Exhibit "C"

Performance Guarantee

Exhibit "D"

License & Easement Agreement

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DESIGN AND CONSTRUCTION AGREEMENT

by and between

MIDDLESEX COUNTY UTILITIES AUTHORITY
("MCUA")

and

CPV SHORE, LLC
("CPV")

____________________, 2012

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DESIGN AND CONSTRUCTION AGREEMENT

This **DESIGN AND CONSTRUCTION AGREEMENT** 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 (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, a copy of which Service Fee Schedule is attached hereto as **Exhibit "A"**; 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, the Service Fee Schedule adopted by MCUA contemplates a Design/Construction Agreement and an Operating Agreement between MCUA and industrial users; and

WHEREAS, the Parties wish to enter into this Agreement to provide for MCUA to design and construct a project, including a pumping station, on the MCUA Property (the "Project") to convey MCUA Reclaimed Water in the Commercial Quantity to the CPV Electric Plant and to design the Project to be expandable to provide the CPV Electric Plant the Additional Commercial Quantity at an agreed upon Delivery Point on the MCUA Property as generally described on **Exhibit "B" (Project Concept)** attached hereto;

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 in 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:

"Agreement" means this Design and Construction Agreement, as the same may be amended, extended or restated.

"Accept, "Accept Delivery", "Acceptance" or "Acceptance of Delivery" shall mean CPV's taking of Reclaimed Water from the Delivery Point (as this term is defined in the Operating Agreement) and CPV using that Reclaimed Water as Cooling Tower Make up Water within the CPV Electric Plant or such other uses approved by MCUA and the NJDEP.

"Additional Commercial Quantity" shall have the meaning set forth in **Section 2.03(a)** hereof.

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

"Change Order" shall have the meaning set forth in **Section 4.04(b)** hereof.

"Commercial Quantity" shall mean not less than 300,000 (Three Hundred Thousand) U.S. gallons of Reclaimed Water delivered at the Delivery Point per hour. Each reference to the delivery and/or acceptance of Reclaimed Water in Commercial Quantity shall be deemed to be followed by the phrase "subject to Force Majeure."

"Construction Contract" shall have the meaning set forth in **Section 3.05(b)** hereof.

"Contractor" shall mean the entity with which MCUA enters into the Construction Contract.

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

"CPV Change" shall have the meaning set forth in **Section 4.04(e)** hereof.

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

"CPV Indemnitees" shall have the meaning set forth in **Section 6.01(a)** hereof.

"CPV Pipeline" shall mean a pipeline and other equipment from the Delivery Point to the CPV Electric Plant, to be constructed by CPV at its sole cost and expense.

"CPV Pro Rata Share" shall mean that portion of a cost or other expense from which a party or parties ("Other Parties" or "New User(s)"), other than CPV or MCUA, benefits, which costs or expenses are attributable to or have been expended by CPV or Other Parties based upon the relative benefit derived by CPV as compared to that derived by Other Parties or New User(s).

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

"Design and Construction Costs" shall have the meaning set forth in **Section 2.05** hereof.

"Design and Construction Services" means the services to be provided by MCUA in accordance with **Section 2.02(a)** hereof.

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

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

"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).

"Field Change" shall have the meaning set forth in **Section 4.04(a)** hereof.

"Force Majeure" shall have the meaning set forth in **Section 9.01 (d)** hereof.

"Final Plans" shall have the meaning set forth in **Section 3.04 (b)** 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).

"MCUA Indemnitees" shall have the meaning set forth in **Section 6.01(b)** hereof.

"Minimum Reclaimed Water Commercial Quality" shall have the meaning set forth in the Operating Agreement.

"New User" shall have the meaning set forth in **Section 10.12** hereof.

"NJDEP Permits" shall mean NJPDES Reuse Permit NJ0142581 and NJ Surface Water Discharge Permit Number 0020141, as either may be amended, modified or superceded.

"Operating Agreement" shall have the meaning set forth in **Section 2.01** hereof.

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

"Payment Request" shall have the meaning set forth in **Section 4.03(a)** hereof.

"Preliminary Plans and Specifications" shall have the meaning set forth in **Section 3.04** hereof.

"Preliminary Project Schedule" shall have the meaning set forth in **Section 3.01(a)** hereof.

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"Progress Payment Requisition" shall have the meaning set forth in **Section 4.03(b)** hereof.

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

"Project Engineer" shall have the meaning set forth in **Section 2.03 (a)(ii)** hereof.

"Project Manual" shall have the meaning set forth in **Section 3.04(b)** hereof.

"Project Schedule" shall have the meaning provided in **Section 3.01(a)** hereof.

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

"Schedule of Values" shall have the meaning set forth in **Section 4.02** hereof.

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

"Substantial Completion" shall have the meaning set forth in **Section 5.01** hereof.

"Take Over Rights" shall have the meaning set forth in **Section 9.03(b)** hereof.

"Term" shall have the meaning set forth in **Section 2.06** hereof.

"Work" shall mean all labor, material, and services provided or required to be provided by the Contractor pursuant to the Construction Contract.

SECTION 1.03 Drafting Ambiguities; Interpretation. In interpreting any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the Parties initially drafted this Agreement, each Party recognizing that it and its counsel have had an opportunity to review this Agreement and have contributed to the final form of same. Unless otherwise specified, (a) whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular; (b) unless otherwise specified, the words "consent" or "approve" or words of similar import, mean the prior written commercially reasonable consent or approval of the applicable Party provided without delay; (c) the words "include" and "including", and words of similar import, shall be deemed to be followed by the words "without limitation" in all cases where it is not followed by the word "only"; and (d) the Exhibits to this Agreement are incorporated herein by reference.

ARTICLE II
DESIGN AND CONSTRUCTION

SECTION 2.01 Engagement. MCUA and CPV hereby agree that MCUA shall perform the Design and Construction Services and that CPV shall make payment for same in accordance herewith. MCUA agrees to use diligent efforts to perform the services described in this Section pursuant to the terms of this Agreement in an expeditious and economic manner.

MCUA shall permit CPV to utilize Reclaimed Water generated by the MCUA plant in conjunction with the CPV Electric Plant. This Agreement shall cover the design and construction of the Project. The Parties agree that an integral part of this Agreement is the Party's entry into a companion agreement entitled Operating Agreement For The Use Of Reclaimed Water, dated _____, 2012 (the "Operating Agreement").

