoiced by MCUA to CPV pursuant to the Effluent Rate for Reclaimed Water shall be the amount shown on the Water Meter. CPV may, at any time and at its expense, require testing and calibration of the Water Meter. Testing and calibration of the Water Meter shall be done by an independent party, mutually agreed upon by the Parties. If the Water Meter is determined to have been inaccurate, MCUA shall repair or replace the Water Meter and shall adjust any charge therefore appropriately. MCUA shall be responsible to maintain and repair the Water Meter located at the Delivery Point.

SECTION 4.02 **Payment and Invoicing.**

(a) CPV shall pay MCUA the Effluent Rate, as set out in the Service Fee Schedule and herein, for the amount of Reclaimed Water Delivered at the Delivery

Point, as metered in accordance with Section 4.01 hereof. The Effluent Rate paid shall be for the services provided by MCUA in providing the Reclaimed Water. The parties acknowledge that as of the Effective Date and through December 31, 2016, the Effluent Rate is $0.50 (Fifty Cents) per one thousand U.S. gallons as measured by the Water Meter at the Delivery Point. In addition to the Effluent Rate, MCUA shall charge to CPV: (1) MCUA's actual cost of electricity to operate the Project; (2) MCUA's actual cost of insurance for the Project; (3) MCUA's actual cost of any chemicals used in the Project; (4) MCUA's actual allocated cost of labor and materials to operate and maintain the Project; and (5) the cost of any Major and Emergency Repairs incurred during the billing period ("Other Costs"). The Effluent Rate and the other allowable reimbursable costs set forth above shall be deemed the "Effective Rate". To the extent there are multiple users, where applicable, the MCUA will pro rata allocate the Other Costs among all users. Within ten (10) days after the end of each calendar month during the Term, MCUA will invoice CPV for the amount of Reclaimed Water Delivered by MCUA during such calendar month and the other MCUA expenses as set forth herein and in the Service Fee Schedule ("Notice of Amount Due"). CPV agrees to pay all undisputed invoiced charges within forty-five (45) days of receipt of invoice therefor. If CPV disputes any invoiced charges, it shall notify MCUA of the disputed amount and basis for the dispute. If any invoice remains unpaid for more than forty-five (45) days, MCUA may provide a Notice of Amounts Due to CPV, and CPV will owe to MCUA a one and one-half per cent (1 1/2%) monthly charge on any balance due. If CPV does not pay MCUA all undisputed charges and notify MCUA of the basis for any disputed amount within thirty (30) days of such Notice of Amounts Due, CPV shall be in default, and MCUA may proceed pursuant to Section 9.01 hereof. Either party may seek resolution of disputed charges at any time in accordance with the dispute resolution mechanism in Section 9.02 hereof.

(b) The parties agree that the Effluent Rate shall remain at $0.50 per 1,000 gallons through December 31, 2016, and that MCUA shall thereafter adjust the Effluent Rate as provided herein and in the Service Fee Schedule.

(c) The parties acknowledge that the Service Fee Schedule adopted as of the date of this Agreement provides for an annual adjustment of the Effluent Rate by reference to the Consumer Price Index for All Urban Consumers (CPI-U) as published by the United States Department of Labor Statistics, and that CPV has entered into this Agreement in reliance on the present Service Fee Schedule.

(d) At all times for the entire Term of the Agreement, the payment obligations of CPV under the terms of this Agreement shall be unconditionally and irrevocably guaranteed by CPV, by either the posting of a standby letter of credit issued by a credible lending institution or the providing of a performance guarantee in the form attached hereto as **Exhibit "C"**, reasonably satisfactory to the MCUA.

ARTICLE V

INDEMNIFICATION AND LIABILITY; INSURANCE

SECTION 5.01 Indemnification.

(a) MCUA agrees to indemnify, hold harmless and defend CPV and its members, officers, agents and employees, (singly, a "CPV Indemnitee" and collectively, the "CPV Indemnitees") against and from any and all claims, suits, liability, loss, cost, injuries, damages or expenses (including reasonable attorneys' fees) of whatsoever nature arising out of or in connection with: (i) personal injury or death of persons whomsoever or loss or destruction or damage to property whatsoever, to the extent that such personal injury, death, loss, destruction or damage is caused by the negligence, reckless or willful misconduct of a MCUA Indemnitee, and/or its agents, consultants and contractors; (ii) any spill, release or discharge of a hazardous substance (including petroleum) at or from the MCUA property (except to the extent caused by the negligence or willful misconduct of a CPV Indemnitee, and/or its agents, consultants and contractors); and (iii) any violation of law by a CPV Indemnitee (as defined below), and/or its agents, consultants and contractors during the performance of this Agreement; provided, however, that nothing contained in this Agreement shall constitute a waiver of any statutory immunities to which MCUA is entitled, including those provided by the New Jersey Tort Claims Act.

