

**CONTRACT NO. 11228**

**NATURAL GAS SUPPLY AND DELIVERY AGREEMENT**

**CONSTELLATION NEWENERGY – GAS DIVISION, LLC**

**AND**

**THE CHICAGO HOUSING AUTHORITY**

## NATURAL GAS SUPPLY AND DELIVERY AGREEMENT

THIS NATURAL GAS SUPPLY AND DELIVERY AGREEMENT is made as of April 1, 2013, by and between the **CHICAGO HOUSING AUTHORITY** ("CHA" or "Buyer"), an Illinois municipal corporation, with offices at 60 East Van Buren, Chicago, Illinois and **CONSTELLATION NEWENERGY – GAS DIVISION, LLC**, a ("CNEG", "Contractor" or "Seller") organized under the laws of Kentucky with offices at 9960 Corporate Campus Drive, Suite 2000, Louisville, Kentucky 40223, and licensed to conduct business in the state of Illinois.

### RECITALS

**WHEREAS**, the CHA is engaged in the development and operation of safe, decent and sanitary housing throughout the City of Chicago for low-income families in accordance with the United States Housing Act of 1937, 42 U.S.C. §1437 et seq.; regulations promulgated by the United States Department of Housing and Urban Development ("HUD"), and the Illinois Housing Authorities Act, 310 ILCS 10/1 et seq., as amended, and other applicable laws, regulations and ordinances;

**WHEREAS**, the CHA desires to procure Natural Gas for delivery to the Local Distribution Company for all of CHA's development buildings to provide heat, hot water and residential cooking gas needs and in furtherance thereof, the CHA issued Request for Proposals ("RFP") No. 12-01012 on or about December 26, 2012, which is attached hereto as Exhibit I and incorporated by reference as if fully set forth herein;

**WHEREAS**, in response to the RFP, the Contractor submitted its original proposal on or about February 4, 2013, as well as its Best and Final Proposal and/or Fee Form(s) supplementing the original proposal (collectively, referred to herein as the "Proposal" as supplemented), which is attached hereto as Exhibit II and incorporated by reference as if fully set forth herein; and

**WHEREAS**, the Contractor has represented in its Proposal that it is ready, willing and able to secure and deliver high volume Natural Gas supplies to the CHA in a timely manner as set forth herein and in the RFP.

**NOW THEREFORE**, in consideration of the mutual promises and the terms and conditions set forth herein, the CHA and the Contractor agree as follows:

### **ARTICLE 1. PURPOSES & INCORPORATION OF RECITALS**

#### **Section 1.01 Purposes; Incorporation of Recitals**

The terms and conditions of this Agreement are intended to facilitate purchase and sale transactions of Natural Gas (each a "**Transaction**") for one or more of Buyer's accounts or facilities (each a "**Facility**") on a Firm, Secondary Firm or Interruptible basis. The

recitals set forth above are incorporated by reference as if fully set forth herein. The parties may further agree to implement certain strategies or related services, the specifics of which will be set forth in a rider jointly executed by the parties.

#### Section 1.02 Definitions

For purposes of this Agreement, the following definitions are used:

- A. The term "**day**" shall mean a period of twenty-four consecutive hours beginning as nearly as practicable at 9:00 A.M., Local Time at the delivery point or at some other time as may be mutually agreed to by the CHA and Contractor. The term "**Business Day**" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- B. The term "**billing month**" shall mean a period of time beginning at 9:00 A.M. on the first day of a calendar month and ending at 9:00 A.M. on the first day of the following calendar month or such other period as may be mutually agreed to by the CHA and Contractor.
- C. "**Local Distribution Company**" (**LDC**) shall mean The Peoples Gas Light and Coke Company sometimes herein referred to as "Peoples Gas Co." or "Peoples Gas", or such other entity or affiliate of Peoples Gas that may from time to time serve as the local distribution company for gas supplies serving the CHA.
- D. "**Pipeline Quality Gas**" is Natural Gas meeting quality and BTU requirements of Transporters.
- E. "**Point of Delivery**" or "Delivey Point" is the point(s) of delivery on the interstate pipeline Transporter's system for the CHA's account, which is commonly referred to as the "Citygate", or such point(s) of delivery as are agreed to by the parties in a transaction.
- F. "**Point of Redelivery**" shall be Peoples Gas' points of interconnection with the outlet side of the CHA's meters.
- G. "**Force Majeure**" is defined as an act of God, strike, lockout, war, civil disturbance, explosion, landslides, hurricanes, lightning, earthquakes, fires, floods, washouts; breakage or accident to machinery or equipment or pipeline, failure of wells or of sources of gas supply not due to the negligence, acts or omissions of the Contractor, which are beyond the Contractor's reasonable control; necessity of compliance with new or unanticipated federal, state or local law, a binding order of a court or governmental agency, technology failures (however caused), or by any other cause not due to the negligence, acts or omissions of the Contractor, which is also beyond the reasonable control of the Contractor.