SECTION 2.02 **Guaranty.** At all times for the entire Term of this Agreement (but excluding any period after the Agreement terminates, and Section 10.12 survives termination), CPV's payment obligations under the terms of this Agreement shall be unconditionally and irrevocably guaranteed by a Letter of Credit, attached hereto as Exhibit "C" or Performance Surety Bond in the form promulgated by the New Jersey Department of Community Affairs or such other form as may be reasonably satisfactory to MCUA. The form of Letter of Credit or Performance Surety Bond shall provide for a dollar for dollar reduction in the payment guaranty obligation to MCUA as CPV makes payments to MCUA as required by the Agreement.

SECTION 2.03 **Design and Construction Services.**

(a) MCUA shall facilitate, coordinate and administer all planning, design, development and pre-construction and construction activities necessary for the construction of the Project, shall consult with the Project Engineer and shall cause the Project Engineer to consult with CPV to the extent necessary for the proper design and construction of the Project. MCUA's services shall include without limitation, the following (collectively, the "Design and Construction Services"):

(i) Meeting and cooperating with CPV to develop a conceptual design of the Project collaboratively, using as a basis the Project Concept Plan (**Exhibit "B"**).

(ii) Preparing a Request for Qualifications (RFQ) and after evaluating the RFQ's, select the qualified engineers and prepare a Request for Proposals (RFP) to the qualified engineers. Upon completion of the conceptual design of the Project, in consultation with CPV, issue an RFP to qualified engineering firms to design the Project on MCUA's behalf and to serve as the design engineer for the Project, provide Design Services during construction and act as Resident Engineer ("Project Engineer"). The RFP shall contain the terms of an engineering contract, which shall be consistent with the duties of the Project Engineer under this Agreement, and shall include the agreed-upon conceptual design of the Project. CPV shall provide its comments on the RFP and RFQ within fourteen (14) days after receipt of the RFP and RFQ from MCUA. MCUA shall consider CPV's comments and if deemed appropriate revise the RFP and RFQ to reflect the comments before issuing the RFP. MCUA shall place notice on its website of the RFP and RFQ and advertise for receipt of proposals in its official newspapers.

(iii) Submitting copies of all proposals received in response to the RFP and RFQ to CPV for review and comment not less than fifteen (15) days prior to any anticipated award of a contract to a Project Engineer, and no less than ten (10) days after receipt of said responses.

(iv) Evaluating the responses to the RFP and RFQ in light of CPV's comments and all criteria required by the RFP and RFQ and by law, and consulting with CPV representatives as to which engineering firm is best qualified to receive an award of contract as Project Engineer on the basis of both qualifications and price.

(v) Awarding the contract to the Project Engineer with the consent of CPV, which shall not be unreasonably withheld, on the basis of a final contract between MCUA and the Project Engineer in a form agreed upon between MCUA and CPV which shall incorporate by reference the terms of this Agreement which are applicable to the duties, obligations and rights and remedies of the Project Engineer. The contract shall require the Project Engineer to guarantee that the Preliminary Plans and Specifications it develops will allow the Project to meet applicable performance requirements, including the required Commercial Quantity able to serve the CPV Electric Plant and such amounts necessary for other identified users of the Reclaimed Water from the Project identified at the time of issuance of the Project Engineer's contract or by way of Change Order. The Project Engineer shall also design the Project to be expandable to provide the CPV Electric Plant up to an additional 300,000 gph of Reclaimed Water ("Additional Commercial Quantity") as a subsequent phase, which amount together with the Commercial Quantity shall be 600,000 gph of Reclaimed Water dedicated for the CPV Electric Plant. MCUA agrees that CPV, at its option, may use the selected Project Engineer for the CPV Pipeline work and that the engagement of the same engineering firm for such work shall not be deemed a conflict of interest by either MCUA or CPV.

(vi) Causing the Project Engineer to prepare: (a) Preliminary Plans and Specifications for CPV's review and comment; (b) a list of all Development Approvals required to be obtained for the Project, and all applications for all such Development Approvals; (c) estimates and projections of capital costs for the construction of the Project, with periodic updates; (d) Final Plans and Specifications in the form of a Project Manual suitable for public bidding under applicable laws; and (e) any change orders. In the event MCUA approves a change order, it shall include in the Project Engineer contract that it has the right to advise Project Engineer that it reserves its rights against the Project Engineer.

(vii) Attending all hearings on Development Approvals before any Governmental Authority and assisting CPV in obtaining all Development Approvals as may be necessary for the CPV Pipeline;

(viii) Obtaining bids from qualified contractors for the construction of the Project in accordance with the Project Manual and in compliance with applicable law, review the bids received, and making a recommendation for award;

(ix) Inspections of the Project on a periodic basis during construction in accordance with Section 4.01(b), issuing reports in accordance with

Section 4.01(e), and issue all other documents required under this Agreement, including the certifications required by Sections 5.01 and 5.02.

(x) Review payment requests submitted by the Contractor.

SECTION 2.04 Independent Contractor.

(a) MCUA is an independent contractor and not an agent of CPV, and MCUA has no authority to make commitments (financial or otherwise) on behalf of, or to legally bind, CPV, except to the extent that CPV has specifically and in writing authorized MCUA to act in accordance with the terms of this Agreement. Except for the expenditures made and obligations incurred in the ordinary course of performing the Design and Construction Services and approved in advance by CPV, MCUA shall not have the power or authority to make any expenditure or incur any expense or obligation on behalf of CPV in connection with the Design and Construction Services.

(b) MCUA shall obtain all Development Approvals required for the construction of the Project, to the Delivery Point.

(c) CPV shall provide such cooperation to MCUA as shall be reasonably necessary to facilitate MCUA's performance of the Design and Construction Services. In furtherance of the foregoing, CPV shall at all times and under all circumstances conduct itself as not to unreasonably hinder, delay or interfere with the progress of the Design and Construction Services.

