

**PARTICIPATION CONTRACT**

**BETWEEN  
CHICAGO HOUSING AUTHORITY  
AND  
CONSTELLATION NEW ENERGY – GAS DIVISION, LLC**

This Participation Contract ("**Contract**") is made and entered into effective as of the 20<sup>th</sup> day of March, 2018 ("**Effective Date**"), by and between Chicago Housing Authority (hereinafter referred to as the "**Customer**" or "**CHA**"), and Constellation New Energy – Gas Division, LLC., a Kentucky Limited Liability Company with headquarters at 9400 Bunsen Parkway, Suite 100, Louisville, Kentucky 40220 and local corporate offices located at 500 West Madison, Suite 3300, Chicago, Illinois 60661 (hereinafter referred to as "**Constellation**" or "**Vendor**").

**WITNESSETH:**

**WHEREAS**, on January 10, 2017, the Chicago Transit Authority ("CTA"), pursuant to an open and competitive solicitation (Requisition No. B16OP00962 – Request for Proposals for the Purchase of Natural Gas) awarded to and executed with Constellation that certain Base Contract for Sale and Purchase of Natural Gas to Constellation (Contract No. B16OP00962, as originally executed and thereafter amended or supplemented by CTA and Constellation, the "**Master Agreement**", incorporated herein by reference as Attachment A), which permits entities to procure, order and purchase natural gas supplies and integrally related services in accordance with terms and conditions set forth in the Master Agreement;

**WHEREAS**, the **CHA**, in reliance upon the local government agency participation rights available and in effect under the Master Agreement ("Other Agencies – Section 15.20 of the Special Conditions), and sought authorization and approval from the CTA to participate in the Master Agreement, which was approved by the CTA in its communications to CHA on or about March 7, 2018 and incorporated herein by reference as Attachment B;

**WHEREAS**, the CHA and the Vendor desire to enter into this Contract to facilitate the procurement and purchase of natural gas supplies and related delivery and management services, as well as other related services by Vendor to the CHA and its Property Division, upon the same generally prevailing terms, conditions and prices as established in the Master Agreement, except as specifically modified by the terms herein; and

**WHEREAS**, the undersigned representative of Customer is authorized, on behalf of Customer, to contract with Vendor for the supply and delivery of natural gas supplies and all integrally related services (e.g., storage, delivery, hedging, balancing and other supply related management and administrative functions) in accordance with the terms of the Master Agreement and this Contract.

**NOW, THEREFORE**, in consideration of the mutual covenants, benefits and promises herein stated and in conjunction with the cooperative agreement referenced, the parties hereto agree to the following terms and conditions:

**1. INCORPORATION OF MASTER AGREEMENT & OTHER TERMS AND UNDERSTANDINGS.**

The purpose of this Contract is to allow the Customer to purchase natural gas supplies and their integrally related delivery services and other amenities from Vendor upon the regular and prevailing terms and conditions set forth in the Master Agreement. To that end, the Master Agreement is hereby incorporated by reference as if set forth herein in its entirety, including any and all subsequent amendments thereto. Furthermore, this Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transaction are merged into and superseded by this Contract and any effective transaction(s) and all transactions under any such prior contracts are, as of the Effective Date, now governed solely by the terms of

this Contract and shall be Transactions hereunder and a part of the single integrated contract between the parties.

As required under the Master Agreement, this Contract shall have no effect (adverse or otherwise) upon the validity, duration or operation of the Master Agreement. Furthermore, to fully effectuate the independent performance, operation and administration of this Contract as a wholly separate agreement from the Master Agreement, this Agreement shall be construed by the Customer and the Vendor, and by any court, tribunal or other entity charged with enforcement or interpretation of this Contract harmoniously with the Master Agreement to the fullest extent practicable and with the stated intention of Customer and the Vendor that the each shall be construed to be consistent and harmonious with the other, and no specific conflict shall be implied or construed.

All rights and duties generally applicable to or reserved to CTA under the Master Agreement shall likewise be vested in the Customer for purposes of this Contract. Furthermore, all rights and duties generally applicable to or reserved to the Vendor under the Master Agreement shall likewise be vested in the Vendor for purposes of this Participation Contract. Additionally, any material clause or provision set forth in the Master Agreement which has an analogous or equivalent term or provision under law or regulation that would apply to the parties to this Contract, the equivalent law or provision shall be given full reasonable effect, without intending any material conflict or contradiction with the equivalent or comparable term, condition, law or regulation referenced in the Master Agreement.

2. **TERM AND COMPENSATION.**

The Term of this Agreement is for the period commencing from the Effective Date set forth above through May 31<sup>st</sup>, 2022, or until the Services to be provided under this Agreement are fully completed and accepted, whichever occurs last.

In consideration of the Vendor's performance and provision of the Services, goods, supplies and other related activities herein, the CHA shall pay the Vendor compensation in the total not-to-exceed amount of Sixteen Million Eight Hundred Thousand Eight Hundred and 00/100 Dollars (\$16,800,800.00) (hereinafter the "Total Compensation"). Pricing for natural gas supplies, deliveries and related services and amenities, shall be subject to the same established catalog pricing, selection, discounts, rebates and other pricing terms established in the Master Agreement.