- H. **"Firm Transportation"** or **"Firm"** means the obligation by the Contractor to deliver requested ordered volumes is unconditional. The only exception to this obligation standard is when it is suspended due to an event recognized by the parties under this agreement as a Force Majeure event; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges 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.
- I. **"Imbalance Charges"** shall mean valid and applicable 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.
- J. **"Ordered Volume"** means the quantity of natural gas ordered by the CHA to be delivered to the LDC.
- K. **"MMBTU"** means one million (1,000,000) British Thermal Units (BTUs).
- L. **"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 shall be responsible for any Imbalance Charges 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.
- M. **"Transporter"** shall mean all gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting gas for Contractor or the CHA upstream or downstream, respectively of the Delivery Point.
- N. **"LST"** shall mean Large Volume Selected Standby Transportation Service.
- O. **"SST"** shall mean Selected Standby Transportation Service.
- P. **"FST"** shall mean Full Standby Transportation Service.
- Q. **"Imbalance Charges"** shall refer to imbalance charges, cash-out charges, overrun or penalties assessed by Transporters such as **"Dumping"**, which is defined as the unbalanced delivery of natural gas which could subject the CHA to balancing penalties as applicable in the local distribution company service territory.
- R. **"Citygate"** (see Point of Delivery)
- S. **"Usage"** shall mean for the applicable meter, the difference in meter readings recorded by Transporter during a specific period of time. The difference in meter readings may be converted by Transporter to a caloric measurement pursuant to the applicable Transporter tariff.

- T. **"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.
- U. **"Confirming Party"** shall mean CNEG, which will be the party to prepare and forward Transaction Confirmations to the other party.
- V. **"Contract"** shall mean the legally-binding relationship established by (i) the Agreement, (ii) any and all binding Transaction Confirmations made pursuant to the Agreement, and (iii) where the parties have selected the Oral Transaction Procedure of the Agreement, any and all transactions that the parties have entered into through an electronic transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation.
- W. **"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.
- X. **"Contract Quantity"** shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- Y. **"Cover Standard"**, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Agreement, 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.
- Z. **"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.
- AA. **"Scheduled Gas"** shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- BB. **"Spot Price"** in reference to the Cover Standard shall mean the price listed in the publication indicated on the Agreement, 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.

- CC. **"Transaction Confirmation"** shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to this Agreement for a particular Delivery Period.
- DD. **"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.

## **ARTICLE 2 CONTRACTOR'S DUTIES AND RESPONSIBILITIES**

### **Section 2.01. Services to be Performed**

#### **A. Scope of Services**

The Natural Gas, which the Contractor shall supply and deliver under this Agreement includes, but is not limited to, the nominations or nomination adjustments, which are described in Section 4.03. The Contractor shall secure and deliver the Natural Gas in accordance with the standards of performance set forth in Section 2.02. In addition, the Contractor shall provide guaranteed firm supply at or upon the prices and terms set forth in Section 4.04 of this Agreement. Contractor shall also provide nomination and balancing service

Buyer shall designate CNEG to the utility and any other applicable Transporter(s) as an authorized recipient of Buyer's current and historical Gas billing and usage data. Buyer authorizes CNEG to take such actions it deems necessary to enroll the Buyer's accounts with the Utility as accounts to be served by CNEG and otherwise meet CNEG's obligations under this Contract, including executing on Buyer's behalf any documents necessary to effectuate any account enrollment or election, undertaking the management of any storage or transportation capacity allocated to Buyer by the utility or other Transporter(s), disposing of storage balances, adding or deleting accounts as necessary, receiving usage nominations from the utility relating to Buyer's Gas requirements and other similar documents. Buyer shall take any actions and execute any documents as CNEG shall reasonably request in this regard.

#### **B. Deliverables**

The Contractor shall prepare certain deliverables consisting of work product from performing the Services that include, but are not limited to, documents, data, studies, reports, findings or information in any form prepared or assembled either in hard copy or

on diskette (collectively, "Deliverables"). The CHA reserves the right to reject any and all Deliverables, which in the sole judgment of the CHA do not meet the intended level of completion or standard of performance, specified in this Agreement.

#### Section 2.02 Performance Standards

The Contractor shall supply and deliver Natural Gas for use by the CHA in accordance with the terms and conditions of this Agreement, and industry practices consistent therewith. The Contractor shall at all be consistent with the obligations assumed by it in entering into this Contract to assure timely and satisfactory delivery of Natural Gas.

#### Section 2.03 Key Personnel

The Contractor's personnel who will be providing services under this Agreement shall be under the supervision of the following key personnel: Jay Beasley, Glenn Grimm and Ann Daso of Constellation NewEnergy – Gas Division LLC, or its affiliated entity(ies). The Contractor retains the right to substitute key personnel with reasonable notice to the CHA.

