



CPV Valley Energy Center
50 Braintree Hill Office Park
Suite 300
Braintree, MA 02184



October 3, 2013

Mayor DeStefano
City of Middletown
16 James Street
Middletown, NY

RE: CPV Valley Energy Center - Effluent Water Supply and Process Water Discharge Services Agreement

Dear Mayor DeStefano,

CPV is pleased to enter the enclosed Effluent Water Supply and Process Water Discharge Services Agreement with the City of Middletown. Both copies of the enclosed agreements have been signed by CPV. Please countersign both agreements and return one fully executed copy in the self-addressed envelope.

Thank you very much, and if you have any questions, please feel free to call me at (781) 817-8970.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. P. Remillard".

Steven P. Remillard
Vice President
Competitive Power Ventures, Inc.

EXECUTION COPY

**EFFLUENT WATER SUPPLY AND
PROCESS WATER DISCHARGE SERVICES AGREEMENT**

AGREEMENT, made this 4th day of October, 2013 (the “**Effective Date**”), by and between CPV Valley, LLC, a Delaware limited liability company, whose mailing address is 50 Braintree Hill Office Park, Suite 300, Braintree, Massachusetts 02184 (“**CPV**”), and the City of Middletown, Orange County, New York, a New York municipal corporation, whose mailing address is 16 James Street, Middletown, New York 10940 (“**CITY**”)

WITNESSETH:

WHEREAS, CPV desires to develop, construct, own and operate a natural gas-fired electric generating facility and certain ancillary equipment (the “**Energy Center**”), on land located in the Town of Wawayanda, New York (the “**Site**”) as described in the attached Exhibit A; and

WHEREAS, the City owns and operates a municipal wastewater treatment facility together with related pipelines, manholes and such other appurtenances to collect, process, treat and dispose of wastewater from the City of Middletown (the “**System**”); and

WHEREAS, the Energy Center will require an adequate and reliable supply of Treated Effluent for its processes and the ability to discharge Process Water back to the City; and

WHEREAS, the City desires to sell Treated Effluent it currently produces and discharges from the System to CPV, and CPV desires to purchase such Treated Effluent; and

WHEREAS, CPV desires to return Process Water from the Energy Center back to the City for discharge either to the headworks of the System or to the City’s permitted wastewater discharge outfalls (at the City’s election), and the City desires to accept such Process Water; and

WHEREAS, in order to effectuate such sale and purchase of Treated Effluent and disposal of Process Water it will be necessary for CPV to construct and operate or arrange for operation of a pump station, chlorine injection system and pipelines and related monitoring, metering and sampling equipment, and to operate or arrange for the operation of such equipment pursuant to an Operating Protocol, which will contain provisions for communication procedures, planned and unplanned outages, records and reporting, access, inspection and testing.

NOW THEREFORE, in and for consideration of the agreements herein, and in reliance upon the representations herein, the City and CPV do hereby, adopt and incorporate all annexes, exhibits, attachments, and/or schedules attached hereto, including the Operating Protocol, and do further agree as follows:

ARTICLE 1
DEFINITIONS; INTERPRETATION

Section 1.1 Definitions.

(a) Definitions. As used in this Agreement, (i) the terms set forth below shall have the respective meanings so set forth, and (ii) the terms defined elsewhere in this Agreement shall have the meanings therein so specified.

“**Affiliate**” of a specified Person means any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. As used in this definition, “control”, “controlled by” and “under common control with” shall mean possession, directly or indirectly, or power to direct or cause the direction of management or policies of such Person (whether through ownership of securities or other partnership or ownership interests, by contract or otherwise), provided that in any event, any Person who owns directly, indirectly or beneficially ten percent (10%) or more of the securities having voting power for the election of directors or other governing body of a corporation, or ten percent (10%) or more of the partnership interests or other ownership interests of any other Person, will be deemed to control such Person. Notwithstanding the foregoing, no individual shall be deemed to be an Affiliate of a Person solely by reason of his or her being a director, committee member, officer or employee of such Person.

“**Agreement**” has the meaning specified in the Preamble.

“**Backup Potable Water Supply**” has the meaning specified in Section 3.8(a)(2).

“**Base Term**” has the meaning specified in Section 2.1(a).

“**Best Efforts**” means a level of effort that, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, can be expected to accomplish the desired result in a timely manner, and consistent with Prudent Industry Practice.

“**Business Day**” means each weekday (Monday through Friday) except the days on which the banks in New York are closed.

“**City**” has the meaning specified in the Preamble.

“**Claiming Party**” has the meaning specified in Section 8.1(b).

“**Commencement Date**” means the earliest date on which the conditions in both subdivisions (a) and (b) in the next clause have been satisfied: (a) the City has received

confirmation from the New York State Department of Environmental Conservation that the State Pollutant Discharge Elimination System permit for the System authorizes the City to accept and discharge the Energy Center's Process Water as contemplated herein, and (b) the date specified as the date for commencement of Treated Effluent deliveries by the City in the notice furnished by CPV pursuant to Section 3.1 (b).

"Commercial Arbitration Rules" has the meaning specified in Section 14.1.

"CPV" has the meaning specified in the Preamble.

"Default Rate" means six percent (6%) per annum.

"Energy Center" has the meaning specified in the Recitals.

"Effective Date" has the meaning specified in the Preamble.

"Effluent Meter" has the meaning specified in section 4.1(a).

"Effluent Price" has the meaning specified in Section 3.7(a).

"Event(s) of Default" has the meaning specified in Sections 6.1 and 6.3.

"Force Majeure" means an act, condition, event or circumstances which prevents one Party from performing its obligations under this Agreement, which act, condition, event or circumstances is not within the reasonable control of, and without fault or negligence of, the Party claiming Force Majeure. Force Majeure includes, without limitation, sabotage, strikes or other labor difficulties, riots or civil disturbance, acts of God, acts of a public enemy, drought, earthquakes, floods, abnormally severe storms, explosions or fires, lightning, landslides, or similarly cataclysmic occurrence. Force Majeure also includes condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Energy Center or System or any material portion thereof, by action of the federal or state government. Force Majeure shall not mean any act or event to the extent resulting from the fault or negligence of any person claiming Force Majeure, or the financial inability of any person to perform its obligations under this Agreement. Force Majeure shall not include (i) the inability to obtain labor, equipment, or other materials or supplies for the Effluent Pump Station and Pipeline or the System (unless the result of a Force Majeure event), or (ii) equipment failures due to wear and tear or defects in manufacture, design, and construction.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), and political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau or entity (including without limitation any zoning authority, the United States Securities and Exchange Commission, the Federal Energy Regulatory Commission, the New York Public Service Commission, the New York State Department of Environmental Conservation, the U.S. Environmental Protection Agency, or any comparable authority).

“Governmental Rule” means any law, rule, regulation, ordinance, order, code, Permit, interpretation, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority having the effect and force of law, including without limitation any Environmental Laws.

“Indemnified Party” has the meaning specified in Section 8.1(a).

“Indemnifying Party” has the meaning specified in section 8.1(b).

“Lenders” means providers of debt or equity financing (including a leveraged lease or any other refinancing thereof) for the construction or operation of the Energy Center (including the Effluent Pump Station and Pipeline), and (ii) any equity investors, owners of debt or equity instruments related to the Energy Center, and their respective successors and assigns, including transferees of such instruments, and any trustee, collateral agent or other fiduciary or nominee acting on behalf of any of the foregoing Persons.

“Liable Party” has the meaning specified in Section 8.3.

“Maximum Daily Treated Effluent Quantity” has the meaning specified in section 3.1(a).

“Maximum Process Water Discharge Quantity” has the meaning specified in section 3.1 (c).

“Meters” has the meaning specified in Section 4.1(a).

“Monthly Flow Report” has the meaning specified in section 4.4(a).

“Off-specification Effluent” has the meaning specified in section 3.6(a).

“Off-specification Additional Treatment Charge” has the meaning specified in section 3.7(d).

“On-Site Contingent Backup Supply” has the meaning specified in Section 3.8(a)(3).

“On-Site Treated Effluent Supply” has the meaning specified in Section 3.8(a)(1).

“Operating Protocol” means the protocol for day-to-day operations and coordination under this Agreement to be agreed upon between the parties pursuant to section 3.1(b).

“Operation Agreement” has the meaning specified in Section 3.9.

“Party” and **“Parties”** have the meaning specified to it in the Preamble.

“Permits” means all permits, consents, licenses, approvals, registrations or authorizations, including any renewals and modifications thereof, issued by any Governmental Authority having jurisdiction over the Parties, Treated Effluent, the pipelines, the System, Energy Center, or Discharge Water, and any appurtenances related thereto.

“Person” means any natural person, corporation, partnership, firm, association, trust, unincorporated organization, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

“Process Discharge Point of Connection” means the physical point where the Energy Center Discharge Water is delivered to the City. The Process Discharge Point of Connection shall be located as shown on Exhibit E.

“Process Water” means non-sanitary discharge water from the Energy Center, which, after treatment by CPV at the Energy Center, meets the numerical and narrative effluent limitations contained in the Energy Center’s Permits.