SECTION 2.05 Design and Construction & Engineering Costs. During the Term, CPV will pay for the costs associated with the Design and Construction Services provided hereunder including, but not limited to, site engineering, Project design and construction, Development Approvals, outside firm legal fees (including the legal fees incurred by the MCUA in the preparation and the negotiation of the Agreement and the Operating Agreement for the Use of Reclaimed Water by and between the MCUA and CPV), consulting fees and costs (the "Design and Construction Costs"), but not general overhead and operating costs of MCUA (e.g., staff costs, administration costs). Reimbursement will commence within sixty (60) days of selection of the Project Engineer and regularly thereafter upon MCUA submitting proof of amounts incurred. Within sixty (60) days after selection, the Project Engineer in consultation with MCUA and CPV shall provide a Project Budget, which shall include a list of all Design and Construction Costs. The Project Budget shall be agreed upon by the parties hereto and be attached to this Agreement as **Exhibit "D"**. MCUA shall provide notice to CPV of any material increases or decreases in the amounts listed on **Exhibit "D"** as soon as MCUA becomes aware of any material increases or decreases and CPV shall have ten (10) days to approve any material increases or decreases in the Project Budget, CPV shall within said ten (10) day period either (i) approve the material increase or decrease; (ii) deny said material increase or decrease stating the reasons for the denial; (iii) submit a statement requesting additional information or additional time, and specifying such amount of time, to review the material increase or decrease. If no response is provided within said ten (10) day period, the material increase or decrease shall be deemed approved.

SECTION 2.06 Term. The parties' obligations under this Agreement shall commence upon the Effective Date and, unless prior termination of this Agreement occurs in accordance with the terms hereof or by operation of law and subject to the various survival provisions of this Agreement, end upon the final completion of the Project by MCUA, its connection to the CPV Facility, and the furnishing by MCUA of effluent in Commercial Quantity in accordance with the Operating Agreement (the "Term").

SECTION 2.07 Designated Representative. At all times during the term of this Agreement, CPV shall have one (1) designated representative with whom MCUA shall communicate regarding all issues pertaining to the design and construction and the Project. The initial designated representative for CPV is set forth on **Schedule A** attached hereto. CPV must notify MCUA in writing of any change in the designated representative. CPV acknowledges and agrees that MCUA may rely on the direction, consent or approval of the representative designated by CPV or other signatory and shall be entitled to act in reliance thereon without further inquiry.

SECTION 2.08 CPV Cooperation. CPV shall reasonably and promptly cooperate with MCUA in connection with MCUA's performance of its obligations hereunder, including, without limitation, (i) approving or disapproving any application, plan, document, agreement, budget, revised budget or other item submitted to CPV for approval by notice given to MCUA in accordance with this Agreement, (ii) executing and delivering all applications, consents and agreements in connection with the Development Approvals or the construction of the Project in accordance with this Agreement and (iii) causing its designated representative under Section 2.07 hereof, to attend any hearing or meeting with any Governmental Authority in connection with the Development Approvals.

ARTICLE III
PRE-CONSTRUCTION PHASE

SECTION 3.01 Project Schedule.

(a) Within sixty (60) days after selection, the Project Engineer, in consultation with MCUA and CPV, shall provide a preliminary project schedule for design and construction (the "Preliminary Project Schedule") to be attached hereto as **Exhibit "E"**. MCUA shall update and revise this schedule in consultation with CPV during the performance of the Design and Construction Services, and schedule estimates provided by design professionals and contractors. The Preliminary Project Schedule, as updated and revised from time to time as herein provided and as approved by CPV, is hereinafter referred to as the "Project Schedule." The Project Schedule shall include the schedule for the completion of the Preliminary Plans and Specifications and Final Plans, and for procurement of the Development Approvals and when MCUA will advertise for bids and shall provide that the Project shall be fully completed before Sep. 1, 2014 (the "Outside Completion Date"). Each iteration of the Project Schedule shall be sequentially numbered.

(b) No material change to the Project Schedule extending the Outside Completion Date shall be made without CPV's approval, which may be indicated by initialing the Project Schedule, and which approval is not to be unreasonably withheld or delayed.

SECTION 3.02 Approvals. MCUA shall use diligent efforts to obtain, or cause to be obtained, all Development Approvals required to develop, commence and complete construction of the Project in accordance with all applicable laws, including, but not limited to, final site plan and land development approvals if applicable.

SECTION 3.03 Administrative.

(a) MCUA shall maintain at its office complete and accurate books and records of all business activities and operations conducted by MCUA in connection with MCUA's performance under this Agreement ("Records") and copies of all permits and approvals obtained pursuant to this Agreement. MCUA's Records shall reflect all items of expense accrued or incurred by MCUA with respect to the Design and Construction Services, specifically including any expense allocable or attributable to CPV, and the status of all Development Approvals relating to the Project. MCUA shall make its Records available at its business offices during regular business hours and shall permit CPV or its agents or representatives to review and audit all records and accounts necessary to confirm and validate expenses and records relating to the Project, and shall provide copies of Records to CPV at the direction and expense of CPV.

SECTION 3.04 Preparation of Plans and Project Manual.

(a) The Preliminary Plans and Specifications are all those drawings and documents prepared by the Project Engineer for the design, development and construction of the Project (the "Preliminary Plans and Specifications"), which shall consist of a complete set of "design development" level plans including structural, mechanical, and electrical drawings and identification of major elements of construction for the Project. The Preliminary Plans and Specifications shall be shared with CPV, and shall be subject to CPV's approval, which shall not be unreasonably withheld.

(b) Upon agreement by CPV and MCUA that the Preliminary Plans are acceptable, MCUA shall cause the Project Engineer to develop construction documents for incorporation into the Construction Contract; the plans in said form, following their approval by CPV, shall be deemed to be the "Final Plans." The Project Engineer shall thereafter prepare a project manual suitable in all respects for competitive bidding in accordance with applicable law, (the "Project Manual"), which shall include the Final Plans, all terms required by Section 3.05, and all documents necessary for public bidding of the Project, which Project shall include the delivery of the Commercial Quantity and to be expandable to deliver the Additional Commercial Quantity, in accordance with applicable law and MCUA policies and shall also prepare an estimate of the Project costs based on the Final Plans (the "Project Engineer's Cost Estimate"). The Project Manual and the Project Engineer's Cost Estimate shall be submitted to CPV for its final review and approval and authorization to advertise for bids not less than thirty (30) days before the anticipated date for advertisement for bids.