#### Section 2.04 Non-Discrimination

The Contractor shall comply with the Civil Rights Act of 1964, 42 U.S.C. sec. 2000 et seq. (1989), as amended. The Contractor shall comply with Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000 (e), as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. sec. 6101-6106 (1989); Rehabilitation Act of 1973, 29 U.S.C. sec. 793-794 (1988); Fair Housing Amendments Act, 42 U.S.C. Sec. 3601 et seq. (1988); and Americans with Disabilities Act of 1990, 42 U.S.C. sec. 12101; as supplemented by 41 C.F.R. Part 60 et seq. (1990).

#### Section 2.05 MBE/WBE Participation

The Contractor shall comply with CHA's Minority and Women Business Enterprise (MBE/WBE) policies as described in the RFP and as set forth in the MBE/WBE Utilization Plan attached to the Contractor's Proposal, which is attached as Exhibit IV.

#### Section 2.06 Ownership of Documents, Records and Reports

The Contractor shall maintain its books, records, documents and adopt a system of accounting in accordance with generally accepted accounting principles and practices, to properly reflect all costs of whatever nature claimed to have been incurred or anticipated to be incurred in connection with the Contractor's performance under this Agreement. In addition, the Contractor shall keep such books, records and documents in a safe place and make them available for audit, examination, excerpt, and transcription to

be conducted by the CHA, HUD, the Comptroller General of the United States or their duly authorized representatives, and allow inspection, copying and abstracting for at least three (3) years after the final payment is made in connection with this Agreement and all other pending matters are closed.

#### Section 2.07 Audit Requirement

The CHA retains an irrevocable right, on prior written notice and during normal business hours, to independently or, through a third party, audit the Contractor's books and records pertaining to this Agreement, and dispute billings upon written notice to the Contractor in accordance with Article 5.

#### Section 2.08 Confidentiality

Both Parties agree that all Deliverables, reports and documents prepared, assembled, received or encountered by the Contractor that contain the confidential information of CHA or Contractor are to remain confidential and to be used solely for the purposes of meeting the objectives of this Agreement. Both Parties agree that such Deliverables, reports and documents shall not be made available to any individual or organization other than the CHA, HUD, Contractor and its affiliates, or courts of competent jurisdiction or administrative agencies pursuant to an order, request or subpoena, without the prior written approval of the party which disclosed the information to the receiving party under this Agreement. In the event the receiving party is presented with an order, request or subpoena regarding such Deliverables, reports, records, documents data and/or information, which may be in the receiving party's possession by reason of this Agreement, The receiving party must immediately give notice to the disclosing party. Notice for to the CHA shall be given to the CHA's Chief Executive Officer and General Counsel. Notice is given with the understanding that that the disclosing party will have the opportunity to contest such process by any means available to it before the Deliverables, reports, records, documents data and/or information are submitted to a court or other third party. The receiving party, however, is not obligated to withhold the delivery of the Deliverables, reports and documents beyond the time ordered by the court or administrative agency, unless the order, subpoena or request is quashed or the time to produce is otherwise extended.

#### Section 2.09 Subcontracts and Assignments

Unless otherwise provided for herein, the Contractor shall not subcontract, assign or otherwise delegate all or any part of its rights or obligations under this Agreement or any part hereof without the prior written approval of the CHA. Any attempted subcontract, assignment or delegation shall be void and of no legal effect.

Notwithstanding the foregoing, CNEG may assign, sell, pledge, transfer, or encumber any of its rights and obligations under this Agreement or the accounts, revenues, or proceeds hereof to: (a) a bank, insurer or other financial institution; or (b) any person or entity (i) succeeding to all or substantially all of CNEG's assets or business or the



division or region of CNEG to which this Agreement relates or (ii) into which CNEG is merged or otherwise combined or reorganized; provided (with respect to this clause (b)) the succeeding entity agrees to be bound to the Agreement; or (c) any affiliate of CNEG.

#### Section 2.10 Rights In Data

To the extent applicable and except as provided elsewhere in this Agreement, the CHA shall have exclusive, unlimited rights in data first produced in the performance of the Agreement; form, fit, and function data delivered under the Agreement; data delivered under the Agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under the Contract; and all other data delivered under the Agreement unless provided otherwise for limited rights data or restricted computer software.

#### Section 2.11 Religious Activities

In connection with this Agreement, the Contractor agrees:

- A. That it shall not discriminate against any person on the basis of religion and shall not limit employment or give preference in employment to persons on the basis of religion; and
- B. That it shall not discriminate against any person on the basis of religion when rendering the Services hereunder and shall not limit such Services or give preference to persons on the basis of religion.
- C. That it shall provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such Services.