The Vendor agrees not to perform, and waives any and all claims for payment of work, materials, expenses, resources or other claims which would result in billings beyond this amount. It is mutually understood and agreed by the parties that the above agreed upon Total Compensation amount is the only compensation provided for in this Agreement and there will be no additional, costs, fees or other type of profit allowable or paid under this Agreement without an express written amendment to the Agreement authorizing said additional compensation, supplies or services. The Vendor acknowledges an affirmative duty to monitor its performance and billings to ensure that the scope of work is completed within the Total Compensation amount.

3. **NOTICES.**

All notices, requests, demands and other communications under this Contract shall be given in writing. Such notices shall be deemed to have been given when delivered in person or three (3) business days after being sent via certified mail or upon delivery if sent via reputable overnight delivery service and addressed to the appropriate party at its mailing address set forth below:

To Customer:

Chicago Housing Authority  
60 E. Van Buren Street, 12th Floor  
Chicago, IL 60605  
Attn: Chief Executive Officer

with a copy to:

Chicago Housing Authority  
60 E. Van Buren Street, 12th Floor  
Chicago, IL 60605  
Attn: Chief Legal Officer

To Vendor:

Constellation NewEnergy – Gas Division, LLC  
9400 Bunsen Parkway, Suite 100  
Louisville, KY 40220

**4. TERMINATION FOR CONVENIENCE.**

Either party may terminate this Contract for convenience by providing the other party thirty (30) days prior written notice. Notwithstanding the foregoing, termination of this Contract pursuant to this Article 4 shall not affect, modify or terminate any prior order(s) or transaction(s) entered into by the CHA and Vendor under this Contract and/or the Master Agreement (including, without limitation, any fixed natural gas orders or transactions that commit to the purchase of designated gas volumes or supplies that are to be delivered or supplied during the term of this Contract).

**5. INSURANCE.**

Vendor and the CHA agree that Vendor's insurance obligations under the Master Agreement shall apply to this Agreement, and that the CHA shall be named as an "additional insured" to that same extent that the Chicago Transit Authority is so designated in the Master Agreement.

**6. EQUAL EMPLOYMENT OPPORTUNITY.**

Reserved.

**7. MBE/WBE/DBE PARTICIPATION/COMPLIANCE.**


Vendor and the CHA agree that Vendor's MBE/WBE/DBE obligations under the Master Agreement shall apply to this Agreement, and that the Vendor's MBE/WBE/DBE Utilization Plan, which is attached hereto as Exhibit C and incorporated by reference herein, shall apply for the administration of MBE/WBE/DBE compliance under this Agreement. This Section 8 shall not be applied, interpreted or construed to be in excess of or in conflict with Vendor's participation and compliance obligations under the Master Agreement.

**8. BUSINESS DOCUMENTS AND CERTIFICATIONS.**

Vendor has provided to the Customer various documentation, certifications and representations, including evidence of its authority to conduct business in the State of Illinois, including without limitation, registrations of assumed names or limited partnerships and certifications of good standing with the Office of the Secretary of the State of Illinois. Vendor's Affidavit and Vendor's Certifications and Representations of Offerors – Non-Construction Contracts (HUD Form 5369-C), as well as its Contractor's Affidavit, are collectively attached hereto as Exhibit D and incorporated by reference as if fully set forth herein.

**IN WITNESS WHEREOF**, Customer and Vendor have executed this Contract on the Effective Date.

**CONSTELLATION NEW ENERGY –  
GAS DIVISION LLC**


By: 

Name: Daniel Marks

Title: Executive Director Retail Gas Operations

Date: May 30, 2019

**CHICAGO HOUSING AUTHORITY**

By: 

Name: Dionna Brookens

Title: Chief Procurement Officer

Date: 7/11/19

Approved as to Form and Legality  
Chicago Housing Authority  
Office of General Counsel



By: Cheryl Colston

Title: Chief Legal officer

# Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: January 10, 2017. The parties to this Base Contract are the following:

Constellation NewEnergy - Gas Division, LLC  
9960 Corporate Campus Drive, Suite 2000, Louisville, KY 40223  
Duns Number: 14-109-2333  
Contract Number: CNEG19763 (CNEG's Internal No.)  
U.S. Federal Tax ID Number: [REDACTED]

and Chicago Transit Authority  
Duns Number: \_\_\_\_\_  
Contract Number: \_\_\_\_\_  
U.S. Federal Tax ID Number: \_\_\_\_\_

Notices:  
9960 Corporate Campus Drive, Suite 2000, Louisville, KY 40223  
Attn: Contracts Department  
Phone: (502) 426-4500 Fax: (502) 214-6381

567 W. Lake Street, Chicago, IL 60661-1465  
Attn: Maribel Rodriguez  
Phone: (312) 681-3443 Fax: (312) 681-3496

Confirmations:  
9960 Corporate Campus Drive, Suite 2000, Louisville, KY 40223  
Attn: Confirmations Department  
Phone: (502) 426-4500 Fax: (502) 214-6381