SECTION 3.05 Terms of the Construction Contract. The Construction Contract prepared by the Project Engineer, or such other person or entity selected by MCUA, subject to CPV's approval, and included in the Project Manual shall, at a minimum, specifically provide the following terms in addition to those customarily included in public construction contract and general conditions forms appropriate to the Work and such supplemental conditions as may be required by the Project Engineer and shall be subject to CPV's prior approval, which shall not be unreasonably withheld:

(i) That CPV shall have no privity of contract with the Contractor or any subcontractor or supplier;

(ii) That the process for review and approval of proposed Change Orders shall require review by CPV in addition to MCUA, and that no Change Order shall be valid unless countersigned by CPV in addition to the signatures of the Contractor, Project Engineer, and MCUA;

(iii) That each Change Order shall constitute a complete accord and satisfaction of all matters that were or could have been included therein, including all issues with respect to adjustment of both the costs of and time for construction;

(iv) That the Contractor shall be required to coordinate and diligently resolve all matters pertaining to the use and/or jurisdiction of labor unions or locals thereof, with respect to the Work and shall not allow any delay to the Project by reason of Project-specific jurisdictional or other disputes; with the sole exception of labor issues that are beyond the control and not due to the fault of the Contractor or any of its subcontractors or suppliers, and in that event only to the extent (i) that such issues actually and materially delay the Work and/or actually and materially increase the Contractor costs, and (ii) that the affected parties are unable to mitigate the effect of such issues by commercially reasonable means, including without limitation resequencing of work or procurement of substitute goods or labor;

(v) That the Contractor shall obtain a performance and payment bond in the form required by <u>N.J.S.A.</u> 2A:44-147 and meeting all requirements of <u>N.J.S.A.</u> 2A:44-143(b), in a penal sum equal to the total construction cost of the Project as reflected in the Construction Contract;

(vi) That the Contractor shall phase its Work so that the Project has achieved Substantial Completion on or prior to the scheduled completion date and upon the occurrence of any unexcused delay, shall immediately implement a time recovery program to maintain compliance with the Project Schedule;

(vii) That the Contractor shall obtain all building permits necessary for the construction of the Project;

(viii) That all records pertaining to the cost of the Work for the Project that are required to be maintained by the Contractor pursuant to the

Construction Contract shall be kept current by the Contractor. Contractor shall permit MCUA and/or CPV, or their respective agents or representatives to have access at reasonable times to review and audit all records and accounts necessary to ensure and validate compliance with Project requirements.

(ix) That the Contractor shall indemnify, hold harmless, and defend each of the Parties with respect to any and all claims for bodily injury and property damage, including without limitation any violation of Environmental Law and/or discharge of any Hazardous Substance, that may arise from the construction of the Project and that the Contractor shall maintain policies of insurance with sufficient coverages and limits as to secure this obligation, acceptable to the Parties and naming each of them as additional insureds;

(x) That any and all lien rights that may arise by reason of the Construction Contract or the Work shall be enforceable only pursuant to the New Jersey Municipal Mechanic's Lien Law, N.J.S.A. 2A:44-125 et seq.; that the Contractor shall indemnify, hold harmless, and defend MCUA against any lien that is filed against the Project and shall immediately cause the same to be discharged by all lawful means including bonding of the lien, without regard to whether or not the Contractor considers the underlying claim of the purported lienor to have merit, and that with each Progress Payment Requisition the Contractor shall provide partial releases of lien for itself and all subcontractors and suppliers reflecting payment through the preceding requisition.

(xi) That all Work and all equipment provided as part of the Work shall be warranted against defects in materials and workmanship for not less than one (1) year after Substantial Completion, or as otherwise agreed upon by CPV and MCUA and as set forth in the Project Manual. As to equipment carrying a customary manufacturer's warranty greater than one (1) year, said equipment shall be warranted for the duration of the customary manufacturer's warranty. The Contractor's warranty obligations shall be secured by a maintenance bond commencing on the date of Substantial Completion, in an amount not less than fifty percent (50%) of the total final cost of construction of the Project inclusive of change orders.

(xii) That any provision that does or could be asserted to establish consequential damages to the parties is waived or omitted.

(xiii) That the Contractor shall be liable to MCUA for liquidated damages in an amount appropriate for the Project per day of unexcused delay in the Substantial Completion of the Project beyond the guaranteed Substantial Completion Date identified in the Project Manual.

(xiv) That the Contractor's signature on a Progress Payment Requisition shall constitute a warranty by the Contractor to MCUA and CPV that all work and services for which payment is requested have been performed in the time and manner required by this Agreement and the Contract Documents; provided, however, that if it is subsequently determined that any Work for which payment was rendered was not in conformity to the Contract Documents, then MCUA shall have the right to pursue correction or remediation of the Work with the Contractor;

(xv) That the Contractor shall continue the Work unabated regardless of the existence of any dispute between the Contractor, MCUA and any third party, and shall not interfere with operations at the MCUA property;

(xvi) That the Contractor shall coordinate its Work, including scheduling, with the contractor(s) constructing the CPV Pipeline so as to facilitate connection and other activities, and so as to not delay the CPV Pipeline;

(xvii) That the Contractor shall pay prevailing wages to its employees;

(xviii) That Construction Contract contain the right to terminate for convenience;

(xix) That the Contractor provided to MCUA a warranty that the Project will be able to perform as set forth in the Project Manual.

(xx) That the terms hereof which are applicable shall be incorporated into the Construction Contract.

SECTION 3.06 Bidding and Award.

(a) Following CPV's written approval of the Project Manual and its issuance of written authorization to MCUA to advertise for bids, MCUA in accordance with law and its policies shall advertise for bids for the construction of the Project using the approved Project Manual. Before issuing any addendum to the Project Manual, MCUA shall consult with CPV as to the content of the addendum.

(b) CPV shall have the right to withhold written authorization to proceed to advertise bids for any reason, provided that if CPV does not issue written authorization to MCUA to advertise for bids within eighteen (18) months after the date of its written approval of the Project Manual, either party may terminate this Agreement without further liability to the other except for payment by CPV of costs incurred by MCUA to be paid or reimbursed by CPV pursuant to this Agreement, provided however that in the event that MCUA terminates the Agreement under this provision and thereafter moves forward with the Project to serve another user, any payments made by CPV and attributable to the use or construction of the Project, shall be reimbursed to CPV by the MCUA.