#### Section 2.12 Drug-Free Workplace

The Contractor shall establish procedures and policies to promote a "Drug-Free Workplace" The Contractor shall notify all employees of its policy for maintaining a "Drug-Free Workplace" and the penalties that may be imposed for drug abuse violations occurring in the workplace. Contractor shall notify the CHA if any of its employees actively working with the CHA pursuant to this Agreement are convicted of a drug offense in the workplace, in a commercially reasonable time and manner

#### Section 2.13 Taxes

Contractor shall pay or cause to be paid all production, severance or similar taxes lawfully levied on Contractor, on the gas, or on any transaction giving rise to taxes, and applicable to the gas delivered hereunder which accrue prior to its delivery to CHA at the Delivery Point(s), and Contractor shall hold CHA harmless therefrom. CHA shall pay all

taxes lawfully levied on CHA applicable to such gas at and after delivery to the Delivery Point(s) and shall hold Contractor harmless therefrom. Notwithstanding the foregoing, in the event that sale of gas, or any of the transactions contemplated hereunder are subject to, or become subject to, any state or local gas revenue, utility, sales, use, gross receipts, commercial activity, excise, or ad valorem tax, that Seller is obligated to remit to any competent taxing authority, CHA shall reimburse Contractor for any such taxes remitted by Contractor in connection with this Agreement.

In the event Natural Gas to be delivered under this Agreement becomes subject to new, increased or decreased Taxes (or changes in the interpretation or application of said Taxes), the Price for the Natural Gas shall be adjusted accordingly and the Contractor may continue to perform under this Agreement subject to such changes in applicable taxes.

The CHA will furnish certificates of exemption from federal excise taxes, transportation taxes and Illinois Retailers' Occupational Tax (commonly known as "Sales Tax"), on all direct sales to the CHA. Currently, governmental authorities in Illinois do not collect gas revenue, utility, sales or use taxes applicable to direct sales. In the event that the Contractor determines, in good faith, that sales of Natural Gas to the CHA are subject to any such tax that Contractor is obligated to remit to any applicable taxing agency, the CHA shall reimburse Contractor for any such taxes remitted by the Contractor to the applicable taxing authorities in connection with sales of Natural Gas hereunder. However, Contractor shall provide reasonable cooperation and assistance to the CHA in any efforts or actions to claim or seek any form(s) of available tax exemption (whether state, local, federal or otherwise).

#### Section 2.14 Transportation, Nominations & Balancing

(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).

(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.

(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.

### **ARTICLE 3 TERM OF AGREEMENT**

#### **Section 3.01 Term of Agreement**

This Agreement shall take effect as of April 1, 2013 and shall continue through March 31, 2015 (the "Initial Term") or until the Agreement is terminated in accordance with its terms, whichever occurs first.

#### **Section 3.02 Contract Extension Option(s)**

The parties may extend this Agreement for three (3) additional one (1) year option periods under the same terms and conditions as this original Agreement. The CHA may give written notice of its desire to exercise an option period to the Contractor at any time prior to thirty (30) days before expiration of the term of this Agreement. This Agreement shall be modified to reflect the time extension in accordance with the provisions of Section 9.03 hereof. Neither party is obligated to exercise any of the option periods.

### **ARTICLE 4 FUNDING AND PAYMENT**

#### **Section 4.01 Basis of Payment**

The CHA will pay the Contractor for the performance of the Agreement at the prices established pursuant to this Agreement for ordered volumes of Natural Gas supplied or delivered to the CHA under the Initial Term of this Agreement, provided that the value of the Natural Gas supplied or delivered to the CHA shall not exceed Eleven Million Eight Hundred Thousand Dollars (\$11,800,000.00) (the "Maximum Compensation") without prior written amendment to this Agreement executed by the CHA's Chief Executive Officer or his designee in accordance with Section 9.03 hereof.

The Contractor agrees not to deliver Natural Gas and has no obligation to deliver Natural Gas beyond the term of this Agreement, and hereby waives any and all quantum valebant claims for additional deliveries to the CHA without a prior written amendment to this Agreement authorizing such additional delivery.

#### **Section 4.02 Billing and Payment**

Billing statements ("Statements") shall be provided monthly and shall coincide with the LDC's billing to the CHA, or the last day of each calendar month. Statements will be made based on the monthly volume estimated to be delivered to and received by the CHA at the Citygate during the applicable month, prorated for billing periods of less than one month. Firm transportation costs are to be identified separately on Contractor's Statements.

Statements should be provided on or around the tenth (10<sup>th</sup>) business day of each month showing the estimated quantity and price of gas to be delivered to the CHA during

that month. Corrections to billings (if any) will be reflected in the next billing provided, after the need for correction is discovered. Payment (or credit) for corrected monthly billings will be made or reflected in the next due payment. Corrections, except for those caused by adjustments by the local utility, will not be more than (3) months after the original billing date.