“Process Water Meter” has the meaning specified in section 4.1(a).

“Process Water Price” has the meaning specified in section 3.7(b).

“Prudent Industry Practices” means the professional practices, methods, equipment, specifications, and safety and output performance standards related to public water and wastewater utility management and industry codes now in effect and as modified during the Term, for water/wastewater systems of substantially the same type and capacity as the System. Prudent Industry Practices for public water/wastewater systems relate, with respect to the design, construction, installation, operation, maintenance and use of public water/wastewater systems and similar or better machinery, all of the above in compliance with the standards of safety, output, dependability, efficiency and economy, including recommended practice, of in a good, safe, prudent and workman-like character and in compliance with all applicable Governmental Rules. Prudent Industry Practices are not intended to be limited to the optimum or minimum practice or method to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices and methods designed, among other things, to ensure continuous, reliable water or wastewater service.

“Rejected Effluent” has the meaning specified in Section 3.6(a).

“Rejected Effluent Price” has the meaning specified in Section 3.7(c).

“Renewal Term” has the meaning specified in Section 2.1(b).

“Representative” means any officer, director, principal, attorney, agent, employee or other representative of a Party.

“Site” has the meaning specified in the Recitals.

“**System**” has the meaning specified in the Recitals.

“**Term**” has the meaning specified in Section 2.1(c).

“**Termination Date**” means the last day of the Term.

“**Treated Effluent**” means wastewater treated at the System that satisfies the requirements set forth in Section 3.5.

“**Treated Effluent Point of Connection**” means the physical point where the Effluent from the City is delivered to CPV. The Effluent Point of Connection shall be located as shown in Exhibit E.

“**Treated Effluent Meter**” has the meaning specified in Section 4.3

Section 1.2 Interpretation.

(a) Interpretation. In this Agreement, unless a clear contrary intention appears: (i) the singular includes the plural and vice-versa; (ii) a reference to any Person includes such Person’s successors and permitted assigns; (iii) reference to any gender includes the other gender; (iv) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (v) reference to any Governmental Rule means such Governmental Rule as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (vi) reference to any Section means such Section of this Agreement, and references in any Section or definition to any clause means such clause of such Section or definition; (vii) “hereunder”, “hereof”, “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof or thereof; (viii) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; and (ix) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including.”

Section 1.3 Titles and Headings

(a) Titles and Headings. Section, Annex, Exhibit and Schedule titles and headings in this Agreement are inserted for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement.

ARTICLE 2 TERM AND TERMINATION

Section 2.1 Term.

(a) Base Term. The term of this Agreement shall commence on the Effective Date, and shall continue unless sooner terminated or renewed or extended as provided herein until 11:59 p.m. Eastern Standard Time on the date that is the fortieth (40th) anniversary of the Commencement Date (the “**Base Term**”).

(b) Renewal Term. CPV has the option to extend the Base Term of this Agreement for two (2) successive periods of ten (10) years each (each such period, a “**Renewal Term**”) on the same terms and conditions contained herein, and this Agreement shall terminate, unless sooner terminated or renewed or extended as provided herein, at 11:59 p.m. Eastern Standard Time on the last day of the applicable Renewal Term. If CPV desires to extend this Agreement as described above in this Section 2.1(b), then CPV shall give written notice of such intention within one hundred eighty (180) days before the end of the Base Term or initial Renewal Term, as applicable.

(c) Term. Wherever this Agreement refers to the “**Term**,” such reference shall be deemed to mean the Base Term together with any applicable Renewal Term, subject to termination pursuant to Section 2.2.

Section 2.2 Termination. This Agreement shall terminate only (i) upon the expiration hereof in accordance with section 2.1, (ii) as expressly provided in Article 6 of this Agreement, or (iii) by the mutual written agreement of the City and CPV.

ARTICLE 3 TREATED EFFLUENT AND PROCESS WATER DELIVERY AND ACCEPTANCE

Section 3.1 Quantities of Treated Effluent and Process Water.

(a) Treated Effluent Supply Commitment. Commencing on the Commencement Date, and continuing during the Term, the City shall undertake Best Efforts to deliver to CPV at the Treated Effluent Point of Connection the Energy Center’s full requirements for Treated Effluent, up to a maximum of 450,000 gallons per day at a maximum flow rate of 315 gallons per minute of Treated Effluent. (such maximum amounts are hereafter referred to as the “**Maximum Daily Treated Effluent Quantity**”). The Parties recognize that Treated Effluent will be required during Energy Center construction and commissioning, and as such, the Commencement Date will be in advance of the Energy Center commercial operations date.

(b) Daily Treated Effluent Requirements. The Maximum Daily Treated Effluent Quantity will be needed only for limited operating conditions, which CPV anticipates will be limited by the Energy Center’s air emissions permit to no more than 30 days per year; the Energy Center’s expected daily requirements for Treated Effluent are anticipated to be substantially less than the Maximum Daily Treated Effluent Quantity, on average approximately 190,000 gallons per day. Not less than ninety (90) days prior to the Commencement Date, CPV shall give written notice to the City of the Commencement Date. No later than 30 days after delivery of such notice, the parties shall agree upon an Operating Protocol which will address the elements set forth in

Exhibit B, hereto, and include provisions for communicating and assuring delivery of the Energy Center's expected daily requirements for Treated Effluent up to the Maximum Daily Treated Effluent Quantity. Once finalized, the Operating Protocol shall be annexed hereto, and incorporated herein as Exhibit B.

(c) Process Water Acceptance Commitment. Commencing on the Commencement Date, the City shall accept from CPV at the Process Discharge Point of Connection all of the Energy Center's Process Water up to a maximum of 252,000 gallons per day at a maximum flow rate of 175 gallons per minute (the "**Maximum Process Water Discharge Quantity**"). The Parties recognize that the discharge of Process Water will be required during Energy Center construction and commissioning, and, as such, the Commencement Date will be in advance of the Energy Center commercial operations date. The Operating Protocol shall also include provisions for communicating and assuring acceptance of the Energy Center's expected Process Water discharge up to the Maximum Process Water Discharge Quantity.

Section 3.2 Delivery of Treated Effluent.

(a) Delivery of Treated Effluent. Commencing on the Commencement Date and continuing during the Term, the City shall undertake Best Efforts to deliver to CPV the Energy Center's Treated Effluent requirements at the Treated Effluent Point of Connection. The City agrees that CPV shall at all times control the quantity of Treated Effluent delivered to CPV, up to the maximum Daily Treated Effluent Quantity.

Section 3.3 Sufficiency of Treated Effluent Supply and Process Water Discharge Capacity.

(a) Sufficiency of Treated Effluent Supply, Backup Potable Water, and Process Water Discharge Capacity. The City represents and warrants to CPV that, as of the Effective Date, (i) the City generates sufficient Treated Effluent (x) to supply the Maximum Daily Treated Effluent Quantity to CPV, and (y) to satisfy the Energy Center's Treated Effluent requirements, and (ii) that no third parties have any rights to purchase or use any Treated Effluent which rights, in the City's good faith and reasonable anticipation, if exercised, could in any way sever, curtail, impair, restrict or adversely affect the quality or quantity of Treated Effluent required to be delivered by the City to CPV pursuant to this Agreement. The City represents and warrants to CPV, with respect to its mitigation commitment pursuant to section 3.8, below, that, as of the Effective Date, (i) the City generates sufficient potable water (x) to supply the Maximum Daily Treated Effluent Quantity to CPV, and (y) to satisfy the Energy Center's Treated Effluent requirements, and (ii) that no third parties have any rights to purchase or use any potable water which rights, in the City's good faith and reasonable anticipation, if exercised, could in any way sever, curtail, impair, restrict or adversely affect the quality or quantity of potable required to be delivered by the City to CPV pursuant to section 3.8 of this Agreement. For the avoidance of doubt, the Parties agree that nothing herein shall restrict the City's ability to market its potable water to third parties in any quantity subsequent to the Effective Date. The City also represents and warrants to CPV that, as of the Effective Date, the City has the capacity to accept and discharge the Maximum Process Water

Discharge Quantity, and no third parties have any rights to purchase or use discharge capacity, which rights, in the City's good faith and reasonable anticipation, if exercised, could in any way sever, curtail, impair, restrict or adversely affect the ability of the City to accept the Process Water required to be accepted by the City pursuant to this Agreement. Additionally, the City covenants that during the Term it shall not enter into any contract, agreement or understanding with any third party that could cause the City to be unable to perform any of the obligations set forth in this section or in section 3.8, below. Without limiting the foregoing representations, warranties, or covenant, or the remedies available to CPV in the event of breach, if the City is in breach of the representations, warranties, and covenant contained in this section, the City shall promptly take such actions as are necessary to cure such breach.

Section 3.4 Changes in Governmental Rules.