(b) CPV shall indemnify, defend and save MCUA and its members, Commissioners, participants, officers, agents and employees, and the State of New Jersey (singly, a "MCUA Indemnitee" and collectively, the "MCUA Indemnitees") harmless from and against and all liability, loss, cost, injuries, damages or expenses (including reasonable attorneys' fees) of whatsoever nature arising out of or in connection with: (i) personal injury or death of persons whomsoever or loss or destruction or damage to property whatsoever to the extent that such personal injury, death, loss, destruction or damage is caused by the negligence or willful misconduct of a CPV Indemnitee and/or its agents, consultants and contractors; (ii) any spill, release or discharge of a hazardous substance (including petroleum) at the MCUA property caused by the negligence or willful misconduct of a CPV Indemnitee, and/or its agents, consultants and contractors; and (iii) any violation of law by a CPV Indemnitee, and/or its agents, consultants and contractors during the performance of this Agreement.

(c) This **Section 5.01** shall survive termination or expiration of this Agreement.

SECTION 5.02 Insurance.

(a) At all times during the Term of this Agreement, the Parties shall maintain or cause to be maintained for itself and/or by contract with all contractors, agents, subcontractors or third parties providing services to or on their behalf in connection with this Agreement, the following minimum insurance:

i) Public Liability or General Liability Insurance written on an occurrence basis, insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the performance of operations hereunder, and having a combined single limit of coverage for bodily injury and property damage in the amount of not less than $5,000,000 per occurrence and $5,000,000 in the annual aggregate if through a self insurance retention program. Each such policy shall further provide for blanket contractual liability, broad-form property damage and personal liability coverage.

ii) A Business Automobile Policy (any auto), with a minimum limit of $5,000,000 each accident, and providing coverage for owned, leased or non-owned vehicles.

iii) Worker's Compensation insurance with statutory limits and Employer's Liability coverage with limits of $500,000 each accident/aggregate.

iv) Excess liability insurance in the amount of $5,000,000.

v) All non-employee engineers shall maintain professional liability insurance for the respective services for negligent acts, errors and omissions with a minimum limit of liability of $2,000,000 per claim.

(b) The limits for the Public Liability, Business Automobile and Worker's Compensation/Employer's Liability coverages required by subparagraphs (i), (ii) and (iii) in paragraph (a) above, respectively, may be provided as a single limit or as a single limit and an umbrella provided that the umbrella policy meets all the terms and conditions contained herein, and is provided on a follow-form basis.

(c) In addition to the coverages stated above, MCUA will maintain in full force and effect, throughout the Term, a policy of special form property and casualty insurance, insuring its respective properties, including without limitation the Project, against loss or damage due to fire or other casualty with limits at least equal to the full replacement value of its property utilized in the performance of this Agreement.

(d) All such insurance shall be provided by an insurance company or companies qualified to do business in the State of New Jersey financially capable of fulfilling the requirements of such policies, and rated "A" to the extent reasonably obtainable but in no event less than "A-" by A.M. Best or in one of the two highest rating categories by Moody's and S&P. Each policy shall be of such form and contain such provisions as are generally considered standard for the type of insurance involved.

(e) The insurance coverage provided for herein shall be provided on a follow-form basis and without liability on the part of either Party for premiums owed by the other. Further, each Party agrees that at any point when the other Party, its agents, its employees, contractors or consultants shall enter its property to perform work or services in connection with this Agreement, then the insurance coverage provided for in paragraph (a)(i) above shall include the name of the other Party, its directors, officers, employees, agents and representatives, as additional named insureds. All policies shall further include a "Severability of Interests Endorsement (Cross Liability)".

(f) Each Party agrees that a terrorism coverage endorsement will be provided where available if at no additional cost to the MCUA.