(c) Upon receipt of the bids for construction, MCUA and the Project Engineer shall analyze the bids and prepare a recommendation as to which bidder is the lowest responsible bidder. MCUA shall provide the bids and recommendation to CPV. CPV shall review the bids and recommendations and provide comments to MCUA. MCUA shall not award the contract for construction of the Project (the "Construction Contract") without CPV's consent if the lowest responsible bid received is in excess by ten percent (10%) of the Project Engineer's Cost Estimate for the construction. The Construction Contract shall be awarded in accordance with applicable law.

ARTICLE IV
CONSTRUCTION CONTRACT

SECTION 4.01 Construction.

(a) Not later than ten (10) Business Days after the occurrence of all of the following: (i) MCUA and Contractor have signed the Construction Contract, (ii) MCUA has notified CPV that it is prepared for the commencement of construction, and (iii) all required bonds and insurance have been provided in conformity with the Project Manual, CPV shall issue a written notice to MCUA authorizing MCUA to cause the Contractor to commence construction. Within three (3) business days of its receipt of such notice, MCUA shall issue a notice to proceed to the Contractor that directs and authorizes the Contractor to commence the performance of the Work. MCUA's notice to proceed shall establish the commencement date of the contract time as said term is defined in the contract documents.

(b) Following the Commencement of Construction, the Project Engineer on behalf of MCUA shall oversee the construction to insure that the construction is being performed in strict accordance with the plans and specifications and the contract documents and shall cause the Contractor to continuously pursue construction of the Project in accordance with the Final Plans and the terms of the Construction Contract. MCUA shall provide general administration of the Construction Contract through Final Completion.

(c) Except to the extent expressly assumed by CPV in writing, any performance of construction management or like services by CPV shall not relieve MCUA of any of its obligations under this Agreement.

(d) If any agreement is required in connection with the construction of the Project that requires execution by CPV as the owner of the CPV Electric Plant and/or CPV Pipeline (including, by way of example, easements and agreements with utility companies), MCUA shall submit such agreement to CPV for its review and approval, and the approval and execution of such agreement shall not be unreasonably withheld, conditioned or delayed. CPV agrees to approve or disapprove any instrument submitted to it as expeditiously as reasonably possible following receipt of the proposed agreement and all information required to evaluate the proposed agreement, including, as applicable, land surveys, engineering data or other items.

(e) The Project Engineer on behalf of MCUA shall provide weekly updates to CPV on the progress of construction and any construction issues. CPV shall have the right to have representatives attend all construction meetings; however CPV's attendance shall not act as any notice to CPV of events or conditions related to the Project, any waiver of rights, or otherwise relieve MCUA of obligations it may have under this Agreement.

SECTION 4.02 Schedule of Values. Construction Contract shall include as an exhibit to be submitted for CPV's review and approval, a proposed schedule of values for the construction of the Project (the "Schedule of Values") that shall be consistent with the Project Budget. The Schedule of Values shall be equal to and shall allocate the total construction contract cost among the various portions of the Work, including general conditions and mobilization; provided, however, that MCUA shall not approve any Schedule of Values that permits progress payments to exceed, in the aggregate, ninety percent (90%) until there is acceptance by the Project Engineer of all components of the Project (subject only to completion of punch list items and items that cannot be completed or fully tested prior to full operation if the Project Engineer's acceptance occurs prior to Substantial Completion and the Project is properly pressure tested to insure that the Project is capable of supplying Reclaimed Water to CPV in Commercial Quantity on a continuous basis) at the standard set forth under the NJDEP Permits and quantity required by this Agreement and the Project Manual; and ninety-eight percent (98%) at Substantial Completion as defined in this Agreement and so reflected in the Project Manual. MCUA shall hold two percent (2%) retainage until final payment. Together with the Schedule of Values, MCUA shall provide to CPV a Draw Schedule which shall contain MCUA's estimate of the timing and amount of all progress payments to be made by CPV to MCUA under this Agreement. The Schedule of Values as approved by CPV, shall be utilized for Progress Payment Requisitions.

SECTION 4.03 Payment.

(a) During the Term of this Agreement MCUA shall on a monthly basis, assemble and submit to CPV, a requisition package containing a request for payment approved and executed by MCUA (the "Payment Request"). Each such Payment Request shall include the Project Engineer's invoice and such other Design and Construction Costs, with reasonable substantiation as CPV shall require, as shall have been incurred by MCUA respecting the Project for the period of the Payment Request, including lien waivers when charges for materials or installation services are included in the Request.

(b) Following the commencement of construction, each Payment Request shall also include the Contractor's payment requisition (the "Progress Payment Requisition"), which shall be on AIA Form G704 or such other form as shall be acceptable to MCUA and CPV and shall be approved and executed by the Contractor and Project Engineer and countersigned by MCUA. Each such Progress Payment Requisition shall include an update of the Schedule of Values indicating the Contractor's progress on each line item, lien waivers (from the Contractor and all of Contractor's subcontractors and suppliers) for all materials and services for which payment is made, the status of any applicable allowances, and reflecting all approved Change Orders. Each Progress Payment Requisition shall be consistent with the updated Schedule of Values that accompanies it and such other documentation required pursuant to the terms of the Construction Contract. CPV may, at its option, inspect any part of the Work covered by any Progress Payment Requisition, for the general purpose of determining whether such Work is properly includible within the Project; however, neither inspection nor failure to inspect shall affect its rights at law or under this Agreement.

(c) Contractor's and MCUA's respective signatures on a Progress Payment Requisition shall constitute warranties by MCUA to CPV to the best of its knowledge and belief, and by Contractor in accordance with the Contract Documents to both MCUA and CPV, that all work and services for which payment is requested have been performed in the time and manner required by this Agreement and the Contract Documents; provided, however, that if it is subsequently determined that any Work for which payment was rendered was not in conformity to the Contract Documents, then MCUA shall pursue correction or remediation of the Work in accordance with and pursuant to the terms set forth in the Construction Contract for correction of deficient or non-conforming Work.

(d) Provided that (i) a Payment Request complies with the requirements of this Agreement, (ii) all documentation (including partial lien releases) submitted with a Payment Request shall comply with the requirements of this Agreement and the Construction Contract, as evidenced by the approval of CPV; CPV shall remit the amount of each approved Payment Request to MCUA, within fourteen (14) days after receipt by CPV and MCUA shall disburse promptly thereafter. If CPV intends to disapprove any portion of any Payment Request, CPV shall notify MCUA as quickly as practicable under the circumstances so that the issue can be resolved if possible within the planned schedule for payment.