(a) Regulatory Changes. If the City becomes aware of any proposed or enacted Governmental Rule (whether federal, regional, state, city, county, or local), Permit amendments or agreements that could adversely affect its ability to perform any of its obligations under this Agreement, including delivering to CPV Treated Effluent and accepting Process Water, then the City shall promptly notify CPV of such fact and the Parties will work together and promptly take such actions as are commercially reasonable to eliminate (or mitigate if elimination is not possible) the adverse effects of any such Governmental Rule, Permit amendments or agreements.

Section 3.5 Quality of Treated Effluent and Process Water.

(a) Quality of Treated Effluent. All Treated Effluent delivered by the City to CPV at the Treated Effluent Point of Connection shall (i) comply with all applicable Governmental Rules for such deliveries, and (ii) meet or exceed the specifications set forth in Exhibit C to this Agreement.

(b) Quality of Process Water. All Process Water delivered by CPV to the City at the Process Discharge Point of Connection shall comply with (a) all applicable Governmental Rules for such deliveries, and (b) meets or exceeds the specifications set forth in Exhibit D to this Agreement..

Section 3.6 Obligations to Accept Treated Effluent.

(a) Obligation to Accept Treated Effluent. Subject to the rejection rights set forth below, on and after the Commencement Date, CPV shall accept all Treated Effluent delivered to it at the Treated Effluent Point of Connection up to the Maximum Daily Treated Effluent Quantity. Notwithstanding the foregoing, CPV may reject Treated Effluent (a) in quantities or at flow rates in excess of its daily requirements as communicated pursuant to the Operating Protocol, or (b) that does not meet the quality specifications set forth in Section 3.5(a) (as determined through testing of samples taken by CPV at its Water Treatment Facility). Treated Effluent that is rejected by CPV (hereafter referred to as "**Rejected Effluent**") will be returned to the City by CPV, and shall be accepted by the City at the Process Discharge Point of Connection. At its sole

option, CPV may accept Treated Effluent that does not meet the quality specifications set forth in Section 3.5 but, nonetheless, is of a quality that is within the treatment capabilities of the Energy Center (such Treated Effluent is hereafter referred to as “**Off-specification Effluent**”).

Section 3.7 Prices of Treated Effluent, Process Water, Rejected Effluent, and Off-specification Effluent.

(a) Price of Treated Effluent. For Treated Effluent accepted at the Treated Effluent Point of Connection, CPV shall pay the City the fixed “**Effluent Price**” of 50% of the lowest prevailing Rate the City Charges for delivery of potable water to users (currently \$ 4.20) per thousand gallons.

(b) Price of Process Discharge Water. For Process Water accepted by the City at the Process Discharge Point of Connection, CPV shall pay the City the fixed “**Process Water Price**” of 100% of the lowest prevailing Rate that the City Charges for accepting raw sewage from users (currently \$ 7.40) per thousand gallons.

(c) Acceptance of Rejected Effluent and Off-Specification Effluent. The City shall accept Rejected Effluent and Of-Specification Effluent at the Process Discharge Point of Connection at no cost to CPV.

Section 3.8 Interruption of Services and Mitigation of Delivery Shortfalls.

Interruption of Services. On and after the Commencement Date, except for permitted System interruptions in accordance with the Operations Protocol, the City shall be obligated to use Best Efforts to continuously furnish CPV with the Energy Center’s requirements for Treated Effluent, and to continuously accept the Energy Center’s requirements for Process Water discharge. The City shall maintain, operate and repair the System in accordance with Prudent Industry Practice and in accordance with all applicable Governmental Rules. The City shall use Best Efforts to make immediate repairs to any portion of the System if the failure to make such repairs would be reasonably likely to impede, delay, impair, restrict or otherwise prevent it from performing any of its obligations hereunder, including the delivery of Treated Effluent to the Effluent Point of Connection and its receipt of Process Water at the Process Discharge Point of Connection. If the City is not able, despite Best Efforts, to deliver Treated Effluent in the amounts needed by CPV, then the following provisions shall apply:

(1) CPV shall first utilize Treated Effluent stored in the on-site makeup water tanks at the Energy Facility (the “On-Site Treated Effluent Supply”).

(2) when use of the On-Site Treated Effluent Supply has continued for three (3) consecutive days, the City shall use Best Efforts to supply to CPV at the Treated Effluent Point of Connection as much potable water as is reasonably available at the time of the service interruption to satisfy the Energy Center’s requirements for Treated Effluent (the “Backup Potable Water Supply”). Potable water shall be deemed to be reasonably available as Backup Potable Water Supply only if it is within the safe yield

volume for the City's potable water system as specified by the New York State Department of Environmental Conservation, and not otherwise committed to or reserved for other current or expected water supply customers at the time of the Treated Effluent service interruption. Such supply of potable water shall comply with the quality requirements of Section 3.5(a), and shall continue until the delivery of Treated Effluent sufficient to meet the Energy Facility's requirements resumes. CPV shall pay the City's lowest prevailing rate for potable water for potable water delivered pursuant to this section during the first twenty-two (22) days of service interruption; thereafter, CPV shall pay the Effluent Price for potable water delivered pursuant to this subsection.

(3) if, during any period after the initial supply of On-Site Treated Effluent is fully utilized, the Backup Potable Water Supply is not sufficient to satisfy the Energy Center's Treated Effluent requirements, CPV shall supply as much of the Energy Center's Treated Effluent requirements as it is able to supply through the use of on-site filtration of Off-specification Effluent (the "On-Site Contingent Backup Supply"). The City shall reimburse CPV for CPV's actual costs for supplying the On-Site Contingent Backup Supply; provided, however, that the amount reimbursable to CPV in any month shall not exceed the amounts payable to the City by CPV pursuant to Section 3.7.

Section 3.9 Option for Additional Services.

(a) Memorandum of Understanding and Operation Agreement. Upon mutual agreement, the Parties may enter into a memorandum of understanding and Operation Agreement pertaining to the design, construction, and operation of additional facilities to provide service to the Energy Center. The memorandum of understanding would contain provisions relating to the design, construction and operation (all at CPV's cost) of a tertiary filtration station and resulting tertiary Treated Effluent specifications, chlorination facilities, an effluent pump station, associated valves, the pipeline for supply of Treated Effluent to the Treated Effluent Point of Connection, and the pipeline for delivery of Process Water to the Process Discharge Point Connection. The memorandum of understanding and Operation Agreement would include provisions for payment by CPV to the City for such incremental services.

Section 3.10 Permits.

(a) Permits. CPV and the City each agree to acquire and maintain in full force and effect throughout the Term all Permits necessary for each party to fulfill its respective obligations under this Agreement and to comply with all Governmental Rules in the performance of each of its respective obligations hereunder.

Section 3.11 Compliance with Governmental Rules.

(a) Compliance with Governmental Rules. During the Term, each Party shall comply with all Government Rules as they pertain to this Agreement.

ARTICLE 4
TREATED EFFLUENT AND PROCESS WATER METERING,
TITLE AND TESTING

Section 4.1 Metering.

(a) Metering. The quantity of Treated Effluent delivered to the Treated Effluent Point of Connection shall be measured by a meter (the “**Effluent Meter**”) installed, owned and maintained by CPV at the Treated Effluent Point of Connection. The quantity of Process Water delivered to the Process Discharge Point of Connection shall be measured by a meter (the “**Process Water Meter**”) installed, owned and maintained by CPV at the Process Discharge Point of Connection. The Treated Effluent Meter and Process Water Meter are referred to collectively herein as “**Meters**”. The parties shall mutually agree upon the Meters, and the Operating Protocol shall contain the agreed-upon specifications for the Meters.

Section 4.2 Title.

(a) Title. Treated Effluent and Off-specification Effluent shall be deemed to be delivered to CPV, and title to Treated Effluent and Off-specification Effluent shall pass to CPV, when such effluent is accepted on CPV’s side of the Treated Effluent Point of Connection. Process Water shall be deemed to be delivered to the City, and title to Process Water shall pass to the City, when such Process Water is accepted on the City’s side of the Process Discharge Point of Connection. Rejected Effluent shall not be deemed accepted by CPV; title to all Rejected Effluent shall always remain with the City.

Section 4.3 Testing.

(a) Testing. Each Meter shall be calibrated, maintained, and tested by CPV in accordance with manufacturer’s recommendations. Notwithstanding the foregoing, each meter shall be tested at least annually by and at the expense of the City to determine its accuracy. Notwithstanding the foregoing sentence, either Party may request a test during the interim between such annual tests, if it reasonably believes that a Meter is not registering accurately. The City shall promptly thereafter perform, or cause to be performed, such test. If it is determined by such interim test that the Treated Effluent Meter or Process Water Meter is registering accurately (a Meter shall be deemed to be registering accurately if any inaccuracy is two percent (2%) or less), then the Party requesting such interim test shall be responsible for paying the costs associated with such interim test. If the Treated Effluent Meter or Process Discharge Water Meter is found to be inaccurate by more than plus or minus two percent (2%), the City and CPV shall equally share the cost to repair or replace such Treated Effluent Meter or Process Water Meter. The Operating Protocol shall contain principles for determining when each period of inaccuracy begins and ends. For each period of such inaccuracy, the Parties shall attempt to agree on the quantity of Treated Effluent and Process Discharge Water, as the case may be, based on past periods of similar operation and any relevant operating data. In the event the Parties are unable to agree on such quantity of Treated Effluent and Process Water, the Parties shall submit the dispute for resolution in accordance with

Section 14.1. CPV or the City shall provide notice of the dates for each test at least ten (10) days before such test to enable CPV or the City, as applicable, to be present at and observe such tests. If a Representative of CPV or the City is not present for any such test for which CPV or the City has provided timely advance notice, CPV or the City shall have the right to proceed with such test, and the results thereof shall not be subject to dispute on the basis that CPV or the City was not present, as applicable.