567 W. Lake Street, 7th Floor, Chicago, IL 60661  
Attn: Maribel Rodriguez  
Phone: 312-681-3443 Fax: 312-681-3496

Invoices and Payments:  
Bank of America Lockbox Services  
Attn: Constellation NewEnergy - Gas Division, LLC  
15246 Collections Center Drive, Chicago, IL 60693-0152  
Phone: (800) 470-9331 Fax: N/A

567 W. Lake Street, 9th Floor, Chicago, IL 60661  
Attn: James Harper  
Phone: 312-681-2485 Fax: \_\_\_\_\_

Wire Transfer or ACH Numbers (if applicable):  
BANK: [REDACTED]  
ABA: [REDACTED]  
ACCT: [REDACTED]  
Other Details: \_\_\_\_\_

BANK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_  
Other Details: \_\_\_\_\_

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. **Select only one box from each section:**

<b>Section 1.2</b> Transaction Procedure	<input checked="" type="checkbox"/> Oral (default) <input type="checkbox"/> Written	<b>Section 7.2</b> Payment Date	<input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) <input type="checkbox"/> _____ Day of Month following Month of delivery
<b>Section 2.5</b> Confirm Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> _____ Business Days after receipt	<b>Section 7.2</b> Method of Payment	<input type="checkbox"/> Wire transfer (default) <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check
<b>Section 2.6</b> Confirming Party	<input checked="" type="checkbox"/> Seller (default) <input type="checkbox"/> Buyer <input type="checkbox"/> _____	<b>Section 7.7</b> Netting	<input checked="" type="checkbox"/> Netting applies (default) <input type="checkbox"/> Netting does not apply
<b>Section 3.2</b> Performance Obligation	<input checked="" type="checkbox"/> Cover Standard (default) <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages	<input checked="" type="checkbox"/> Early Termination Damages Apply (default) <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>		<b>Section 10.3.2</b> Other Agreement Setoffs	<input type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 2.26</b> Spot Price Publication	<input checked="" type="checkbox"/> Gas Daily Midpoint (default) <input type="checkbox"/> _____	<b>Section 14.5</b> Choice Of Law	State of Illinois
<b>Section 8</b> Taxes	<input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) <input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 14.10</b> Confidentiality	<input type="checkbox"/> Confidentiality applies (default) <input checked="" type="checkbox"/> Confidentiality does not apply
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: 8			
<input checked="" type="checkbox"/> Addendum(s): 1			

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

Constellation NewEnergy - Gas Division, LLC  
Party Name  
By [Signature]  
Name: Daniel Marks  
Title: Director, C&I Gas Operations

Chicago Transit Authority  
Party Name  
By [Signature]  
Name: Jeremy V. FINE  
Title: \_\_\_\_\_

# General Terms and Conditions

## Base Contract for Sale and Purchase of Natural Gas

### SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.7.

The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.

#### Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

#### Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

### SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.

2.2. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).



- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation.
- 2.8. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.11. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.16. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.17. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.20. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.23. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.24. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "Spot Price" as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average

of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

2.27. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period

2.28. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.

2.29. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

### SECTION 3. PERFORMANCE OBLIGATION

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.

#### Cover Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s); or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s); or (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

#### Spot Price Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

### SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.



4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

## SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

## SECTION 6. TAXES

The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.

### Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

### Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

## SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 14.B, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

## SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payments and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

## SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; or (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.



The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

**Early Termination Damages Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

**Early Termination Damages Do Not Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

**Other Agreement Setoffs Apply:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

**Other Agreement Setoffs Do Not Apply:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount shall accrue from the date due until the

date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

## SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6 and Section 10, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

## SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.



TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## SECTION 14. MISCELLANEOUS

14.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

14.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

14.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

14.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

14.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

14.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

14.7. There is no third party beneficiary to this Contract.

14.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

14.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, or (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

14.11 The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties.

**DISCLAIMER:** The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAEBS does not mandate the use of this Contract by any party. NAEBS DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAEBS'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAEBS KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAEBS BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.



**TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY**

**EXHIBIT A**

Date: January 10, 2017  
Transaction Confirmation #: 1

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated January 10, 2017. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.

**SELLER:**

Constellation NewEnergy – Gas Division, LLC  
9960 Corporate Campus Drive, Suite 2000  
Louisville, KY 40223  
Attn: Confirmations Department  
Phone: (502) 426-4500  
Fax: (502) 214-6381  
Base Contract No. CNEG19763 (CNEG's internal No.)  
Transporter:  
Transporter Contract Number:

**BUYER:**

Chicago Transit Authority  
567 W. Lake Street, 7<sup>th</sup> Floor  
Chicago, IL 60661-1465  
Attn: Maribel Rodriguez  
Phone: (312) 681-3443  
Fax: (312) 68103496  
Base Contract No.  
Transporter:  
Transporter Contract Number:

Contract Price: For Peoples Gas accounts, first of the month Chicago Citygate index price as published by NGI's Bidweek Survey minus \$0.0451 per MMBTU plus all applicable costs to the Delivery Point. For Nicor Gas accounts, first of the month Chicago Citygate Index price as published by NGI's Bidweek Survey minus \$0.1527 per MMBTU plus all applicable costs to the Delivery Point. Applicable Sales Taxes and other fees shall be charged only in accordance with the terms of the Contract.