The CHA shall pay all amounts due and owing within forty-five (45) calendar days after the date of Statement. For payments received on or before the twenty-fifth (25<sup>th</sup>) day of the delivery month, in good and sufficient U.S. funds, a \$0.0015 per billed therm discount will be credited on the succeeding Statement. If CHA's failure to pay continues for more than sixty (60) calendar days after the date of a Statement from Contractor, then Contractor shall have the right to suspend further deliveries of Natural Gas for the account of the CHA until all undisputed amounts due and owing are paid to Contractor, provided Contractor gives the CHA five (5) days prior written notice of the intended suspension. In the event of a suspension of service, if a price has been fixed for any quantity of gas subject to this Agreement, the parties agree that the CHA shall compensate Contractor for its loss associated with liquidating the fixed price arrangement, in accordance with the requirements of the Uniform Commercial Code, based upon the difference between the resale price and the fixed price arrangement, should the resale price be less.

If CHA disputes the amount payable under any invoice rendered hereunder, CHA shall pay when due the amount not in dispute under such invoice as well as provide documentation to support the amount paid or disputed. CHA recognizes that CHA's assertion of an inaccurate Usage determination by Transporter, in the absence of a redundant metering device to support that claim, is not adequate support to withhold payment. Any payment by CHA shall not be deemed to be a waiver of CHA's right to recoup any overpayment, nor shall acceptance of any payment be deemed to be a waiver of CHA's right to any underpayment. Any claim must be made within two (2) years of the date of the invoice or last revision thereof.

In the event the CHA fails to pay the undisputed amount due to Contractor when due, the unpaid portion of the undisputed amount shall accrue in accordance with the Illinois Local Government Prompt Payment Act, provided that in no event shall such rate exceed the maximum rate allowed by law, compounded daily from the date such payment is due until the same is paid.

#### Section 4.03 Sale and Quality

- A. Contractor agrees to sell to CHA, and CHA agrees to purchase from the Contractor CHA's nominated quantity of Natural Gas based on its estimated usage of Natural Gas for its development buildings and any volumes established through a Transaction Confirmation. All Natural Gas sold to CHA must meet full BTU contract requirements defined as "Pipeline Quality Gas". The CHA will notify Contractor of the quantity of gas (hereinafter referred to as "Ordered Volume") the CHA will require for the next succeeding calendar month on or

before the 15<sup>th</sup> business day of each calendar month. In the event that CHA requirements for gas shall be materially more or less than the "Ordered Volume" the CHA will notify Contractor by telephone and in writing as soon as possible of the CHA revised requirements for such calendar month or part thereof and Contractor shall make its best efforts to adjust deliveries at the point(s) of delivery to conform to CHA revised requirements. The CHA and Contractor may mutually agree at any time upon the delivery of additional quantities of Natural Gas subject to the LDC daily deliverable cap on Natural Gas deliveries, if applicable, (over and above the monthly volume), if Contractor has such additional quantities available. If during any calendar month that this Agreement is in effect, the CHA's requirements for Natural Gas exceed the "Ordered Volume", the CHA reserves the right to purchase such additional Natural Gas over the Ordered Volume from the LDC, if the Contractor cannot provide such additional volume Natural Gas.

CHA shall be responsible for all Imbalance Charges assessed by the LDC, except to the extent that such Imbalance Charges are directly related to Contractor's failure to deliver the daily Ordered Volumes pursuant to the terms of this Agreement.

Notwithstanding anything in this Section 4.03(A), if the CHA requests the nomination and balancing service and Contractor provides it pursuant to Section 2.01(A), then Contractor shall have the rights and responsibilities set forth in Section 2.01(A) with respect to nominations and Imbalance Charges.

- B. Peoples Gas shall be the sole arbitrator of the volumes actually delivered at the point of delivery to the CHA's account for the billing month. The "Monthly Activity Statement", as it may be revised or corrected by Peoples Gas and provided to the CHA by Peoples Gas, shall be the monthly reference document.

#### Section 4.04 Natural Gas Pricing Options

The parties will use the following Transaction Confirmation procedure. Any gas purchase and sale transaction may be effectuated in an electronic 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 the Confirming Party shall confirm a transaction by sending the other party a Transaction Confirmation by facsimile, email or mutually agreeable electronic means within three Business Days of a transaction, 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 this Natural Gas Supply and Delivery Agreement (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to this section but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties. If a Transaction Confirmation is materially different from the CHA's understanding of the agreement, the CHA shall notify CNEG via facsimile, email or mutually agreeable electronic means by the Confirm Deadline. The failure of the CHA to so notify CNEG in writing by the Confirm Deadline constitutes the CHA's agreement to the terms of the transaction described in the Transaction Confirmation. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to this section, (ii) the oral agreement of the parties, and (iii) this Natural Gas Supply and Delivery Agreement, the terms of the documents shall govern in the priority listed in this sentence.