Section 4.4 Monthly Flow Records

(a) CPV shall record the daily flow through each meter, and shall provide the City with a summary of the quantities of Treated Effluent and Off-specification Effluent accepted, Process Water discharged, and Rejected Effluent returned to the City during each calendar month (the "**Monthly Flow Report**"). The form of the Monthly Flow Report shall be set forth in the Operating Protocol. The Monthly Flow Report shall be provided to the City by the fifth business day of the month following the month to which the Monthly Flow Report pertains.

**ARTICLE 5
BILLING AND PAYMENT**

Section 5.1 Billing.

(a) Billing. By the fifteenth (15th) day of each calendar month after the Commencement Date, the City shall submit an invoice to CPV setting forth the amounts of: (i) Treated Effluent and Off-specification Effluent accepted by CPV; and (ii) Process Water and Rejected Effluent received by the City in the preceding month; the price payable by CPV in respect of such Treated Effluent and Process Water pursuant to Section 3.7; and the total amount payable by CPV to the City or by the City to CPV. Amounts payable by the City to CPV may be netted against amounts payable by CPV to the City. The form of the invoice shall be set forth in the Operating Protocol. The amounts of Treated Effluent, Process Water, Rejected Effluent, and Off-specification Effluent included in each invoice shall be equal to the amounts set forth in the corresponding Monthly Flow Report.

Section 5.2 Payment.

(a) Payment. Each Party with payment obligations shall pay the undisputed portion of each invoice within thirty (30) days after receipt.

Section 5.3 Payment Dispute.

(a) Payment Dispute. CPV shall have thirty (30) days from the date of receipt of each invoice to notify the City in writing that it disputes any of the charges or credits on such invoice. Disputes will be resolved in accordance with the provisions of Section 14.1. In the event that CPV pays any amount set forth on an invoice that is subsequently determined not to have been owed to the City, the City shall reimburse CPV the amount of such overpayment within thirty (30) days after the date of such determination plus interest at the rate set forth in Section 14.14.

ARTICLE 6
EVENTS OF DEFAULT, AND REMEDIES

Section 6.1 CPV Events of Default. Each of the following shall constitute an “Event of Default” under this Agreement:

- (a) CPV’s failure, neglect, or refusal to pay any payment due under this Agreement, which continues for thirty (30) days after written notice from the City to CPV.
- (b) CPV’s failure to perform or observe any material provision of this Agreement, which failure continues for more than thirty (30) days after receipt of notice of such breach from the City (or, if a cure cannot be effected within such thirty- (30-) day period with the exercise of reasonable diligence, such longer period as may be reasonably necessary to effect a cure, so long as CPV is diligently trying to cure such breach throughout such period).
- (c) CPV shall (i) file or acquiesce in a petition in any court (whether or not pursuant to any statute of the United States or of any state) in bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, or make an application in any such proceedings for, or acquiesce in, the appointment of a trustee or receiver for it or over all or any portion of its property; or (ii) be subject to any petition filed against CPV in any court (whether or not pursuant to any statute of the United States or of any state) in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings where: (1) CPV shall thereafter be adjudicated as bankrupt or insolvent, or such petition shall be approved by any such court, and (2) any trustee in bankruptcy, assignee or CPV (if a debtor in possession) does not upon demand by the City reaffirm, assume and perform this Agreement in accordance with applicable laws and procedures.
- (d) CPV’s failure to commence construction of the Energy Center within three (3) years after it receives all permits and approvals from Government Authorities that are necessary to construct the Energy Center.

Section 6.2 Remedies for CPV Event of Default.

- (a) If an Event of Default by CPV should occur, and if such default shall be continuing for more than thirty (30) days following a notice of default to CPV provided pursuant to Section 6.1(a) where CPV has failed to commence and diligently prosecute cure thereof, the City shall have the right to seek specific performance or any other remedy at law or equity.
- (b) If an Event of Default by CPV should occur, and if such default shall be continuing for more than sixty (60) days following a notice of default to CPV provided pursuant to Section 6.1(a) where CPV has failed to commence and diligently prosecute cure thereof, the City shall have the right to terminate this Agreement by providing express written notice to CPV.

Section 6.3 City Events of Default. Each of the following shall constitute an “Event of Default” under this Agreement:

(a) The City’s failure to perform or observe any material provision of this Agreement, which failure continues for more than thirty (30) days after receipt of notice of such breach from CPV (or, if a cure cannot be effected within such thirty- (30-) day period with the exercise of reasonable diligence, such longer period as may be reasonably necessary to effect a cure, so long as the City is diligently trying to cure such breach throughout such period).

(b) The City shall (i) file or acquiesce in a petition in any court (whether or not pursuant to any statute of the United States or of any state) in bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, or make an application in any such proceedings for, or acquiesce in, the appointment of a trustee or receiver for it or over all or any portion of its property; or (ii) be subject to any petition filed against the City in any court (whether or not pursuant to any statute of the United States or of any state) in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings where: (1) the City shall thereafter be adjudicated as bankrupt or insolvent, or such petition shall be approved by any such court, and (2) any trustee in bankruptcy, assignee or City (if a debtor in possession) does not upon demand by CPV reaffirm, assume and perform this Agreement in accordance with applicable laws and procedures.

Section 6.4 Remedies for City Event of Default.

(a) If an Event of Default by the City should occur, and if such default shall be continuing for more than thirty (30) days following a notice of default to the City provided pursuant to Section 6.3(a) where the City has failed to commence and diligently prosecute cure thereof, CPV shall have the right to seek specific performance or any other remedy at law or in equity..

(b) If an Event of Default by the City should occur, and if such default shall be continuing for more than sixty (60) days following a notice of default to the City provided pursuant to Section 6.3(a) where the City has failed to commence and diligently prosecute cure thereof, CPV shall have the right to terminate this Agreement by providing express written notice to the City.

ARTICLE 7 PIPELINES AND APPURTENANCES

Section 7.1 Pipelines.

(a) Pipelines. CPV shall construct, at CPV’s cost and expense, the pipelines and related facilities necessary or desirable to deliver Treated Effluent to the Treated Effluent Point of Connection and Process Water and Rejected Effluent to the Process Discharge Point of Interconnection. Within sixty (60) days after the Effective Date, the City shall provide to CPV, in form satisfactory to CPV, easement rights authorizing CPV to construct, operate, and maintain such pipelines at all locations within

the City necessary or desirable for such construction, operation, maintenance, and repair, and for ingress and egress to such pipelines for purposes of construction, operation, maintenance and repair. Said facilities shall be constructed in accordance with all applicable Governmental Rules and upon obtaining all necessary Permits from Governmental Authorities. Said facilities and construction activities shall be coordinated as necessary with City facilities so as not to disrupt System operations and processes. CPV shall own all such facilities unless ownership is otherwise addressed by exercising the Option for Additional Services under Section 3.9

Section 7.2 Location of Facilities.

(a) Location of Facilities. The location and design of pipelines and appurtenances will be designated before construction subject to the approval of the City Commissioner of Public Works, which shall not be unreasonably withheld, conditioned or delayed.

Section 7.3 Representations, Covenants, and Indemnity.

(a) Representation. The City represents and warrants that: (i) it lawfully owns the property on which the City's treatment facilities and System are located; (ii) it owns and operates the System; (iii) it has secured all Permits from all Governmental Authorities that are necessary or desirable to construct, operate, maintain and repair the System; (iv) it is not now in violation of the terms and conditions of said Permits; and (v) construction within the City of the pipelines and associated facilities such as, but not limited to, meters and pump stations is permitted pursuant to the City's zoning ordinance and other applicable local ordinances.

(b) Covenants. During the term of this Agreement, the City shall continue to maintain the System and all Permits necessary to construct, operate, maintain, or repair the System as required in this Agreement, and shall secure any new or different Permits that may be necessary to continue to use the System or any substitute thereof in a manner consistent with the terms and purposes of this Agreement; and that it will operate the System in compliance with the terms and conditions of all such Permits.

(c) Indemnity. The City hereby indemnifies and holds CPV harmless from all costs and expenses (including defense costs) that may be incurred by CPV arising from or relating to any pre-existing conditions or environmental releases that may have occurred on City- owned property and for any contamination or environmental release resulting from the City's action or inaction, except to the extent that any such costs and expenses arise from the action or inaction of CPV.

Section 7.4 Permits, Approvals and Cooperation.