Delivery Period: Begin: May 1, 2017 End: April 30, 2020

**Performance Obligation and Contract Quantity (MMBTU/Month):**

<u>Month</u>	<u>Nicor</u>	<u>Peoples Gas</u>	<u>Month</u>	<u>Nicor</u>	<u>Peoples Gas</u>	<u>Month</u>	<u>Nicor</u>	<u>Peoples Gas</u>
May-17	1,125	10,408	May-18	1,125	10,408	May-19	1,125	10,408
Jun-17	379	3,751	Jun-18	379	3,751	Jun-19	379	3,751
Jul-17	239	3,264	Jul-18	239	3,264	Jul-19	239	3,264
Aug-17	238	3,789	Aug-18	238	3,789	Aug-19	238	3,789
Sep-17	495	4,792	Sep-18	495	4,792	Sep-19	495	4,792
Oct-17	2,222	27,879	Oct-18	2,222	27,879	Oct-19	2,222	27,879
Nov-17	7,420	73,217	Nov-18	7,420	73,217	Nov-19	7,420	73,217
Dec-17	9,948	99,176	Dec-18	9,948	99,176	Dec-19	9,948	99,176
Jan-18	12,594	110,075	Jan-19	12,594	110,075	Jan-20	12,594	110,075
Feb-18	10,731	99,722	Feb-19	10,731	99,722	Feb-20	10,731	99,722
Mar-18	8,850	80,823	Mar-19	8,850	80,823	Mar-20	8,850	80,823
Apr-18	7,802	58,026	Apr-19	7,802	58,026	Apr-20	7,802	58,026

**Delivery Point(s):** Peoples Gas Citygate and Nicor Citygate, as applicable

**Special Conditions:**

Incremental / Cashout Volumes: Volumes consumed in excess of the volumes indicated above will be priced at the applicable index price for the month plus \$0.030/MMBTU. Volumes indicated above that are in excess of the Volumes consumed will be priced at a price equal to the applicable index price for the month plus \$0.000/MMBTU. For the purpose of this section, the applicable index is the simple average of the Gas Daily Daily Chicago Citygate Midpoint Daily posting for the given month.

Transaction Fees: Fees to be assessed whenever Buyer converts an index price to a fixed price for either some or all of the contract volumes in any given month during the contract term in accordance with Section III, Subsection 4 of the RFP shall be no

greater than the prices specified in Seller's response.

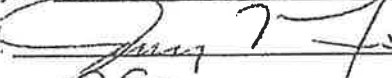
Seller: Constellation NewEnergy - Gas Division, LLC

By: 

Title: Director, C&I Gas Operations

Date: 1/11/17

Buyer: CHICAGO TRANSIT AUTHORITY

By: 

Title: CFO

Date: 1/10/17

**SPECIAL PROVISIONS TO THE  
Base Contract for Sale and Purchase of Natural Gas (NAESB)  
Between Constellation NewEnergy – Gas Division, LLC and Chicago Transit Authority  
Dated January 10, 2017**

The above-referenced Base Contract for Sale and Purchase of Natural Gas (the "Base Contract") between Constellation NewEnergy – Gas Division, LLC and Chicago Transit Authority is hereby amended and revised, effective as of the date of the Base Contract. Unless specifically agreed otherwise in a Transaction Confirmation, the Base Contract, as modified by these Special Provisions, shall apply to all transactions for the purchase and sale of Gas between the parties. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Base Contract.

**1. Section 1.3.** The last sentence of Section 1.3 is amended to read as follows:

"In the event of a conflict among the terms of (i) the Base Contract, including these Special Provisions, (ii) the General Terms and Conditions from NAESB Standard 6.3.1, (iii) a binding Transaction Confirmation pursuant to Section 1.2, and (iv) the oral agreement of the parties which is evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, the terms of the documents shall govern in the priority listed in this sentence."

**2. Section 3.4.** Section 3.4 is hereby deleted.

**3. Section 6.** The label "6.1." is hereby added before the first occurrence of the words "Seller shall pay" in Section 6 and a new Section 6.2 is hereby added reading as follows:

"6.2. Federal Excise Tax does not apply to materials purchased for the Authority by virtue of Exemption Certificate No. 38-73-0234K. Illinois Retailers Occupation Tax, Use Tax, and Municipal Retailers' Occupational Tax do not apply to materials or services purchased by the Authority by virtue of Chapter 70 Illinois Compiled Statutes Section 3605, 33 as amended. These taxes must not be included in any of the prices quoted in the Consultant's Proposal. The Authority's Illinois Tax Exemption Identification number is E9978-2987-07."