(e) CPV shall reimburse MCUA for reasonable outside legal costs incurred by MCUA in connection with the Project.

(f) MCUA and CPV recognize that MCUA may enter into an agreement with another entity that will also require that entity to pay for the design and construction of the Project. In the event the other entity makes payment for the design and construction of the Project prior to CPV's payments, payment for the same work shall not be due from CPV under the terms hereof and CPV shall instead have the obligation to reimburse MCUA for CPV's pro rata share of the Project.

SECTION 4.04 Field Changes; Change Orders.

(a) MCUA shall have the right to direct the Contractor to make changes to the Project to the extent that same do not materially adversely affect the Project Schedule, the Contract Sum; the Delivery Point, or the quality or quantity of Reclaimed Water to be provided by MCUA to CPV (each a "Field Change"), provided that MCUA shall promptly notify CPV of the Field Change orally. CPV may object to any requested Field Change on the above grounds and require that such change be processed as a Change Order. Notwithstanding anything herein to the contrary, if CPV fails to object to a proposed Field Change in writing specifically setting forth the basis of the objection within forty-eight (48) hours after the delivery of written notice of the proposed Field Change by MCUA to CPV, CPV shall be deemed to have consented to the proposed Field Change.

(b) During the Term of this Agreement, with the sole exception of Field Changes, MCUA shall not approve any changes in the Work specified in the Final Plans, whether pursuant to the Construction Contract or otherwise, or enter into a change order with the Contractor without a written change order ("Change Order") countersigned by CPV evidencing approval of the Change Order, and such approval and countersignature shall not be unreasonably withheld, conditioned or delayed. For convenience, the parties may use a single form of document that provides for the signatures of the Parties or the Project Engineer and the Contractor, but CPV shall not be required to negotiate any Change Order directly with the Contractor. The Project Engineer on behalf of MCUA shall be responsible for conducting all necessary negotiations with the Contractor and shall be responsible for incorporating all changes into the Work pursuant to the Construction Contract, as modified by the Change Order.

(c) All requests for Change Orders shall be accompanied by all backup material provided by the Contractor in accordance with the change order provisions of the Construction Contract, and all further information that may be reasonably required in order for CPV to fully evaluate the request for a Change Order, and shall at a minimum state in detail the scope, cost impact, and time impact of the proposed Change Order and the reason why MCUA considers said Change Order to be necessary. All Change Order requests shall state both the time and cost impacts of the requested Change Order and, when executed, shall constitute an accord and satisfaction between MCUA and the Contractor. Reservations of rights by the Contractor shall not be acceptable, and shall constitute ground for the rejection of the Change Order. All requests for adjustments of time frames in the Contract Time by reason of excused delay under the Construction Contract shall fully substantiate the cause(s) of the delay, the number of days of delay attributable to the aforementioned, and all efforts made by the Contractor to mitigate all such delays. Any such request shall also be accompanied by a delay analysis demonstrating that each day of claimed excused delay is not concurrent with any day of unexcused delay.

(d) CPV shall use diligent efforts to respond to each request for approval of any Change Order in a timely manner. Under all circumstances, the Parties shall respond to each such request for a Change Order or re-submission of a Change Order Request (i) within five (5) Business Days of any such request for a time extension of ten days or less, and/or having a total cost of less than Twenty Thousand Dollars ($20,000) and (ii) within ten (10) Business Days of any such request having a total cost of Twenty Thousand Dollars ($20,000) or greater and/or requesting a time extension of more than ten (10) days. CPV's response to a request for a Change Order may take the form of (i) an approval of the Change Order, (ii) a denial of the requested Change Order stating the reasons why same is denied, (iii) a statement that the request is incomplete together with a list of items required to be supplied, or (iv) a statement that the request is complete but more time for review is required, which shall include the reason(s) why CPV believes further review time is required and an anticipated date for action on the request. In the case of subparagraph (iv), the Project Schedule may be adjusted by Change Order in the event that construction is delayed by reason of CPV review.

(e) CPV may, subject to the provisions of this Section 4.04, request changes in the Project consisting of additions, deletions or other revisions to the Work and/or extensions of the Project Schedule ("CPV Change"). CPV shall submit any proposed CPV Change to MCUA and the Project Engineer for review. Within twenty (20) calendar days of receiving the proposed CPV Change, MCUA shall submit to CPV (i) an estimate of the cost of same, (ii) an estimate of the impact of same upon the Project Schedule, (iii) a description of any impact upon functionality of the Project or the quality of construction or materials incorporated into the Project, (iv) any other information necessary in order for CPV to fully evaluate the various impacts of the proposed CPV Change, and (v) a draft Change Order incorporating the proposed CPV Change into the Construction Contract. Upon CPV's approval of the draft Change Order, MCUA will proceed to negotiate same with the Contractor in accordance with the procedures provided therefor in the Contract Documents and in this Agreement. CPV shall then consider and countersign the fully negotiated Change Order in accordance with the provisions of this Section 4.04 relating to Change Orders generally. No CPV Changes shall constitute authority to perform Work unless authorized by Change Order pursuant to this Section 4.04.

(f) By the approval of any Change Order, CPV shall be deemed to represent and warrant that it has or can make available sufficient funds to pay for any Change Orders approved by it in accordance with this Agreement.

SECTION 4.05 Termination on the Construction Contract for Convenience. If at any time CPV should request MCUA to terminate the Construction Contract for convenience, the MCUA shall terminate the Construction Contract, provided that CPV shall be liable to MCUA for the termination costs and damages due Contractor under the Construction Contract and MCUA's engineering and legal costs associated with the termination for convenience.

ARTICLE V
COMPLETION

SECTION 5.01 Substantial Completion. Substantial Completion shall be determined by the Project Engineer, evidenced by the Project Engineer's certification of Substantial Completion, in form and substance reasonably satisfactory to CPV; provided, however, that the Project shall not be deemed Substantially Complete until the date on which the Project is pressure tested as set forth in Section 4.02 and is deemed by the Project Engineer to be capable of supplying Reclaimed Water to CPV in Commercial Quantity and on a continuous basis. The Certificate of Substantial Completion shall also include a punchlist of Work to be completed, and shall fix the time within which the Contractor shall finish all items on the punchlist in accordance with the terms of this Agreement.