(a) Permits. In connection with the construction of the pipelines and related facilities, the City shall cooperate with CPV, including CPV's agents, affiliates, contractors, servants and employees, in preparing, reviewing, and processing applications for such Permits and municipal approvals as may be reasonably required to be issued by the City to authorize construction, operation, maintenance, or repair of the pipelines

within the City. The parties shall, following the execution of this Agreement, cooperate in establishing mutually acceptable descriptions for the Permitted Premises to be incorporated into this Agreement and any related permits or easements.

(b) Other Approvals. The City shall cooperate with CPV in applying for and obtaining any other Permits that may be necessary or desirable to authorize construction, operation, maintenance or repair of the pipelines and other associated facilities.

(c) Mutual Cooperation. CPV and the City shall cooperate with each other as necessary for the safe and normal operation of the System and any Energy Center facilities located on City property. In the event of an emergency, each party agrees to cooperate with the other in order to achieve normal operations.

ARTICLE 8 INDEMNITIES AND LIABILITY

Section 8.1 Indemnities and Limitations of Liability.

(a) City Liability. Except as provided in this Section and in Sections 6.4 and 7.3(c), the City shall have no liability whatsoever arising from the terms, obligations and provisions of this Agreement or the operations of the City's wastewater treatment facilities and appurtenances.

(b) Indemnification. The City and CPV each agree that it will, to the extent permitted by law, protect, indemnify and hold the other, and its Affiliates, agents, employees and invitees to, as applicable, the sites of the Energy Center or the System (the "**Indemnified Parties**") harmless from and against all liabilities, actions, damages, claims, demands, liens, encumbrances, judgments, losses, costs, expenses, suits or actions and attorneys' fees and costs; and will defend the Indemnified Parties in any action, suit, or other proceeding, including appeals, for personal injury to, or death of, any person or persons, or loss or damage to property of third parties caused by the acts or omissions the indemnifying party, its agents or employees, in connection with, arising out of or as a result of this Agreement or the performance of either party's obligations hereunder. Neither party shall be required to reimburse, defend, or indemnify the other party for loss or claim to the extent that such loss or claim arises from the negligent acts or omissions of such other party, its agents or employees.

(c) Cooperation Regarding Claims. If either party shall receive notice or have knowledge of any claim, demand, action, suit or proceeding against such party that may result in a claim by either party (the "Claiming Party") against the other party (such other party is an "Indemnifying Party") pursuant to this Article 8, the Claiming Party shall, as promptly as is reasonably possible, give the Indemnifying Party notice of such claim, including: (i) a reasonably detailed description of the facts and circumstances relating to such claim; (ii) a reasonably detailed description of the basis for its potential claim for indemnification with respect thereto; and (iii) a complete copy of all notices, pleadings and other papers related thereto; provided, that failure promptly to give such

notice or to provide such information and documents shall not relieve the Indemnifying Party of any indemnification obligation it may have under this Article 8 unless such failure shall materially diminish the ability of The Indemnifying Party to respond to or to defend the Claiming Party as a result of its failure to give such notice. The City and CPV shall consult and cooperate with each other regarding the response to and the defense of any claim and the Indemnifying Party shall promptly assume the defense or represent the interests of the Claiming Party in respect of such claim, which shall include the right to select legal counsel, reasonably satisfactory to the Claiming Party, and other consultants to appear in proceedings on behalf of the Claiming Party and to propose, accept or reject offers of settlement, all at the Indemnifying Party's sole cost; provided that no such settlement shall be made without the written consent of the Relevant Claiming Party, such consent not to be unreasonably withheld or delayed; provided, further, that if the claim is settled without the Indemnifying Party's consent, the Claiming Party shall be deemed to have waived all rights hereunder against the Indemnifying Party for damages arising out of such claim. Nothing herein shall prevent the Claiming Party from retaining its own counsel and participating in its own defense at its own cost and expense. The Parties shall cooperate with each other in any notifications to insurers.

Section 8.2 Limitation of Liability.

(a) Limitation of Liability. Except for the indemnification under this Article 8, and for damages payable with respect to an Event of Default hereunder, a party shall only be liable to the other party for direct damages as a result of a breach or default under this Agreement. Except for the indemnification under this Article 8, and for damages payable with respect to an Event of Default hereunder, and for damages payable with respect to the indemnification obligations under Section 7.3(c) and Article 8 in no event shall a Party be liable to the other Party, whether under contract, tort (including negligence), strict liability or any other cause of or form of action whatsoever, for claims by such Party of cost of money, loss of profits, loss of use of capital or revenue or any other incidental, special, indirect or consequential loss or damage of any nature arising at any time or from any cause whatsoever, or for punitive or exemplary damages.

Section 8.3 Assignment of Liable Party's Rights.

(a) Assignment of Liable Party's Rights. If any entity providing insurance covering any liability of a Party for indemnification or contribution within the scope of this Article 8 or Section 7.3(c) (the "**Liable Party**") refuses to make payment with respect to such liability, the damaged Party shall, at the request of the Liable Party, execute such documents as may be necessary to effect an assignment of the Liable Party's rights to payment from such entity, provided that nothing in this Section 8.3 shall relieve the Liable ..Party from liability under this Article 8 or Section 7.3(c).

Section 8.4 No Release of Insurers.

(a) No Release of Insurers. The provisions of this Article 8 shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies.

Section 8.5 Representatives.

(a) Representatives. Nothing contained herein shall be deemed to give rise to any personal obligation or liability of any Representative of either Party by reason of any breach or violation of any of the provisions hereof or otherwise, and neither Party shall have any rights against, or be entitled to sue or seek any recovery from, any such Persons. Nothing herein shall relieve either Party of any liability to make any payment expressly required to be made by such Party pursuant to this Agreement.

**ARTICLE 9
INSURANCE**

Section 9.1 Insurance Requirements.

(a) CPV and the City shall each carry Workers' Compensation or self-insurance complying with all applicable Governmental Rules, including Employer's Liability insurance of one million dollars (\$1,000,000.00) for injury or death of any one person.

(b) CPV and the City shall each carry Commercial General Liability Coverage in form at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions. The limit shall not be less than one million dollars (\$1,000,000.00) each occurrence/ two million dollars (\$2,000,000.00) aggregate for bodily damage, property damage and personal injury. The property damage provision of such insurance shall be endorsed to waive all rights of subrogation against the other Party and its Affiliates. Coverage shall (i) be evidenced by "Additional Insured" endorsement adding as insured's the other Party, its directors, officers, agents and employees with respect to liability arising out of work performed by or for the insured Party and (ii) be endorsed to specify that the insured Party's insurance is primary and that any insurance or self-insurance maintained by the other Party shall not contribute to it.

(c) CPV and the City shall each carry Commercial Automobile Liability Coverage in form at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1, "any auto." The limit shall not be less than one million dollars (\$1,000,000.00) each accident for bodily injury and property damage.

(d) Within 30 days prior to CPV entering any property of the City for purposes of constructing any pipeline or necessary appurtenance contemplated under this agreement, the parties shall provide to each other certificates of insurance evidencing compliance with the insurance requirements of this Article 9. All policies for each insurance required hereunder shall be issued by insurance companies that are licensed by the State of New York and have a Best's Key Rating Guide of B+ VIII or better.

Section 9.2 Terms of Insurance.

(a) Terms of Insurance. All insurance provided in accordance with this Agreement shall be on reasonable and customary terms and conditions as reasonably agreed to by the parties.

Section 9.3 Additional Insureds.

(a) Additional Insureds. Each Party shall make the other Party and other required parties, additional insureds under the insurance required to be maintained hereunder, except with respect to such Party's independent negligence. The insurance provided to the additional insureds shall be primary and any other valid and collectable insurance available to the additional insureds shall be excess. Each insurer shall agree that its policy is primary insurance, and that it shall be liable under its policy, only to the extent arising out of the negligence of the insured Party, and within the parameters set forth in Article 8 and Section 7.3(c) of this Agreement, for the full amount of any loss up to and including the total amount of liability without right of contribution from any other insurance affected by the other Party. The inclusion of a Party as an additional insured shall not in any way affect its rights with respect to any claim, demand, suit or judgment made, brought or recovered against the other Party. Said policy or policies shall protect CPV and the City in the same manner as though a separate policy has been issued to each; however, nothing in said policy shall operate to increase the insurer's liability as set forth in the policy beyond the amount or amounts shown or to which insurer would have been liable if only one interest had been named as an insured. A severability of interest clause will be included within the terms of each policy.

Section 9.4 Notice of Discontinuance.

(a) Notice of Discontinuance. All certificates of insurance from the insuring companies required to be furnished to either Party hereunder shall include the following clause: "At least thirty (30) days' advance notice shall be given in writing by certified mail, return receipt requested, to the other Party at its notice address set forth in Section 12.1, to the attention of its risk management department, prior to cancellation, termination, or any alteration of the policy or policies evidenced by this certificate."

Section 9.5 Periodic Review of Insurance Requirements.