**4. Section 7.1.** A new sentence is added to Section 7.1 and shall read as follows:

"Seller shall supply all invoices electronically to Buyer via email to the following address: [mrodriguez3@transitchicago.com](mailto:mrodriguez3@transitchicago.com)

**5. Section 7.2.** Replace "10" with "30".

**6. Section 7.5.** The following language is hereby inserted after "(i).":

"the interest rate specified in the Illinois Local Government Prompt Payment Act a copy of which is available at: <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=725&ChapAct=50%26nbsp%3BILCS%26nbsp%>

**7. Section 8.1** In the second line, insert the word "arising" between "Gas" and "prior". In the third line, insert the word "assume" after the word "and"; and after the word "Gas", insert the words "arising upon or".

**8. Section 9.1.** Remove the word "Invoices".

**9. Section 9.3.** In the first line, replace the word "given" with the word "effective".

**10. Section 9.4.** A new Section 9.4 is added as follows:

**9.4.** The Contract number must be prominently featured in the heading of all notices sent hereunder.

Any and all notices referred to in this Contract, or that either party desires to give to the other, shall be addressed as follows:

Supplier: Constellation NewEnergy – Gas Division, LLC Notices, Correspondence and Parcel Deliveries, <u>9960 Corporate Campus Drive, Suite 2000</u> <u>Louisville, KY 40223</u> Fax Number: (502) 214-6381 Email: Attn: Contracts Administration	Buyer: Chicago Transit Authority 587 W Lake St 7th Floor, Chicago, IL 60661 Attn: Maribel Rodriguez  Fax Number: (312) 681-3496 E-mail: <a href="mailto:mrodriguez3@transitchicago.com">mrodriguez3@transitchicago.com</a>
Payments (as indicated on invoice)	

**11. Section 10.1.** Section 10.1 is hereby deleted without affecting the numbering of subsequent sections.

**12. Section 12.** The first sentence is hereby deleted and replaced with the following:

"This Contract shall remain in effect for a period of thirty-six (36) months from May 1, 2017. The Buyer shall have the option to extend this Contract two times for additional periods of up to one year each or one time for an additional period of up to two years. At any time during the then-current term of this Contract, Buyer may request Contractor to offer pricing for an additional one or two years, at the Buyer's sole discretion, to extend the term of this agreement for such time following the end of the then-current term. Buyer may update or revise the Listed Facilities for the requested term extension as Buyer

deems appropriate at its sole discretion. The Contractor agrees to make such an offer to Buyer at its request setting forth the price or prices at which Contractor would continue to provide service for the requested periods. The Contractor's offer to extend shall be made on the Price Proposal forms to the RFP, as applicable, in executable form, and shall be subject to the terms and conditions set forth in the RFP and in this Contract. By requesting an offer to extend the term of the Contract, Buyer does not commit to extend the term of the Contract, and Buyer may accept or reject the Contractor's offer in its sole discretion. If Buyer accepts such an offer, then it will execute and deliver the applicable related Price Proposals, which shall then become a part of this Contract, and this Contract shall be extended for the term set forth in the applicable Price Proposal(s)."

**13. Section 14.1.** The second sentence in the section is replaced with the following:

"Neither Party may assign this Contract in whole or in part without the written approval of the other Party."

**14. Section 14.11.** Section 14.11 is hereby deleted without affecting the numbering of subsequent sections.

**15. New Section 15.** A new Section 15 is hereby added as follows:

#### **Section 15 – Additional CTA Special Provisions**

##### **15.1. Definitions**

For the purpose of Section 15, the terms set forth in this Section 15.1 below shall have the meaning ascribed to them herein.

15.1.1. "Subcontractor" shall mean an individual, firm, partnership, corporation, or business entity other than an employee of the Supplier that contracts with Supplier to supply Gas to Buyer under this Contract. The word "Subcontractor" is referred to as if singular in number and means each Subcontractor and any authorized representative of each Subcontractor.

15.1.2. "Subcontract" shall mean a contract between Supplier and a Subcontractor.

15.1.3. "Supplier" shall mean the Seller.

##### **15.2 Transaction Confirmation Special Conditions**

The terms and conditions of the Base Contract and these Special Conditions cannot be changed or amended through the Special Conditions appearing on the Transaction Confirmation form.

##### **15.3. Records and Audits**

###### **A. Records**

- (i) The Supplier must deliver or cause to be delivered to Buyer promptly, at a mutually agreeable place and time, all documents prepared for Buyer under the terms of this Contract, or reasonably required by Buyer to verify the accuracy of any bill or charge, in accordance with the time limits prescribed in this Contract, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the natural gas services under this Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract or to Supplier's confidential transactions with its upstream suppliers.

Supplier must maintain any such records not delivered to Buyer or demanded by Buyer for a period of 3 years after the final payment made in connection with this Contract.