(g) The policies of insurance required to be maintained under this Section 5.02 shall (i) provide for the benefit of each of the Parties that thirty (30) days notice of cancellation, termination, modification, or lapse in coverage shall be given to the other party (except for cancellation for non-payment of premium in which case ten (10) days prior notice shall be provided to the other party) and (iii) not contain a provision relieving insurer thereunder of liability for any loss by reason of the existence of other insurance.

(h) Promptly following the request of each Party, the other Party shall deliver or cause to be delivered to such Party original or duplicate certificates of insurers evidencing the insurance required to be maintained by that Party and all required additional-insured endorsements, and, within thirty (30) days prior to the expiration of any such insurance, other certificates evidencing the renewal of such insurance.

SECTION 5.03 **Evidence of Insurance.** Each Party shall, upon request, provide to the other Party evidence that it maintains the insurance policies required hereunder.

ARTICLE VI

FORCE MAJEURE

SECTION 6.01 **Force Majeure.** No liability shall result to either Party from delay in performance or from nonperformance caused by act of God, war, governmental action or inaction, labor strikes at MCUA, but not if due to or to any extent attributable to the action or inaction of a Party, and provided such circumstances are beyond the reasonable control of the Party affected and the Party affected makes reasonable commercial efforts to overcome or perform in spite of the event (each a "Force Majeure"); and further provided that inability to make payments shall not be considered an event of Force Majeure.

SECTION 6.02 **Notice of Force Majeure Event.** The affected Party shall promptly notify the other Party, in writing, of the Force Majeure, its extent and probable duration thereof, and shall be diligent in attempting to remove the cause(s) thereof. The Parties claiming Force Majeure bears the burden of establishing that the event was beyond its control and of demonstrating the amount of delay that is necessary because of the Force Majeure event. As a condition precedent to obtaining any relief under this provision, the Party claiming Force Majeure shall notify the other Party in writing that a Force Majeure event has occurred no later than five (5) days after the date the Party claiming Force Majeure knew or should have known of the occurrence of any Force Majeure event.

SECTION 6.03 **Suspension of Obligations.** If a Force Majeure event occurs, either party shall be entitled to suspension or adjustment of its obligations, as the case may be, to the extent that such obligation is affected by and beyond the control of the Party claiming the Force Majeure event.

ARTICLE VII

[NOT USED]

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

SECTION 8.01 **Representations and Warranties of MCUA.** MCUA makes the following representations and warranties to CPV, knowing and intending that CPV shall rely upon them:

(a) MCUA is a public body corporate and politic and a political subdivision of the State of New Jersey, organized pursuant to N.J.S.A. 40:14B-1 et seq.

(b) MCUA has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which MCUA is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(c) This Agreement and the instruments and documents referenced herein and necessitated hereby, are not prohibited by and do not conflict with any laws, other agreements, instruments, judgments or decrees to which MCUA is a party or is otherwise subject.

(d) This Agreement and the instruments and documents referenced herein and necessitated hereby, to the extent applicable, are duly executed by MCUA and are valid and legally binding upon MCUA and enforceable in accordance with their terms on the basis of applicable laws presently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the MCUA is a party, or by which MCUA is bound.

(e) The Person executing this Agreement on behalf of MCUA has been duly authorized and empowered to execute this Agreement and this Agreement has been duly executed and delivered by MCUA and constitutes the valid and binding obligation of MCUA except to the extent that the enforcement thereof may be limited by bankruptcy, insolvency, other laws or legal or equitable principles affecting the enforcement of creditors' rights generally.

(f) MCUA's representations and warranties contained herein shall continue to be true and correct for the Term of this Agreement and any applicable extension.

(g) This Agreement is consistent with the rules and regulations of MCUA.

SECTION 8.02 **Representations and Warranties of CPV.** CPV makes the following representations and warranties to MCUA, knowing and intending that MCUA shall rely upon them:

(a) CPV is a limited liability company, is qualified to do business and is in good standing under the laws of the State, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations hereunder.

(b) CPV has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Authority is a party, to consummate the transaction contemplated hereby, and to perform its obligations hereunder.

(c) The execution, delivery and performance by CPV of this Agreement have been duly authorized by all necessary action and shall not violate the certificate of formation, operating agreement or any other formation or operating document of CPV or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which CPV is a party or by which CPV may be bound or affected.