(a) Periodic Review of Insurance Requirements. The minimum policy limits of the foregoing insurance requirements, shall be subject to review for adequacy by the Parties every five (5) years during the Term, and such policy limits may be increased, upon the mutual agreement of the Parties, in light of the probable risks and liabilities known to the Parties at the time of such review; provided, however, that in no event shall the City be allowed to reduce the deductible amount of any insurance policy specified in this Article 9 below the greater of any amount set forth above or any deductible amount required by any Lender to CPV. In the event CPV and the City cannot agree upon the minimum policy limits of the foregoing insurance requirements, the Parties shall submit the matter to binding arbitration pursuant to Section 14.1.

Section 9.6 Lender Insurance Requirements.

(a) Lender Insurance Requirements. Notwithstanding the foregoing provisions of this Agreement, the City agrees to procure and maintain in full force and effect all insurance policies required by each Lender to CPV (and to satisfy the requirements for each such policy, including, without limitation, the policy limits and deductibles thereunder). The City agrees to cause CPV to be named as an additional named insured on such policies. For the avoidance of doubt, City shall not be required to procure and maintain the insurance required by such Lenders upon the termination of CPV's indebtedness to such Lenders and upon satisfaction of such indebtedness the City shall only be required to satisfy the requirements of the foregoing provisions of this Article 9.

Section 9.7 Waiver of Subrogation.

(a) Waiver of Subrogation. Each Party to this Agreement hereby releases and relieves the other, and waives its entire right of recovery against the other, for direct or consequential loss or damage to the extent that such Party recovers for such loss or damage is from property insurance carried by such Party, its Affiliates, agents, employees, contractors and/or invitees, whether or not due to the negligence of the City or CPV (as the case may be) their respective Affiliates, agents, employees, contractors and/or invitees.

**ARTICLE 10
FORCE MAJEURE**

Section 10.1 Procedure on Force Majeure Claim

(a) Procedure on Force Majeure Claim. If a Party wishes to claim relief by reason of Force Majeure, it shall give written notice to the other Party pursuant to the provisions of Article 13 of this Agreement, stating the date of commencement of such Force Majeure event and the predicted extent, estimated consequences and cause thereof to the other Party as soon as reasonably possible and in any case within five (5) days after it becomes aware of such event or circumstances.

(b) The Party claiming Force Majeure shall keep the other Party fully informed of any developments with respect to the Force Majeure;

(c) If a Party claims relief for Force Majeure and the other Party disputes the existence, nature, extent or condition of the event of circumstances giving rise to such claim for relief, then such dispute shall be resolved pursuant to Section 14.1.

(d) The Party claiming Force Majeure shall give written notice to the other Party pursuant to the provisions of Article 13 of this Agreement, stating the cessation of the relevant event or circumstances of Force Majeure as soon as practicable after becoming aware of such cessation.

Section 10.2 Effects of Force Majeure.

(a) Effects of Force Majeure. If either Party is rendered wholly or partly unable to perform its obligations hereunder because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:

i. The non-performing Party promptly, but in no case longer than five (5) days after the occurrence of the Force Majeure, gives written notice to the other Party pursuant to the provisions of Article 13 of this Agreement, describing the particulars of the occurrence;

ii. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure; and

iii. The non-performing Party uses commercially reasonable efforts to remedy its inability to perform.

ARTICLE 11 ASSIGNMENT

Section 11.1 Successors and Assigns.

(a) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and permitted assigns.

Section 11.2 Assignment.

(a) Assignment. Except as expressly provided in Section 11.3, neither Party will assign or transfer any right, obligation or interest under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed; provided, however, that the consent of the other Party shall not be required in connection with (i) any Party's assignment of this Agreement to an Affiliate of such Party or a purchaser or transferee of substantially all of the assets of a Party, but only upon assumption by such Affiliate, purchaser or transferee of all of such Party's obligations under this Agreement, or (ii) the merger (or similar transaction) of a Party. If a Party assigns this Agreement to an Affiliate of such Party, the assigning Party shall remain liable for its obligations hereunder. Any assignee of this Agreement pursuant to the foregoing provisions of this paragraph shall have the right to further assign this Agreement as provided for in this paragraph. If in connection with any assignment permitted pursuant to this paragraph any Lender to or equity investor of CPV (and any direct or indirect wholly-owned subsidiary of CPV) requests the City to consent in writing to such an assignment even though such consent is not required hereunder, the City shall promptly provide such consent. In the case of an assignment that does not require the City's consent, CPV's sole obligation under this Article 10 is to provide the City with notice of such assignment.

Section 11.3 Collateral Assignments.

(a) Collateral Assignments. Notwithstanding the foregoing, without the prior consent of the City, CPV may assign its rights and interest under this Agreement to (i) any Lenders to CPV (and any direct or indirect wholly-owned subsidiary of CPV), including, without limitation, holders of the membership interests in CPV and any direct or indirect wholly-owned subsidiary of CPV, in each case as collateral security for the obligations of CPV (and any direct or indirect wholly-owned subsidiary of CPV). The City shall reasonably cooperate with CPV (and any direct or indirect wholly-owned subsidiary of CPV) and their respective Lenders from time to time, including, without limitation, the furnishing of such information and documentation as such Lender reasonably requests from the City, or an opinion of counsel addressed to any such Lender or equity investor concerning such matters, as such Lenders may reasonably request, and in connection with any such collateral assignment, the City shall enter into a consent and agreement with such Lenders on such terms as may be customary under the circumstances and as shall be reasonably required by such Lenders, provided that the foregoing undertaking shall not obligate the City to change any of its rights or benefits, or impose or increase any of its burdens, liabilities, or obligations, under this Agreement.

ARTICLE 12
REPRESENTATIONS AND WARRANTIES

Section 12.1 Representations and Warranties of CPV. CPV hereby makes the following representations and warranties to the City:

(a) CPV is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State of New York and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by CPV of this Agreement has been duly authorized by all necessary limited liability company action, and does not and will not require any consent or approval of CPV's members other than that which has been obtained (evidence of which shall be, if it has not heretofore been, delivered to the City).

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any legal requirements, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which CPV is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing.

(d) This Agreement constitutes the legal, valid and binding obligation of CPV enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) There is no pending or, to the knowledge of CPV, threatened action or proceeding affecting CPV before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement.

Section 12.2 Representations and Warranties of the City. The City hereby makes the following representations and warranties to CPV:

(a) The City is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of New York and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by the City of this Agreement have been duly authorized by all necessary official action, and do not and will not require any consent or approval of the City's City Council other than that which has been obtained (evidence of which shall be, if it has not heretofore been, delivered to CPV).

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any legal requirements, or its articles of incorporation or bylaws, or any deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the City is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing.

(d) This Agreement constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) There is no pending or, to the knowledge of the City, threatened action or proceeding affecting the City before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement.

(f) The City has all approvals of any Governmental Authority necessary for it to perform its obligations under this Agreement.

(g) The City's prior contractual obligations to deliver Treated Effluent to other parties total zero (0) million gallons per day in the aggregate.

ARTICLE 13 NOTICES

Section 13.1 Notices.

(a) Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received by the applicable Party hereto if personally delivered; when transmitted by the applicable Party hereto if transmitted by telecopy, electronic or digital transmission method, subject to the sender's facsimile machine or other device receiving the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by telephone to sender that he has received the message; and when received by the applicable Party hereto, if sent for next day delivery to a domestic address by recognized overnight delivery service or if sent by certified or registered mail, return receipt requested.

Notices shall be given:

If to the City, to:

The City of Middletown
16 James Street
Middletown, New York 09140
Attn: Jacob Tawil, Commissioner of Public Works
Facsimile No: (845) 343-4014

and

The City of Middletown
19 James Street
Middletown, New York 09140
Attn: Assistant Corporation Counsel
Facsimile No: [_____]

If to CPV, to:

CPV Valley, LLC
c/o Competitive Power Ventures, Inc.
Silver Spring Metro Plaza I
8403 Colesville Road, Suite 915
Silver Spring, Maryland 20910
Attn: General Counsel

Facsimile No: (240) 723-2339

and

CPV Valley, LLC
c/o Competitive Power Ventures, Inc.
50 Braintree Hill Office Park, Suite 300
Braintree, MA 02184
Attn: Project Manager
Facsimile No: (781) 848-5804

CPV Valley, LLC
Wawayanda, NY _____
Attn: Plant Manager
Facsimile No.: _____

**ARTICLE 14
GENERAL**

Section 14.1 Dispute Resolution.

(a) Except as otherwise provided in this Agreement, in the event of any Dispute, the Parties will confer and attempt to resolve the Dispute informally. If such Dispute cannot be resolved in this manner within fifteen (15) calendar days after notice of the Dispute is given to the other Party, the Dispute shall be resolved by recourse to the courts as provided herein. The Parties irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of New York and of the United States District Courts located in New York for any lawsuits, actions or other proceedings arising out of or relating to this Agreement and agree not to commence any such lawsuit, action or other proceeding except in such courts. The Parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any lawsuit, action or other proceeding arising out of or relating to this Agreement in the courts of the State of New York located in the County of Orange or the United States District Courts located in New York, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such lawsuit, action or other proceeding brought in any such court has been brought in an inconvenient forum. Any right to trial by jury with respect to any lawsuit, claim or other proceeding arising out of or relating to this Agreement is expressly and irrevocably waived.