- B. (i) Supplier and any of its Subcontractors must furnish Buyer with all information that may be reasonably requested pertaining to all costs and charges that the Supplier is authorized to pass-through to the Buyer under this Contract which relate to the delivery of the natural gas. Supplier must keep books, documents, paper, records and accounts in connection with the services open to audit, inspection, copying, abstracting and transcription and must make these records available (in paper and electronic form) to Buyer, its auditors at reasonable and mutually convenient times and places during the performance of the natural gas services.
- (ii) Supplier must maintain its books, records, documents and other evidence and adopt accounting procedures and practices sufficient to reflect properly all pass-through costs and charges of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Contract. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.

- (iv) Buyer may in its sole discretion audit the records of Supplier or its Subcontractors relating to all pass-through costs and charges, at a mutually agreeable place and time during the term of this Contract or within three years after the Contract ends, in connection with the goods, work, or services provided under this Contract. Each calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that Supplier or any of its Subcontractors has overcharged Buyer in the audited period, Buyer will notify Supplier. Subject to Supplier's right to dispute the result of such audit pursuant to Section 7.4. Supplier must then promptly reimburse Buyer for any amounts Buyer has paid Supplier due to the overcharges, plus interest at the rate of 18% per annum from the date of payment of the overcharge. Supplier will not be responsible for any interest on overcharges that result, through no fault of Supplier, from incorrect meter readings or meter readings supplied by the Delivery Company to the Supplier.

#### **15.4. Confidentiality**

Buyer is a body corporate and politic and a unit of local government. Buyer is subject to the Freedom of Information Act, 5 ILCS 140/1, *et seq.*, which declares, among other things, that it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government. It is Buyer's intent to make this entire Contract and the prices paid available to the public.

#### **15.5. Deemed Inclusion**

Provisions required (as of the Effective Date) by law, ordinances, rules, regulations, or executive orders to be inserted in this Contract are deemed inserted in this Contract whether or not they appear in this Contract or, upon application by either party, this Contract will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Contract is signed prevent its enforcement. The following additional attachments are deemed included and are incorporated by this reference:

##### **Attachments:**

- Listed Facilities
- Contractor's Proposal and Contractor's BAFO (if submitted)
- CTA RFP No. B16OP00982 and Addenda

#### **15.6. Independent Contractor**

This Contract is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Supplier and Buyer. The rights and the obligations of the parties are only those set forth in this Contract. Supplier must perform under this Contract as an independent contractor and not as a representative, employee, agent, or partner of Buyer.

#### **15.7. Miscellaneous**

This Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois. The forum of choice for the parties to resolve any dispute which may arise out of this Contract is the appropriate state court of competent jurisdiction located in Cook County, Illinois. This Contract shall not be construed against a Party by reason of who prepared it. Each Party represents and warrants that the person signing this Contract is authorized to do so and that this Contract is a valid and binding obligation of such Party. The parties agree that fax copies of executed original copies of this Contract shall be sufficient and admissible evidence of the content and existence of this Contract to the same extent as the originally executed copy or copies (if executed in counterpart).

#### **15.8. Contract Changes**

Any change, modification, change order, or amendment (hereinafter "Contract Change") to this Contract must be in writing and approved and signed by Buyer and Supplier. Contract Changes can include, but are not limited to, changes to scope, time extensions, cost, contract terms, or any combination thereof. Supplier shall be liable for satisfactorily correcting, and/or all costs resulting from, any change not ordered in writing and signed by Buyer.

#### **15.9. Substance Abuse**

To the extent the Supplier, Subcontractor, or any party contracted for work as a result of this Contract performs a safety sensitive function, Supplier agrees to comply with, and assures their employees comply with all applicable drug and alcohol abuse testing requirements that may be found under state and federal law as they apply to public contracting.



#### **15.10. Obligation to Comply with the Illinois State Officials and Employees Ethics Act**

The Supplier agrees to comply with all of the requirements of the Illinois State Officials and Employees Ethics Act, 5 ILCS 430/1-1 et seq. ("Ethics Act"), as it may be amended from time to time, the provisions of which are incorporated into this Contract to the same force and effect as if set forth in full herein. As required by the Ethics Act, as amended, the Supplier agrees to cooperate fully and expeditiously with the State Office of the Executive Inspector General in all investigations or audits. This obligation applies to all officers, directors, agents, partners, employees, and Subcontractors of the Supplier.

#### **15.11. Limitation of Liability**

In carrying out any of the provisions of this Contract or in exercising any power or authority granted to them thereby, there will be no liability upon the board members, officials, agents or employees of the Authority, including without limitation the General Manager, Purchasing, and the Project Manager, either personally or as officials of the Authority, it being understood that in such matters they act as representatives of the Authority.

In carrying out any provisions of this Contract there will be no liability upon the board members, officers, agents or employees of the Supplier, it being understood that such persons act as representatives of the Supplier.

#### **15.12. Advertising and Publicity**

Supplier must not disclose, use or refer to this Contract or any of its terms, or the name of the Authority in any advertising, publicity releases, promotional materials or materials distributed to existing or prospective customers, without the prior written consent of the Project Manager. Notwithstanding the above, Supplier may identify the Authority as a customer or client in a general customer reference list.