The index that any index-based pricing options are based upon shall be the NGI index, which is the *Natural Gas Intelligence Weekly Gas Price Index*, "Non-Utility End-User, Chicago Citygate", "Illinois via NGPL Bidweek Index. Should this publication no longer exist, "Gas Daily" Price Guide, Regional Price Sampler, "Chicago", which is published on the second business day of the month, shall serve as an alternate.

#### Section 4.05 Price Locks

Unless otherwise set forth in a Transaction Confirmation or a Rider, Buyer can request to lock in the commodity price for any month(s) at any time during the Delivery Period, prior to 12:00 p.m. EST/EDT on the final day of NYMEX last day settlement for each applicable delivery month. Commodity purchase/sale prices exclude pipeline and utility distribution charges. Buyer also has the right to lock basis at a fixed price and at predetermined volumes. Basis includes interstate and intrastate pipeline transportation but does not include the commodity cost or the utility distribution charges.

#### Section 4.06 Deliveries and Warranty of Title

Delivery of Natural Gas shall commence on the first day of the month for which the nomination is made. Contractor shall deliver or cause to be delivered to the CHA all the Natural Gas sold under this Contract at the point of delivery.

Title to all Natural Gas delivered under this agreement shall pass from Contractor to the CHA at the Citygate. The Contractor warrants that it will, at the point of delivery have good title to all gas delivered to CHA at the point of delivery under this Agreement, free and clear of all liens, encumbrances and claims whatsoever and that it will at such time of delivery have good title to said Natural Gas.

#### Section 4.07 Non-Appropriation

To the extent applicable, funding for this Agreement is subject to (1) availability of federal funds from HUD, (2) the approval of funding by the CHA's Board of

Commissioners and (3) the Contractor's satisfactory performance of this Agreement. Furthermore, in the event that no funds or insufficient funds are appropriated and budgeted or appropriated funds are rescinded by Congress in any fiscal period of the term of this Agreement for payments to be made under this Agreement, then the CHA shall notify the Contractor in writing of such occurrence and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted, but no sooner than the date of notification of termination.

## **ARTICLE 5 DISPUTES**

In the event of a dispute between the CHA and the Contractor involving this Agreement, both parties will attempt to negotiate a resolution. If the parties cannot resolve the dispute through negotiation, either party shall, unless otherwise set forth herein, submit the dispute in writing to CHA's Director of Procurements and Contracts (the "Director") for decision. The Director shall, with reasonable promptness, render a decision concerning the dispute submitted. Unless the Contractor, within thirty (30) days after receipt of the decision, shall notify the Director in writing that it takes exception to the decision, the decision of the shall be final and binding. If Contractor takes exception to any such decision, it may pursue any and all remedies available to it at law or equity.

## **ARTICLE 6 RISK MANAGEMENT AND INDEMNIFICATION**

### **Section 6.01 Insurance**

The Contractor agrees to procure and maintain at all time during the term of this Agreement, the types of insurance specified below in order to protect the CHA from the acts, omissions and negligence of the Contractor, its officers, officials, subcontractors, joint venturers, partners, agents or employees. The insurance carriers used by the Contractor must be authorized to conduct business in the State of Illinois and shall have a BEST rating of not less than "A". The insurance provided shall cover all operations under this Agreement, whether performed by the Contractor or by its subcontractor, joint venturers, partners, agents or employees.

#### **A. Required Insurance Coverage:**

1. Commercial Liability Insurance, (Primary) and Umbrella Liability (Excess).

Commercial Liability Insurance provided is to have limits of not less than One Million Dollars (\$1,000,000) per occurrence with an Aggregate of not less than Two Million Dollars (2,000,000) (i.e. \$1,000,000/\$2,000,000). In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations, Personal & Advertising Injury and will also cover injury to Contractor's officers, employees, agents, subcontractors, invitees and guests and their personal property. The CHA is to be added as an additional insured on the Contractor's

policy and such insurance will be as primary and non-contributory with any other insurance available to the CHA.

2. Umbrella Liability coverage, if applicable, is to follow the form of the Primary Insurance requirements outlined above.

B. Related Requirements

The Contractor shall furnish the Chicago Housing Authority, Purchasing and Contracts Department, 60 East Van Buren, Chicago, Illinois 60605, original Certificates of Insurance evidencing the required coverage to be in force on the Effective Date of this Agreement.

THE REQUIRED DOCUMENTATION MUST BE RECEIVED PRIOR TO CONTRACTOR COMMENCING WORK UNDER THIS AGREEMENT.

Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by the Purchasing and Contracts Department prior to expiration of insurance coverage. At the CHA's option, non-compliance will result in one or more of the following actions: (1) The CHA will purchase insurance on behalf of Contractor and will charge back all costs to Contractor; (2) the contract shall be terminated; (3) all payments due Contractor will be held until Contractor has complied with the contract; or (4) Contractor will be assessed Five Hundred Dollars (\$500) for every day of non-compliance. The receipt of any certificate does not constitute agreement by the CHA that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of the Agreement.

If any of the required insurance is underwritten on a claims made basis, the retroactive date shall be prior to or coincident with the date of this Agreement and the Certificate of Insurance shall state the coverage is "claims made" and also the Retroactive Date. The Contractor shall maintain coverage for the duration of this Agreement. Any extended reporting period premium (tail coverage) shall be paid by the Contractor.

The Contractor expressly understands and agrees that any insurance or self-insurance programs maintained by the CHA shall apply in excess of, and will not contribute with insurance provided by the Contractor under this Agreement.

Section 6.02 Indemnification

The Contractor agrees to protect, defend, indemnify, keep, save, and hold the CHA its officers, officials, employees and agents and contractors free and harmless from and against any and all liabilities, losses, penalties, damages, settlements, environmental liability, costs, charges, professional fees or other expenses or liabilities of every kind,



nature and character arising out of or relating to any and all claims, liens, demands, obligations, actions, suits, judgments or settlements, proceedings or causes of action of every kind, nature and character (collectively, "Claims") arising prior to the delivery of Gas to CHA at the Delivery Point. Without limiting the foregoing, any and all such Claims, relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged infringement of any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, order, rule or regulation, or decree of any court, shall be included in indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend all suits for any and all Claims at its sole expense and agree to bear all other costs and expenses related thereto, even if the Claims are considered groundless, false or fraudulent. Nothing in this Section 6.02 shall be construed to prevent Contractor from entering into a settlement with respect to any Claims provided that any such settlement shall fully protect the CHA, its officers, officials, employees, agents and contractors.

The CHA shall have the right, at its option and its own expense, to participate in the defense of any suit, without relieving the Contractor of any of its obligations under this indemnity provision. The Contractor expressly understands and agrees that the requirements set forth in this indemnity to protect, defend indemnify, keep, save and hold harmless the CHA are separate from and not limited by the Contractor's responsibility to obtain, procure and maintain insurance pursuant to any other section of this Agreement. Further, the indemnities contained in this section shall survive the expiration or termination of this Agreement.

## **ARTICLE 7 EVENTS OF DEFAULT, REMEDIES, TERMINATION, RIGHT TO OFFSET, SUSPENSION**

### **Section 7.01 Events of Default Defined**

Each of the following shall constitute an event of default:

- A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance of this Agreement, made by one party to the other.
- B. In reference to the Contractor, the Contractor's material failure to deliver Natural Gas, not excused by Force Majeure, by the delivery time set forth or material failure to perform its obligations under this Agreement including, but not limited to, the following:
  - 1. Breach of a Firm obligation to deliver Gas, for four (4) consecutive days or nine (9) nonconsecutive days in a Delivery Period, rounded up to a full day, in respect of any single transaction, and such breach is not excused under Force Majeure or by the other party's failure to perform;

2. The inability to deliver Natural Gas on a timely basis as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
3. Failure to promptly commence delivery after any period of failure to deliver pursuant to Force Majeure;
4. Discontinuance of delivery of Natural Gas for reasons or circumstances, which are not beyond Contractor's reasonable control;
5. Failure to comply with a material term of this Agreement, including, but not limited to, the provisions concerning compliance with HUD regulations, insurance and nondiscrimination; and
6. Any other acts specifically and expressly stated in this Agreement as constituting an event of default.

C. In reference to the CHA, the CHA's material failure to receive delivery of Natural Gas, not excused by Force Majeure, by the delivery time set forth or material failure to perform its obligations under this Agreement including, but not limited to, the following:

1. Breach of a Firm obligation to receive Gas, for four (4) consecutive days or nine (9) nonconsecutive days in a Delivery Period, rounded up to a full day, in respect of any single transaction, and such breach is not excused under Force Majeure or by the other party's failure to perform;
2. The inability to receive Natural Gas on a timely basis as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
3. Failure to promptly commence receipt of Gas after any period of failure to deliver pursuant to Force Majeure;
4. Discontinuance of receipt of Natural Gas for reasons or circumstances, which are not beyond Contractor's reasonable control;
5. Failure to comply with a material term of this Agreement; and
6. Any other acts specifically and expressly stated in this Agreement as constituting an event of default.

D. Default under any other contract the parties may presently have or may enter into during the life of this Agreement. Both parties acknowledge and agree that in the event of default under this Agreement the non-defaulting party may also declare default under any such other contract between the CHA and the Contractor.

E. In the event either party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment obligation to the other party; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); or (v) be unable to pay its debts as they fall due; then the other Party shall have the right to either withhold and/or suspend deliveries or payment, or terminate the Agreement without prior notice, in addition to any and all other remedies available hereunder.