Section 14.2 No Third Party Beneficiary.

(a) No Third Party Beneficiary. This Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and, to the extent expressly provided, for the benefit of the Lenders and the other Indemnified Parties, and shall not imply or create any rights on the part of, or obligations to, any other Person.

Section 14.3 Governing Law.

(a) Governing Law and Venue This Agreement shall be construed in accordance with, and governed by, the laws of the State of New York without regard to its conflicts of laws provisions.

Section 14.4 Partial Invalidity.

(a) Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without

invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable. In the event that such a construction would be unreasonable or would deprive a Party of a material benefit under this Agreement, the Parties shall seek to amend this Agreement to remove the invalid provision and otherwise provide the benefit unless prohibited by any Governmental Rule.

Section 14.5 Waivers.

(a) Waivers. The failure of either Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision or of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition, nor in any way to affect the validity of this Agreement or any part hereof or the right of a Party thereafter to enforce each and every such provision. A waiver under this Agreement must be in writing and state that it is a waiver. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

Section 14.6 Entire Agreement and Amendments

(a) Entire Agreement and Amendments. This Agreement (including the Exhibits, Schedules and Annex hereto which are an integral part of this Agreement) supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties hereto or their Representatives including, without limitation, the Memorandum of Understanding and the Option to Lease.

Section 14.7 Counterparts.

(a) Counterparts. This Agreement may be signed in multiple originals and/or using counterpart signature pages. All such multiple originals shall constitute but one and the same document.

Section 14.8 Decision-Making By Parties

(a) Decision-Making By Parties. Except where this Agreement expressly provides for a different standard, whenever this Agreement provides for determination, decision, permission, consent or approval of a Party, the Party shall promptly make such determination, decision, grant or withholding of permission, consent or approval in a commercially reasonable manner and without unreasonable delay. Any denial of consent required to be made in a commercially reasonable manner shall include in reasonable detail the reason for denial or aspect of the request that was not acceptable.

Section 14.9 No Recourse To Affiliate

(a) No Recourse To Affiliate. This Agreement is solely and exclusively between the City and CPV, and any obligations created herein shall be the sole obligations of the Parties hereto. No Party shall have recourse to any parent, member, shareholder, subsidiary, partner joint venture, Affiliate, director or officer of the other

Party for performance of said obligations unless the obligations are assumed in writing by the Person against whom recourse is sought.

Section 14.10 Further Assurances

(a) Further Assurances. The City and CPV agree to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Agreement and each will take all reasonable actions within its authority to secure the cooperation of its Affiliates.

Section 14.11 Survival

(a) Survival. Sections 1.1, 1.2, 1.3, Articles 5 and 6, section 7.3(c), Article 8, Articles 12, 13 and 14 shall survive the expiration or termination of this Agreement.

Section 14.12 No Partnership

(a) No Partnership. The Parties intend that nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or other co-ownership arrangement between the Parties.

Section 14.13 Cumulative Remedies

(a) Cumulative Remedies. All rights and remedies of either Party hereto are cumulative of each other and of every other right or remedy such Party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

Section 14.14 WAIVER OF JURY TRIAL

(a) WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF THE PARTIES HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH OF THE PARTIES TO ENTER INTO THIS AGREEMENT.

Section 14.15 Past-Due Amounts

(a) Past-Due Amounts. Any amounts due hereunder, if not timely paid by the party from whom they are due, shall bear simple interest at an annual rate of interest equal to the lesser of (i) Default Rate; or (ii) the maximum interest rate allowed under New York law, from the date that such amount was due without regard to any grace period herein provided until the time that such amount is paid in full. Additionally, if any amount due hereunder is not paid by the party from whom such amount is due, the other

party, upon thirty (30) days notice to the defaulting party, may elect to set-off the amount remaining overdue at the end of such thirty-day period (with such interest thereon) against amounts due or becoming due from the other party to the defaulting party hereunder until such other party shall have recovered in full the amount owed to it by the defaulting party.

Section 14.16 Estoppel Certificates

(a) Estoppel Certificates. Within thirty (30) days after receipt of a written request, either Party shall deliver a written statement to the other stating whether this Agreement is unmodified and in full force and effect, whether the other Party is in compliance with this Agreement and any other matters that may reasonably be requested.

Section 14.17 Consents

(a) Consents. Except where this Agreement expressly provides for a different standard, whenever this Agreement provides for a determination, decision, permission, consent, or approval of a Party, the Party shall promptly make such determination, decision, grant or withholding of permission, consent or approval in a commercially reasonable manner and without unreasonable delay. Any denial of consent required to be made in a reasonable manner shall include in reasonable detail the reason for denial or aspect of the request that was not acceptable.

Section 14.18 Legal Representation of Parties

(a) Legal Representation of Parties. This Agreement was negotiated by the Parties with the benefit of legal representation and any rule of construction or interpretation requiring this Agreement to be construed or interpreted against any Party, shall not apply to any construction or interpretation hereof or thereof.

Section 14.19 Confidentiality

(a) Confidentiality. Each Party agrees that it will not and shall direct its respective employees, officers, agents and representatives not to, directly or indirectly, release or cause or permit to be released to the public any press notices, publicity (oral or written) or advertising promotion relating to the execution of this Agreement, or otherwise publicly announce or disclose or cause or permit to be publicly announced or disclosed, in any manner whatsoever, the terms, conditions or substance of this Agreement or the transactions contemplated herein, without first obtaining the consent of the other Party. It is understood that the foregoing shall not (i) preclude any party from discussing the substance or any relevant details of the transactions contemplated in this Agreement on a confidential basis with any of its partners, attorneys, officers, directors, employees, accountants, professional consultants, financial advisors, rating agencies, or potential lenders, as the case may be (the “**Representatives**”) provided that such Representatives have been informed of the applicable Party’s obligations hereunder or (ii) prevent it from complying with applicable laws, including, without limitation, governmental regulatory, disclosure, tax and reporting requirements, including, but not

limited to, the New York Freedom of Information Law (NY Public Officers Law Article 6).

Section 14.20 No Tax Lien

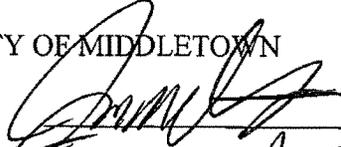
(a) No tax lien shall arise with respect to any unpaid amounts due from CPV to the City under this Agreement.

SIGNATURE PAGE TO EFFLUENT WATER SUPPLY AND PROCESS WATER
DISCHARGE SERVICES AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of
the date set forth at the beginning of this Agreement.

CITY:

CITY OF MIDDLETOWN

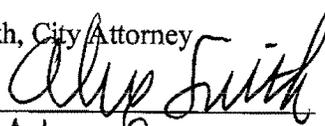
By: 

Name: Joseph M. Anastasio

Title: Mayor

APPROVED AS TO FORM:

Alex Smith, City Attorney

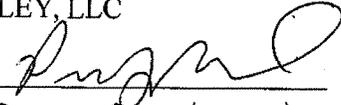
By: 

Name: Alex Smith

Title: Assistant Corp. Counsel

CPV:

CPV VALLEY, LLC

By: 

Name: Peter Podurgiel

Title: Senior Vice President

EXHIBIT A

ENERGY CENTER AND SITE DESCRIPTION

The proposed CPV Valley Energy Center is a natural gas, combined-cycle generating facility with a nominal rating of 650MW ("Project"). The Project would be located on an approximate 30 acre portion of a total 122 acre site parcel of open land in the northeast portion of the Town of Wawayanda. The broader 122 acre site parcel is bounded by Interstate-84 (I-84) to the south, route 17M on the east, and Route 6 to the north and west. The 30 acre development footprint is located in the southwest quadrant of the broader site. The development site parcel is currently undeveloped land used previously for agricultural purposes, including the growing of hay and corn, and wooded areas.

The CPV Valley Energy Center consists of a combined-cycle facility capable of generating a peak of approximately 650 megawatts (MW) of electricity. Approximately 175 MW of this power will be produced using two F Class combustion turbine generator sets. Exhaust heat from the combustion turbines will be sent to heat recovery steam generators (HRSGs) to produce steam to drive a steam turbine generator. The HRSGs will include a natural gas-fired "duct burner" (supplemental firing system). The duct burners will allow for additional electrical production during select periods. The steam turbine generator will provide approximately 300 MW, the balance of the Facility's output.

The Project will be equipped with state-of-the-art emissions control technology; selective catalytic reduction technology (SCR) to control oxides of nitrogen (NOx) and an oxidation catalyst to control carbon monoxide (CO) emissions. Exhaust steam from the steam turbine will be cooled (i.e., condensed) and then returned to the HRSG using an air-cooled condenser. Air-cooled condensing will be employed to minimize water use and eliminate potential cooling tower plume impacts.

Natural gas will be used as the primary fuel with ultra-low sulfur distillate oil serving as a back-up fuel so that the Project can reliably support the electrical system in the event that natural gas supplies are needed to meet residential heating or other demands.