#### **15.13. Representations of Supplier**

In connection with the execution of this Contract, the Supplier represents and warrants:

1. That it, each of its joint venture members if a joint venture, and its Subcontractors, are not in default at the time of the execution of this Contract, or deemed by the General Manager, Purchasing to have, within 3 years immediately preceding the date of this Contract, been found to be in default, in connection with any contract awarded by the Authority.
2. That this Contract is feasible of performance in accordance with all of its provisions and requirements and that the Supplier can and will perform, or cause to be performed, the Scope of Services in accordance with the provisions and requirements of this Contract.
3. The parties acknowledge that, except only for those representations, statements, or promises expressly contained in this Contract, and any exhibits attached hereto and incorporated by reference herein, neither Party has relied upon any other representation, statement or promise of the other Party, either made orally or in writing.
4. That, Supplier acknowledges that the Authority, in its selection of the Supplier to perform the Scope of Services hereunder, materially relied upon the Supplier's response(s) to the Authority's solicitation

#### **15.14. Compliance with All Laws**

The Supplier and Buyer will at all times observe and comply with all laws, ordinances, regulations, and codes of the Federal, State, City, Authority and other local government agencies that may in any manner affect the contents of the RFP or the performance of the Contract.

#### **15.15. Civil Rights**

1. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal Transit Law at 49 USC § 5332, the Supplier agrees that it will not discriminate against any employee or applicant on the basis of race, color, creed, national origin, sex, sexual orientation, gender identity, age, or disability. In addition, the Supplier agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:

- a. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal Transit Laws at 49 USC § 5332, the Supplier agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Services provided under this Contract. The Supplier agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, sexual orientation, gender identity, or age. Such action will include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Supplier agrees to comply with all implementing requirements FTA may issue.
  - b. **Age.** In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623 and Federal Transit Law at 49 USC § 5332, the Supplier agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Supplier agrees to comply with any implementing requirements FTA may issue.
  - c. **Disabilities.** In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the Supplier agrees that it will comply with the requirements of US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Supplier agrees to comply with any implementing requirements FTA may issue.
3. During the performance of this Contract, the Supplier agrees as follows:
- a. The Supplier will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or national origin. The Supplier will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. Such action will include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Supplier agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
  - b. The Supplier will, in all solicitations or advertisements for employees placed by or on behalf of the Supplier, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.
  - c. The Supplier will send to each labor union or representative of workers with whom the representative has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Authority's General Manager, Purchasing, advising the labor union or workers' representative of the Supplier's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.
  - d. The Supplier will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - e. The Supplier will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Authority and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.
  - f. In the event of the Supplier's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Supplier may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September

24, 1965, and such other sanctions may be imposed and remedies applied as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Supplier must include the provisions of the above Paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Supplier will take such action with respect to any subcontract or purchase order as the Authority may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the Supplier becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Federal Government contracting agency, the Supplier may request the United States to enter into such litigation to protect the interests of the United States.

4. The Supplier also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### **15.16. Illinois Human Rights Act**

During the term of this Contract, the Supplier must comply with the provisions of the Illinois Human Rights Act which are applicable to public contracts. The provisions of the Illinois Human Rights Act are incorporated into this agreement. A copy of this act is available at [http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2266&ChapAct=775%26nbsp%3BILCS%](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2266&ChapAct=775%26nbsp%3BILCS%20).

#### **15.17. Disclosure of Ownership**

Any person, business entity, or agency that submits a proposal for the purpose of contracting with the Authority is required to complete all certifications, forms and statements contained in the Authority's RFP.

#### **15.18. Ethics Ordinance**

Supplier agrees to comply with the CTA Ethics Ordinance, CTA Ordinance No. 004-76, as amended from time to time, the provisions of which are hereby incorporated into this Contract. The Supplier agrees that, as provided by Section 5.3 of the CTA Ethics Ordinance, any contract negotiated, entered into, or performed in violation of any of the provisions of the Ethics Ordinance shall be voidable as to the Authority at the election of the Authority. A copy of this ordinance is available at <http://www.transitchicago.com/assets/1/procurement/or004-99.pdf>.

#### **15.19. Conflict of Interest**

1. No Board member, officer or employee of the Authority or other unit of local government, who exercises any functions or responsibilities in connection with the carrying out of the Scope of Services or the carrying out of the Scope of Services to which this Contract pertains, may have any personal interest, direct or indirect, in this Contract or the proceeds thereof.
2. In accordance with 41 USC § 22, the Supplier agrees that no member of or Delegate to the Congress of the United States, or the Illinois General Assembly and no members of the Chicago Transit Board or Authority employees, may be admitted to any share or part of this Contract or to any private financial interest, profit, or benefit arising herefrom.
3. The Supplier covenants that it, its officers, directors and employees, and the officers, directors, and employees of such of its members if a joint venture, and Subcontractors presently have no interest and will not acquire any interest, direct or indirect, in the Scope of Services to which this Contract pertains, which would conflict in any manner or degree with the performance of the Services hereunder. The Supplier further covenants that, in the performance of this Contract, no person having any such interest will be employed by the Supplier.
4. An organizational conflict of interest exists when the nature of work to be performed under a proposed third party contract or subcontract may, without some restriction on future activities, result in an unfair competitive advantage to the third party contractor or Subcontractor or impair its objectivity in performing the Contract. The Supplier is prohibited from performing any work or services for the Authority that conflict with work or services that the Supplier performs under any other contract with the Authority. The restrictions in this paragraph are applicable to all Subcontractors. The Supplier has sole responsibility for compliance with this provision. Any violation of this provision is a material breach of the Contract, which is cause for termination.