SECTION 5.02 Final Completion. Upon receipt of written notice from MCUA that the Project is ready for final inspection and a final Application for Payment, the Project Engineer and CPV, together with MCUA, will promptly make such inspection and, when the Project Engineer determines that the Project has been constructed in strict conformity with the Contract Documents, the Project Engineer will promptly issue a final Certificate for Payment stating that to the best of the Project Engineer's knowledge, information and belief, and on the basis of the Project Engineer's on-site visits and inspections, the Work has been completed in strict accordance with terms and conditions of the Contract Documents as of a stated date, which date shall be the date of Final Completion and the Project is pressure tested as set forth in Section 4.02 and is deemed by the Project Engineer to be capable of supplying Reclaimed Water to CPV in Commercial Quantity and on a continuous basis. The final Certificate for Payment shall be countersigned by CPV. MCUA shall provide CPV with a copy of the close-out documents. CPV shall review the final close out documents and concur that the MCUA Project has been completed in accordance with the plans and specifications and contract documents. CPV shall pay the final Certificate for Payment within fourteen (14) days of receipt of the close out documentation.

ARTICLE VI
INDEMNIFICATION AND INSURANCE

SECTION 6.01 Indemnification.

(a) MCUA agrees to indemnify, hold harmless and defend CPV and its members, officers, agents and employees, (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 (as defined below), 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); (iii) any violation of law by a MCUA Indemnitee, 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; and (vi) the construction of the Project, except to the extent caused by the gross negligence or willful misconduct of a CPV Indemnitee, and/or its agents, consultants and contractors.

(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 Indemnity" 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 or the CPV Pipeline 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 6.01 shall survive termination or expiration of this Agreement.

SECTION 6.02 (A) Insurance - MCUA.

(a) At all times during the Term of this Agreement, MCUA 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 behalf of MCUA in connection with the Design and Construction Services.

(i) Public Liability or General Liability Insurance written on an occurrence basis and providing coverage for claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the performance of the Design and construction 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 through a self insured retention program. Each such policy shall further provide for blanket contractual liability, broad-form property damage, personal liability coverage, products and completed operations coverage and pollution liability coverage on a sudden and accidental basis.

(ii) Business Automobile Insurance, with a minimum limit of $5,000,000 each accident with respect to owned, hired or non-owned vehicles assigned to or used in the performance of the Design and Construction Services or any Work performed under this Agreement.

(iii) Worker's Compensation insurance with statutory limits and Employer's Liability coverage through a self insured retention program with limits of $500,000 for each accident, bodily injury for each employee by disease and policy limit by disease.

(iv) Builder's All Risk insurance covering the interests of MCUA, Contractor and its subcontractors in an amount equivalent to the total installed cost of Project. CPV shall not be liable for any deductibles applicable under the Builder's All Risk Insurance policy. Such Builder's All Risk insurance shall remain in effect until Final Completion of the Project.

(v) MCUA shall require the Project Engineer to maintain professional liability insurance for the respective engineering and design services associated with this Agreement for negligent acts, errors and omissions with a minimum limit of liability of $2,000,000 per claim.

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

(b) The limits for the Commercial General 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) 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 having an A.M. Best Rating of at least "A- / IX" 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.

(d) The insurance coverage provided for herein shall be provided on a follow-form basis and without liability on the part of CPV for premiums owed by MCUA. Further, MCUA agrees that at any point when MCUA, its agents, its employees, contractors or consultants shall enter any CPV controlled facilities (including without limitation the CPV

Electric Plant) to perform work in connection with the Design and Construction Services, then the insurance coverage provided for in paragraph (a)(i) above shall include the name of CPV, its directors, officers, employees, agents and representatives, as additional named insureds. All policies shall further include a "Severability of Interests Endorsement (Cross Liability)".

(e) MCUA agrees that a terrorism coverage endorsement will be provided where available at no additional cost to MCUA.

(f) The policies of insurance required to be maintained under this Section 6.01 shall (i) provide for the benefit of CPV that thirty (30) days notice of cancellation, termination, modification, or lapse of coverage shall be given to CPV (except for cancellation for non-payment of premium in which case ten (10) days prior notice shall be provided to CPV) and (iii) not contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other insurance.

(g) Promptly following the request of CPV, MCUA shall deliver or cause to be delivered to such Party original or duplicate policies or certificates of insurers evidencing the insurance required to be maintained by MCUA 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 6.02 (B) Insurance - CPV.

(a) At all times during the Term of this Agreement, CPV 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 behalf of CPV in connection with the CPV Electric Plant Project, including the CPV Pipeline, the following minimum insurance:

(i) Commercial General Liability insurance 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 the construction of the CPV Electric Plant project, and having a combined single limit of coverage for bodily injury and property damage in the amount of not less than $5,000,000. Each such policy shall further provide for blanket contractual liability, broad-form property damage and personal liability coverage.

(ii) Business Automobile Insurance (any auto), with a minimum limit of $5,000,000 each accident and providing coverage for owned, hired or non-owned vehicles operated by CPV.

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

(iv) Requires CPV's engineer to maintain professional liability insurance for respective services for negligent act, errors and omissions with a minimum liability of $2,000,000 per claim.

(b) The limits for the Commercial General 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) All such insurance shall be provided by an insurance company or companies qualified to do business in the State of New Jersey, and having an A.M. Best Rating of at least "A- / IX" 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.

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

(e) The policies of insurance required to be maintained under this Section 6.01 shall (i) provide for the benefit of MCUA that thirty (30) days notice of cancellation, termination, modification, or lapse of coverage shall be given to MCUA (except for cancellation for non-payment of premium in which case ten (10) days prior notice shall be provided to MCUA) and (iii) not contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other insurance.

(f) Promptly following the request of MCUA, CPV shall deliver or cause to be delivered to such Party original or duplicate policies or certificates of insurers evidencing the insurance required to be maintained by CPV 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 6.03 Evidence of Insurance. Each Party shall, upon request of the other Party, provide evidence that it maintains the insurance policies required hereunder.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES OF MCUA

SECTION 7.01 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.

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(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.

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

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES OF CPV

SECTION 8.01 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 their 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 deliver 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 shall have 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 advise 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 Body 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.