(d) This Agreement is duly executed by CPV and is valid and legally binding upon CPV and enforceable in accordance with its terms on the basis of applicable Laws presently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which CPV is a party.

(e) This Agreement is not prohibited by and does not conflict with any other agreements, instrument, judgments or decrees to which CPV is a party or is otherwise subject.

(f) No receiver, liquidator, custodian or trustee of CPV has been appointed and no petition to reorganize CPV pursuant to the United States Bankruptcy Code or any similar statute that is applicable to CPV has been filed.

(g) No petition under the United States Bankruptcy Code or any State insolvency Law has been filed by or against, nor has a receiver, fiscal agent or similar officer been appointed by a court for the business or property of CPV, or any partnership in which CPV was or is a general partner or any entity in which CPV was or is an officer or principal manager and the holder, directly or indirectly of an ownership interest (and, in the case of any involuntary proceeding, such proceeding has not been terminated within sixty (60) days of its commencement) within the ten (10) full calendar years preceding the Effective Date.

(h) There is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which: (1) questions the authority of CPV to enter into this Agreement or any action or act taken or to be taken by CPV pursuant to this Agreement; or (2) is likely to result in a material adverse change in CPV's property, assets, liabilities or condition which shall materially and substantially impair its ability to perform its obligations pursuant to the terms of this Agreement.

(i) CPV has received no notice asserting any noncompliance in any material respect by CPV with applicable statutes, rules and regulations of the United States, the State or any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement, which would have a material adverse effect on CPV's ability to perform its obligations in connection with the Agreement. CPV is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Authority which is in any respect material to the transactions contemplated hereby.

(j) CPV's representations and warranties contained herein shall continue to be true and correct for the Term of this Agreement and any applicable extension.

(k) The persons executing this Agreement on behalf of CPV have been duly authorized and empowered and this Agreement has been duly executed and delivered by CPV and constitutes the valid and binding obligation of CPV except to the extent that the enforcement thereof may be limited by bankruptcy, insolvency or other laws or legal or equitable principles affecting the enforcement of creditors' rights generally.

(l) CPV has not been convicted in a criminal proceeding, and CPV is not the subject of a pending criminal proceeding (excluding traffic violations or other similar minor offenses).

(m) CPV has not been found in any civil or criminal action in or by a court or agency of competent jurisdiction to have violated any federal or state law or regulation relating to the sale of securities or commodities or been enjoined from engaging in any trade or business for any reasons other than the violation of a contractual non-competition provision.

ARTICLE IX

DEFAULT; REMEDIES; TERMINATION

SECTION 9.01 **Default.** All disputes arising out of or related to this Agreement shall be addressed through the Dispute Resolution process set out below. The reference of disputes to the Dispute Resolution process notwithstanding, this Agreement may be terminated as set out in the Force Majeure provisions, and in the following circumstances:

(a) MCUA may terminate this Agreement upon written notice to CPV if: (i) CPV has failed to pay undisputed amounts due under Section 4 and MCUA notifies CPV in writing that it is in default for such failure to pay and CPV does not pay such sum within ten (10) days after notice; (ii) CPV becomes bankrupt, insolvent or unable to pay its debts as they become due; or (iii) CPV breaches a material representation or warranty or defaults in a material obligation under this Agreement which breach or default makes MCUA's performance hereunder impossible or illegal, and the circumstance stated in (i), (ii) or (iii) remains uncured for twenty (20) business days after MCUA's written notice to CPV of such circumstance; unless such circumstance cannot be cured by the payment of money and cannot with due diligence be wholly cured within such twenty (20) business day period, in which case CPV shall have such longer period as shall be necessary to cure such default, so long as it proceeds promptly to cure such default within the twenty (20) business day period, prosecutes such cure to completion with due diligence within sixty (60) days, and advises MCUA of the actions which it is taking and the progress being made.

(b) CPV may terminate this Agreement upon written notice to MCUA if MCUA defaults in an obligation or breaches a material representation or warranty expressly set forth in this Agreement and such default or breach causes a material adverse impact on CPV's ability to perform under this Agreement or the operations of the CPV

Electric Plant, and such default or breach remains uncured for twenty (20) business days after notice to MCUA thereof, unless such breach cannot be cured by the payment of money and cannot with due diligence be wholly cured within such twenty (20) business day period. In such a case, MCUA shall have such longer period as shall be necessary to cure such breach, if it proceeds promptly to cure such breach within such twenty (20) business day period, prosecutes such cure to completion with due diligence within sixty (60) days and advises CPV of the actions which it is taking and the progress being made.