The Project will interconnect with the New York Power Authority's (NYPA) 345-kilovolt (kV) transmission system, which is located less than 1 mile north of the Project site, via a 345kV substation to be located adjacent to NYPA's 345 kV Marcy South transmission line in the City of Middletown.

Process water requirements for the Project will be met through use of grey water from the City of Middletown Sewage Treatment Plant. The treated effluent currently discharged to the Wallkill River would be filtered and chlorinated for reuse as process makeup water. Process water discharge will be conveyed back to the City of Middletown Sewage Treatment Plant's for treatment. Potable water will be obtained through an interconnect to the municipal system along Route 6.

EXHIBIT B

CONTENTS OF THE OPERATING PROTOCOL

In order to effectuate the sale and purchase of Treated Effluent and disposal of Process Water between the Parties, it will be necessary for CPV to construct and operate or arrange for the operation of a pump station, chlorine injection system and pipelines and related monitoring, metering and sampling equipment, and to operate or arrange for the operation of such equipment pursuant to this Operating Protocol, which contain provisions for communication procedures, planned and unplanned outages, records and reporting, access, inspection and testing. Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

1) Treated Effluent

The Operating Protocol for Treated Effluent shall include, but not be limited to the following:

a) Procedures and protocols for:

i) Communication;

ii) Reporting;

iii) Scheduling;

iv) Sampling;

v) Testing;

vi) Metering;

vii) Planned and Unplanned Outages;

viii) Delivery of Treated Effluent (up to the Maximum Daily Treated Effluent Quantity) by the City to the Treated Effluent Point of Connection in accordance with Article 3 of the Agreement;

ix) Rejection by CPV of Treated Effluent or communication of acceptance by CPV of Rejected Effluent and Off-specification Effluent in accordance with Article 3 of the Agreement;

x) Communication of Interruption of Services and Mitigation of Delivery Shortfalls by City in accordance with Article 3 of the Agreement;

(a) Interruption of Services by City shall include the following;

(i) [defined list of Interruption of Services]

- xi) CPV's use of On-Site Treated Effluent Supply and On-Site Contingent Backup Supply;
- xii) Communication and scheduling by CPV of the Backup Potable Water Supply in accordance with Article 3 of the Agreement;
- xiii) Access, inspection, maintenance, repair, replacement, testing, records and reporting requirements for CPV for the Effluent Meter in accordance with Article 4 of the Agreement;
- xiv) Emergency contact lists and emergency notification methods and response measures for the Parties; and
- xv) Any other procedures and protocols required to fulfill the obligations of the Parties under the Agreement.

2) Process Water

The Operating Protocol for Process Water shall include, but not be limited to the following:

- a) Procedures and protocols for:
 - i) Metering and delivery by CPV of Process Water (up to the Maximum Process Water Discharge Quantity) to the Process Discharge Point of Connection in accordance with Article 3 of the Agreement;
 - ii) Communication and scheduling of planned and unplanned outages by City of the Process Discharge Point of Connection and System;
 - iii) Access, inspection, maintenance, repair, replacement, testing, records and reporting requirements for the Process Water Meter in accordance with Article 4 of the Agreement;
 - iv) Emergency contact lists and emergency notification methods and response measures for the Parties; and
 - v) Any other procedures and protocols required to fulfill the obligations of the Parties under the Agreement.

EXHIBIT C

TREATED EFFLUENT QUALITY SPECIFICATIONS

City of Middletown
 State Pollutant Discharge Elimination Permit System (SPDES)
 Discharge Permit
 (NY0026328)

		City of Middletown
Constituent	Units	SPDES Permit Limits
pH (lab)	SU	6.0 - 9.0
CBOD ₅ , monthly avg. (Nov. 1 - May 31)	mg/L	25
CBOD ₅ , 7 day avg.	mg/L	40
UOD ⁽¹⁾ , monthly avg. (June 1 - Oct. 31)	mg/L	33
Suspended Solids, monthly avg.	mg/L	30
Suspended Solids, 7 day avg.	mg/L	45
Nitrogen, Ammonia (as NH ₃), monthly avg. (June 1 - Oct. 31)	mg/L	3.3
Nitrogen, Ammonia (as NH ₃), monthly avg. (Nov. 1 - May 31)	mg/L	6.8
Mercury, daily max.	ng/L	50
Fecal Colifom, 7 day geometric mean	cfu/100ml	400
Fecal Colifom, 30 day geometric mean	cfu/100ml	200

(1) Ultimate Oxygen Demand = 1.5 x CBOD₅ + 4.5 x TKN (Total Kjeldahl Nitrogen)

EXHIBIT D

PROCESS WATER QUALITY SPECIFICATIONS

		Daily Maximum	Maximum Monthly Average
Constituent	Units		
Total Cadmium	mg/L	0.69	0.26
Total Chromium (Hex)	mg/L	2.77	1.71
Total Copper	mg/L	3.38	2.07
Total Lead	mg/L	0.69	0.26
Total Nickel	mg/L	3.98	2.38
Total Silver	mg/L	0.43	0.24
Total Zinc	mg/L	2.61	1.48

EXHIBIT E

TREATED EFFLUENT AND PROCESS DISCHARGE POINTS OF CONNECTION

[FOLLOWING PAGE]

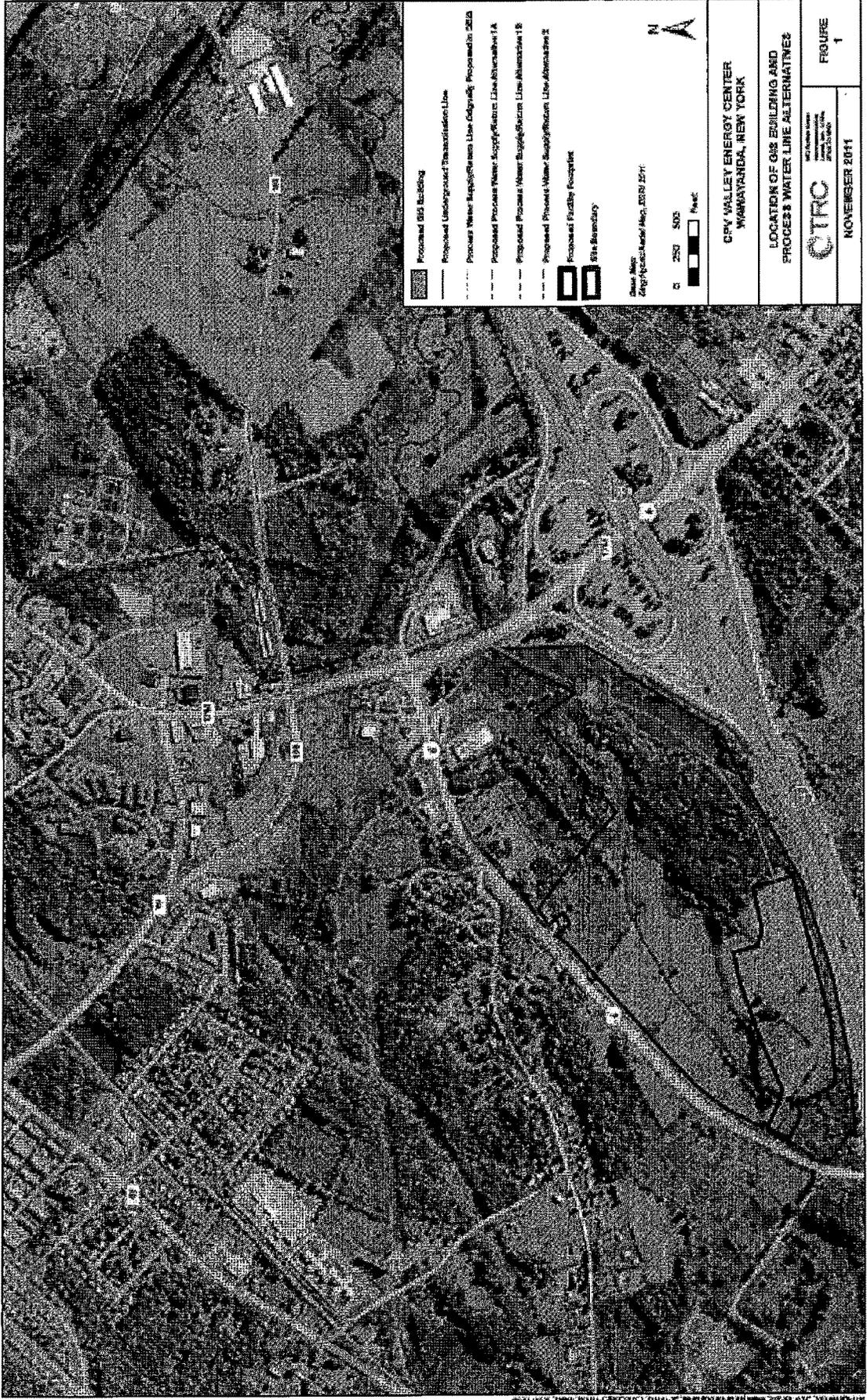


Exhibit E