(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 principals 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

SECTION 9.01 Default. Except for disputes arising from either Party's performance of its obligations related to the design and construction work (including but not limited to costs, charges, payments or schedule changes), all of which will be addressed through the Dispute Resolution process set out below either Party may terminate this Agreement by notice to the other Party at any time in the event of the following:

(a) Default by CPV in any payment obligation under this Agreement which remains uncured for ten (10) Business Days after notice from MCUA.

(b) Default by either Party in a material obligation under this Agreement which remains uncured for twenty (20) Business Days after such Party's notice to the other Party thereof, unless such default 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, the defaulting Party shall have such longer period as shall be necessary to cure such default, if the defaulting Party proceeds promptly to cure such default within such twenty (20) Business Day period, prosecutes such cure to completion with due diligence within sixty (60) days, and advises the other Party of the actions which it is taking and the progress being made; or

(c) Breach of a material representation or warranty by the other Party expressly set forth in this Agreement which remains uncured for twenty (20) Business Days after such Party's notice to the other Party 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, the defaulting Party shall have such longer period as shall be necessary to cure such breach, if the defaulting Party 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 the other Party of the actions which it is taking and the progress being made.

(d) No liability shall result to either Party from delay in performance or from nonperformance caused by act of God, war, governmental action or inaction (excluding that of MCUA), labor strikes or inability to obtain fuel, materials, power or transportation, but not if due to or to any extent attributable to the action or inaction of a Party, provided such circumstances are beyond the reasonable control of the Party affected (each a "Force Majeure"); provided that inability to make payments shall not be considered an event of Force Majeure, unless the inability to make payments is caused by act of God, war or governmental action. 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.

SECTION 9.02 Dispute Resolution.

(a) 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 twenty (20) 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.

(b) If the Parties are unable to resolve the dispute to their satisfaction within ten (10) Business Days after the nomination, 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 Court Judge or Federal 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) In the event of default by MCUA prior to the Construction Contract being entered into by the MCUA for the Project, CPV shall have the right to take over the design and construction of the Project (the "Take Over Rights"), which design shall not unreasonably interfere with the MCUA's ability to operate its systems, and the MCUA shall be deemed to have leased the property set forth in Exhibit F, to CPV until completion of the construction of the Project, whereupon CPV shall convey the Project to the MCUA to be operated by MCUA in accordance with the Operating Agreement. MCUA shall provide all necessary consents and approvals required for CPV to complete the Project in accordance with this 9.03(b). In the event that CPV exercises its Take Over Rights, CPV shall: (i) comply with all laws applicable to the Project as a result of the Property being owned by the MCUA; (ii) provide MCUA with an opportunity to comment on the Project Manual; (iii) cause the Contractor and Project Engineer to provide the certifications to CPV and MCUA that would otherwise be required by this Agreement if MCUA were constructing the Project; and (iv) dedicate the Project to the MCUA once the Project has been completed. Upon Final Completion of the Project, the lease contemplated herein shall terminate and the Project will be operated by MCUA pursuant to the terms of the Operating Agreement for the Use of Reclaimed Water by and between the MCUA and CPV.

(c) 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 or of any other agreement pertaining to the Design and Construction Services.

(d) Except for claims arising from the willful misconduct of MCUA, in no event shall MCUA be liable to CPV for any damages caused by any failure of the Project in excess of damages MCUA recovers from the Contractor, Project Engineer or any other responsible third party, provided MCUA pursues its remedies against any responsible third party to the fullest extent as permitted by law at the direction and expense of CPV.

ARTICLE X
MISCELLANEOUS

SECTION 10.01 Assignment.

(a) No Party to this Agreement 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. Any assignment in contravention of this Section shall void *ab initio* and of no effect.

(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, or (ii) any Lenders providing financing to the CPV Electric Plant Project. Any such assignment shall include the right to make second or subsequent assignments or encumbrances in order to perfect or enforce such assignment.

SECTION 10.02 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: 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 10.02(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 10.03 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 recover its reasonable attorneys' fees in addition to all other relief to which it may be entitled therein. The finder of fact shall determine the extent to which a Party is "prevailing," and the amount of attorneys' fees payable. 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 10.04 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 (also including their respective Indemnitees as defined in Sections 6.01 (a) and 6.01 (b)), to indirect, consequential, special, or punitive damages, or actual or anticipated lost revenues or profits, of any nature or kind whatsoever.

SECTION 10.05 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 10.06 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 10.07 Recordation. This Agreement shall not be recorded and any recording shall be deemed a material default under this Agreement.

SECTION 10.08 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 10.09 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, except the provisions of the MCUA Service Fee Schedule and the Operating Agreement between the Parties.

SECTION 10.10 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 10.11 Effect of CPV Reviews or Approvals. No review or approval by CPV of any design, plan, Progress Payment Requisition, Change Order, Field Change, or any other document of any nature, shall operate to relieve MCUA of any of its obligations under this Agreement with respect to the Design and Construction Services or relieve the Project Engineer or the Contractor, or any other person, of any of their respective obligations with respect to the design of the Project in accordance with applicable professional standards of care and their respective agreements, provided that the approval of CPV shall make it responsible for any financial obligation MCUA incurs in reliance on CPV's approval.

SECTION 10.12 Recapture. If all or some part of the Project is used for transmission of Reclaimed Water by MCUA to any person or entity other than the Parties (a "New User"), as a condition of allowing such use MCUA shall enter into an agreement with each such New User which shall provide for reimbursement by the New User to MCUA of that proportion of the total amount paid by MCUA for the design and construction of the part of the Project utilized by the New User and reimbursed to it by CPV, which the annual amount of Reclaimed Water provided to the New User for use in its operations bears to the total annual amount of Reclaimed Water provided to all users. Said agreement, which shall be reviewed and approved by CPV relative to the determination of the pro-rata share only, prior to its approval by MCUA, shall provide such means of true-up as shall be appropriate to reach a fair division of the cost of design and construction of the Project based on usage, between each New User and all prior existing users. MCUA shall pay all such amounts paid by the New User by way of reimbursement to CPV without interest and other users subsequent to CPV without interest, if any, pursuant to agreement for their respective shares of the cost of the Project based on usage. This Section 10.12 shall survive the expiration or earlier termination of this Agreement.

SECTION 10.13 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 10.14 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 10.15 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 10.16 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 10.16, "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 10.17 Conflict of Law. Any provision contained in this Agreement to the contrary notwithstanding, CPV 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.

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