(c) The Transition Period shall commence upon the effective date of termination under this Article.

SECTION 9.02 **Dispute Resolution.** If there is a dispute between the Parties arising out of or related to this Agreement, the aggrieved Party will promptly notify (the "Notice") the other Party of its intent to invoke this dispute resolution procedure. If the Parties fail to resolve the dispute within the ten (10) business days after delivery of the Notice, each Party will, within five (5) business days thereafter, nominate an officer or authorized manager to meet at the site, or at any other agreed location, to resolve the dispute.

(a) If the Parties are unable to resolve the dispute to their satisfaction within ten (10) business days after the notification, the Parties shall submit the dispute to arbitration for resolution. The arbitration will be conducted in New Jersey in accordance with the rules of procedure of the American Arbitration Association (the "AAA"). The Parties shall have five (5) business days to mutually agree to the use of one arbitrator, who shall be a retired New Jersey Superior or Federal Court Judge, either selected by mutual agreement or appointed by the AAA. The arbitration will be "baseball" type arbitration: each party will provide the arbitrator with a proposed determination of the dispute (including the amount of any payment sought and an explanation of how the amount was calculated), and the arbitrator will issue a written award accepting one of the proposals. The award of the arbitrator will be final and binding upon the Parties. Judgment on the award rendered may be entered in any court having jurisdiction, or application may be made to such court for judicial acceptance of the award or order of enforcement. The dispute resolution procedures set forth in this Section shall be the sole and exclusive dispute resolution procedures available to the Parties under this Agreement. The arbitrator may award the prevailing Party its costs, including reasonable attorney's fees incurred as a result of such dispute. Neither the existence of any dispute nor the pendency of any arbitration hereunder shall excuse either party form performance under this Contract.

THE PARTIES HEREBY WAIVE ALL RIGHTS TO TRIAL BY JURY ON ANY AND ALL CLAIMS OR CAUSES OF ACTION ARISING UNDER OR RELATED TO THIS AGREEMENT TO THE FULLEST SCOPE AND EXTENT POSSIBLE.

SECTION 9.03 **Remedies.**

(a) In the event of default of any Party that remains uncured beyond all applicable notice and/or grace periods, the other Party may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of such defaulting Party under this Agreement or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.

(b) Pursuit of any remedy or combination of remedies shall not constitute a waiver or election of remedies with respect to any remedy, default, or termination provision of this Agreement.

(c) The parties agree that, in the event of any default by MCUA in its obligation to supply Reclaimed Water in Commercial Quantity as required by this Agreement, CPV may purchase water from another source for CPV's use in the CPV Electric Plant as a substitute for Reclaimed Water supplied by MCUA under this Agreement. In such event, consistent with Section 4.02 above, MCUA's liability to CPV and CPV's damages shall be limited to the difference between the applicable Effluent Rate chargeable by MCUA, excluding Items (1) through (5) in Section 4.02(a) of this Agreement which are reflected in Section A(i) through (v) on the Service Fee Schedule for the equivalent quantity of Reclaimed Water and the rate paid by CPV to the alternate water supplier. By way of example and for purposes of clarification, if the cost of water obtained by CPV to make up for an insufficient quantity of Reclaimed Water is $3.00 per thousand gallons, and the Effluent Rate at the time of purchase is $0.90 per thousand gallons excluding Items (i) through (v) on the Service Fee Schedule, the difference of $2.10 per thousand gallons would be multiplied by CPV's usage to the extent of MCUA's default in supply of Reclaimed Water. CPV shall recover such damages in accordance with the provisions of Section 3.03 hereof.

ARTICLE X

MISCELLANEOUS PROVISIONS

SECTION 10.01 <u>Relationship</u>. The relationship of the Parties to each other shall be that of Parties to a contract, and neither this Agreement or anything done pursuant to this Agreement shall be deemed to create any partnership, joint venture, or agency relationship between Parties. This Agreement does not create a relationship between the Parties hereto, or either of them, and any third party in the nature of a third party beneficiary or fiduciary relationship.