## **15.20. Other Agencies**

Other local government agencies may negotiate their own agreements with the Contractor based on a contract stemming from this solicitation. Other agencies will issue their own contracts directly to the Contractor. Participation by other agencies shall have no adverse effect on the Authority. The Authority will not be responsible for any obligation due from any other agency to the Contractor. The Authority will have no liability for the acts or omissions of any other agency.

Prior to entering into a contract with another agency in connection with this provision, the Authority recommends, but does not require, that the Contractor ask the other agency to confirm that it has determined that use of this provision is in compliance with all applicable procurement rules and regulations, including the rules and regulations of any grantor such as the Federal Transit Administration. The Authority makes no warranty or representation that the Authority's selection process for this Contract will achieve such compliance.

## **15.21. Minimum Wage**

Contractor and its Subcontractors must comply with Transit Board Ordinance No. 014-124 ("Minimum Wage Ordinance") and any regulations promulgated in pursuant thereof, to provide for a fair and adequate minimum wage to be paid to certain employees of certain Authority contractors and subcontractors, as described in categories 1, 2 and 3 below. As of November 15, 2014, the minimum wage to be paid pursuant to the Minimum Wage Ordinance is \$13.00 per hour ("Minimum Wage"). This minimum hourly wage is subject to adjustment on July 1 of every year based on the Consumer Price Index.

The Minimum Wage must be paid to:

- (1) all Contractor and Subcontractor employees performing work or services on property owned or controlled by the Authority or at any other location specified by the Authority in the Contract as the location for performance of the work or services;
- (2) those Contractor and Subcontractor employees who are directly performing work or services for which the Authority pays the Contractor an hourly rate or a per piece work rate for work; and
- (3) those Contractor and Subcontractor employees who fulfill the Authority's requirement for the Contractor to provide specified work hours or a specified number of workers.

However, the Minimum Wage requirement does not apply:

- (a) to valid IRS Code Section 501(c)(3) not-for-profit organizations;
- (b) with respect to any employee: (1) whose work or services are performed in general support of the Contractor's or Subcontractor's operations, (2) do not directly relate to the work or services provided to the Authority under the Contract, (3) are either not included in the Contract price or are not included in the Contract price as overhead, and (4) that employee's regularly assigned work location does not fall within category #1 above;
- (c) to categories of employees subject to subsection 4(a)(2), subsection 4(a)(3), subsection 4(d), subsection 4(e), or Section 6 of the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., as amended; but does apply to those workers described in subsections 4(a)(2)(A) and 4(a)(2)(B) of the Illinois Minimum Wage Law; and
- (d) to employees subject to a collective bargaining agreement that provides for different wages than those required by the Minimum Wage Ordinance, provided that collective bargaining agreement was either in force prior to November 15, 2014 or, if negotiated after November 15, 2014, clearly and specifically waives the requirements of the Minimum Wage Ordinance.

Contractor and its Subcontractors must cooperate in any investigation by the Authority regarding compliance with the Minimum Wage Ordinance. Failure of the Contractor or any of its Subcontractors to comply with the Minimum Wage Ordinance or to cooperate in such an investigation is grounds for the Authority declaring the Contractor in default of this Contract and exercising such remedies as the Authority deems appropriate. Contractor must include this provision in all subcontracts and cause its Subcontractors to comply with its requirements.

If this Contract includes any provisions (including, but not limited to, Davis-Bacon Act or Illinois Prevailing Wage Act) requiring payment of higher wages than required by the Minimum Wage Ordinance, then the Contractor and its subcontractors shall pay the higher wages required by such provisions.

**End of Section 15**

# SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Contract in triplicate on the day and year first above written.

CONSTELLATION NEWENERGY – GAS DIVISION, LLC

CHICAGO TRANSIT AUTHORITY

By: *Daniel Marks*  
(Signature)

By: *[Signature]*  
(Signature)

Daniel Marks  
Name

CFO  
Title

Director, C&E Gas operations  
Title

Dated: 1/10/17

[If a corporation and signed by any person other than the president or vice-president, a certified copy of the resolution or by-law authorizing such person to sign must be attached to this Contract.]

State of KENTUCKY

County of JEFFERSON

Signed and sworn before me by the signatory whose name appears above on this:

9th day of January, 2017  
(day) (month) (year)

My Commission expires: March 1, 2017

*Evetta A. Williams*  
(Signature of Notary Public)



Approved as to form and legality for the sole benefit of the Authority. Subject to proper authorization and execution thereof.

*[Signature]*  
Attorney