SECTION 10.02 <u>Information</u>. The Parties agree to keep each other informed as to outages, emergencies or other situations that could affect the use of Reclaimed Water for cooling purposes. The parties further agree to coordinate the timing and the frequency of sampling through mutual agreement.

SECTION 10.03 <u>Assignment</u>.

(a) No Party shall assign this Agreement or any rights hereunder without the prior written consent of the other Party, which consent shall not to be unreasonably withheld, conditioned or delayed.

(b) Notwithstanding the above, CPV shall be freely entitled, without the consent of MCUA, on notice to MCUA, to assign this Agreement in whole or in part in favor of (i) any affiliate of CPV, (ii) any lenders providing financing to the CPV Electric Plant, (iii) any successor to CPV's interest in the Project with a senior unsecured debt rating at or above "Baa3" by Moody's Investor Services or any successor thereto, subject to the assignee agreeing to accept all the terms and conditions of this Agreement, including the posting of the appropriate guarantee pursuant to Section 4.02(d) hereof. If the Assignee's letter of credit or guarantee is accepted by the MCUA, CPV's letter of credit or guarantee shall be released. Any such assignment shall include the right to make second or subsequent assignments of encumbrances in order to perfect or enforce such assignment.

SECTION 10.04 **Notice.**

(a) Any report, demand, notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered personally, by telecopy (with a hard copy and a transmission confirmation sent by a recognized overnight national carrier service (such as Federal Express) for next business day delivery) or shall be sent by certified or registered mail, return receipt requested, first-class postage prepaid to the parties at the addresses set forth below (or to such other addresses as the parties may specify by due notice to the other):

To MCUA:

To MCUA: Middlesex County Utilities Authority 2571 Main Street Extension Sayreville, NJ 08872 Attention: Richard Fitamant Executive Director	with a copy to: Wilentz, Goldman & Spitzer 90 Woodbridge Center Drive Woodbridge, NJ 07095 Attention: John A. Hoffman
To CPV: CPV Shore, LLC Braintree Hill Office Park – Suite 300 Braintree, MA 02184 Attention: Andrew Urquhart Facsimile No.: 781-817-8980 Telephone No.: 781-848-5804	with a copy to: CPV Shore, LLC 8403 Colesville Road, Suite 915 Silver Spring, MD 20910 Attention: General Counsel Facsimile No.: 240-723-2339 Telephone No.: 240 723-2300

(b) Any notice delivered to a Party's designated address by (i) personal delivery, (ii) recognized overnight national courier service, or (iii) registered or certified mail, return receipt requested, shall be deemed to have been given by such Party at the time the notice is delivered to such Party's designated address, notwithstanding prior receipt by fax. Confirmation by the courier delivering any notice given pursuant to this **Section 10.04 (b)** shall be conclusive evidence of the giving of such notice.

(c) Each Party hereby agrees that it will not refuse or reject delivery of any notice given hereunder, that it will acknowledge, in writing, receipt of the same upon request by any other Party and that any notice rejected or refused by it shall be deemed for all purposes of this Agreement to have been received by the rejecting Party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(d) Any notice given by an attorney for a Party shall be effective for all purposes.

SECTION 10.05 **Attorneys' Fees.** In the event any action or proceeding is commenced to obtain a declaration of rights hereunder, to enforce any provision hereof, the prevailing Party in such action shall be entitled to seek reasonable attorneys' fees in addition to all other relief to which it may be entitled therein. All indemnities provided for herein shall include the obligation to pay costs of defense in the form of court costs and attorneys' fees and disbursements.

SECTION 10.06 **Waiver of Damages.** Notwithstanding anything in this Agreement or governing law to the contrary, each party waives any and all rights, as against the other (including against their respective Indemnitees as defined in Sections 5.01 (a) and 5.01 (b), but excluding rights to indemnity for awards made to third-parties), to indirect, consequential, special, or punitive damages, or actual or anticipated lost revenues or profits, of any nature or kind whatsoever.

SECTION 10.07 **Successors and Assigns.** The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto.

SECTION 10.08 **No Joint Venture.** Nothing contained herein shall be construed as making any Party the partner, joint venture or agent of any other Party and no Party shall have the power or authority to bind any other.

SECTION 10.09 **Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey (without regard to conflict of laws principles).

SECTION 10.10 **Incorporation of Prior Agreements.** This Agreement contains the entire understanding of the Parties hereto with respect to the subject matter hereof, and no prior or other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose; provided, however, that this Agreement shall be read in *pari materia* with the Design and Construction Agreement so as to give effect to the terms of both Agreements.

SECTION 10.11 **Modification of Agreement.** This Agreement may not be amended or modified, nor may any obligation hereunder be waived orally, and no such amendment, modification or waiver shall be effective for any purpose unless it is in writing and signed by the Party against whom enforcement thereof is sought.

SECTION 10.12 **Invalidity.** If any provision hereof shall be declared invalid by any court or in any administrative proceedings, then the provisions of this Agreement shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction herein contemplated to the extent possible. The captions and paragraph headings are provided for purposes of convenience of reference only and are not intended to limit, define the scope of, or aid in interpretation of any of the provisions hereof.

SECTION 10.13 **Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which, when so executed and delivered, shall constitute an original fully enforceable counterpart for all purposes, and all of which, when taken together shall constitute one and the same instrument.

SECTION 10.14 **Time Periods.** With respect to any time period set forth in this Agreement, should such time period end on a Saturday, Sunday or a legal holiday, the end of such time period shall be deemed to be the next occurring business day.

SECTION 10.15 **Conflict of Interest.** The Parties will not, before, during or after performance of this Agreement, make, offer, provide or agree to make, offer or provide any payment, gift, fee, discount, commission, percentage, loan, service, entertainment, substantial favor or anything of value (for purposes of this Section 10.15 "payment") to (a) any employee, agent, or representative of the other ("offeree"); (b) any member of an offeree's immediate family or (c) anyone claiming to act or acting for or on behalf of any offeree, where the purpose of such payment is to influence the business judgment, decision or action of any person for the purpose of obtaining or retaining business, or an advantage in business, or directing business in favor of a particular person. If either Party is requested to make or provide such payment by any such person described in (a), (b) or (c) above, that Party will report such request immediately to the other Party in the manner provided for the giving of notice under this Agreement. All engineering, construction and material supply contracts entered into by MCUA in connection with this Agreement will contain provisions in substantially the same form and substance as this section, binding such contractors or suppliers to the same obligations as the Parties have hereunder.

SECTION 10.16 **License & Easement Agreement.** MCUA agrees to enter into a License & Easement Agreement with CPV in the form appended hereto as Exhibit "D" to permit CPV to use the Edison tunnel and through other lands and easements owned or controlled by MCUA, as identified in Exhibit "B", or in the Exhibits to Exhibit "D", and as may reasonably be requested from time to time by CPV, to place, maintain and operate all utilities and supporting infrastructure necessary, including but not limited, to the CPV Pipeline and electrical transmission lines (including overhead electrical transmission lines) for the development and operation of the CPV Electric Plant and the Project. MCUA's agreement is contingent on having the legal ability to grant CPV the rights that it requests pursuant to MCUA's easements and MCUA's reasonable determination that CPV's requests will not interfere with MCUA's operations.

SECTION 10.17 **Conflict of Law.** Any provision contained in this Agreement to the contrary notwithstanding, MCUA acknowledges and recognizes that MCUA is a public entity, subject to its enabling legislation, N.J.S.A. 40:14B-1 et seq. and other applicable law, and that any provision of this Agreement in conflict with such law is void *ab initio* and of no effect.

SECTION 10.18 **MCUA Cooperation with CPV Pipeline Work.** MCUA shall cooperate with CPV in connection with CPV's performance of its associated CPV Pipeline work, including, without limitation, (i) consenting to any application, plan, document, agreement, budget, revised budget or other item submitted to CPV to MCUA in accordance with this Agreement, (ii) executing and delivering all applications, consents and agreements in connection with the development permits and approvals or the construction of the CPV Pipeline work in accordance with this Agreement and (iii) causing its designated representative to attend any hearing or meeting with any Governmental Authority in connection with the permitting and development approvals of the CPV Pipeline work.

IN WITNESS WHEREOF, the Parties have, through their duly authorized representatives, hereto set their respective signatures to this Agreement.

MIDDLESEX COUNTY UTILITIES AUTHORITY	**CPV SHORE, LLC**
By: ______________________	By: ______________________
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________

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Exhibit “A”

Service Fee Schedule

Exhibit "B"

Project Plan