#### Section 7.02 Remedies

Upon the occurrence of any event of default, which the defaulting party fails to cure within thirty (30) calendar days after receipt of notice given in accordance with the terms of this Agreement, the non-defaulting party may declare the other party in default and invoke any or all of the following remedies:

- A. Terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified in the notice given but not prior to the thirty (30) day cure period described above.
- B. Pursue any and all remedies, legal and/or equitable, available to the non-defaulting party.
- C. Withhold all or any part of the defaulting party's compensation hereunder, commensurate with the level of damages attributable to default.
- D. Deem the Contractor non-responsible in future contracts to be awarded by the CHA.
- E. If a price has been agreed to for any quantity of gas subject to this Agreement pursuant to a Transaction, the parties agree that any such quantity will be liquidated and a net settlement amount will be paid by the owing party and such amount shall be determined based upon the difference between the resale price and the Contract Price.

The remedies under this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies existing now or hereafter, at law, in equity or by statute. A party's failure to exercise any right or remedy shall not be construed as a waiver of any event or default or acquiescence thereto.

E. In the event either party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment obligation to the other party; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); or (v) be unable to pay its debts as

they fall due; then the other Party shall have the right to either withhold and/or suspend deliveries or payment, or terminate the Agreement without prior notice, in addition to any and all other remedies available hereunder.

#### Section 7.03 Termination for Convenience

The CHA may terminate this Agreement for convenience at any time by a notice in writing from the CHA to the Contractor when this Agreement may be deemed to be no longer in the best interest of the CHA. The Contractor shall continue to supply and deliver "Ordered Volumes" of Natural Gas until the effective date of termination. Subject to performance within the requisite performance standards and audits of invoices as set forth above, the CHA shall pay Contractor on the agreed price for "Ordered Volumes" of Natural Gas delivered to the point of redelivery through the date of termination. This Section 7.03 is not subject to Article 5 of this Agreement. However, if a price has been fixed for any quantity of gas subject to this Agreement, the parties agree that the CHA shall compensate Contractor for its loss associated with the liquidation of the fixed price arrangement, in accordance with the requirements of the Uniform Commercial Code, based upon the difference between the resale price and the fixed price arrangement, should the resale price be less.

#### Section 7.04 Suspension

The CHA may at any time request that the Contractor suspend its Services, or any part thereof, by giving ten (10) business days prior written notice to the Contractor or upon no notice in the event of emergency. Costs incurred after the effective date of such suspension shall be negotiated pursuant to Article 5. The Contractor shall promptly resume performance of such Services under the same terms and conditions as stated herein when requested to do so by the CHA. No suspension of this Agreement shall in the aggregate exceed a period of thirty (30) days. If the total number of days of suspension exceeds (30) days, the Contractor shall treat such suspension as a termination for convenience. If a price has been fixed for any quantity of gas subject to this Agreement, the parties agree that the CHA shall compensate Contractor for its loss associated with the liquidation of the fixed price arrangement, in accordance with the requirements of the Uniform Commercial Code, based upon the difference between the resale price and the fixed price arrangement, should the resale price be less.

### **Article 8      WARRANTIES,      REPRESENTATIONS      AND      SPECIAL CONDITIONS**

#### Section 8.01 Warranties and Representations

In connection with the execution of this Agreement, the Contractor warrants and represents to CHA:

- A. That it is financially solvent and that it and each of its employees, agents or subcontractors of any tier are competent to perform the Services required under this Agreement.
- B. That no officer, agent or employee of the CHA is employed by the Contractor or has a financial interest directly or indirectly in this Agreement or the compensation to be paid hereunder, except as may be permitted in writing by the CHA and HUD, and that no payment, gratuity or offer of employment shall be made in connection with this Agreement by or on behalf of the Contractor to any official or employee of the CHA.
- C. That Contractor and its subcontractors are not in default at the time of the execution of this Agreement, or deemed by the CHA's Director of Procurements and Contracts Department to have, within the last five (5) years been found to be in default on any contract awarded by the CHA.
- D. That Contractor shall not knowingly use the services of any ineligible contractor or subcontractor for any purpose in the performance of the Services under this Agreement.
- E. That, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, or of any kind whatsoever, by the CHA, its officials, officers, agents, or employees, has induced the Contractor to enter into this Agreement or has been relied upon by the Contractor.
- F. That the Contractor and, to the best of its knowledge, its subcontractors are not in violation of the provisions of 18 U.S.C. § 666 (a)(2) or other Federal criminal laws applicable to public contracts funded with federal government funds, the Illinois Criminal Code, 720 ILCS 5/33E-1 et seq. (1989), as amended; and the CHA's Ethics Policy adopted on January 16, 2001.
- G. That the Contractor has disclosed all relevant information to the CHA. The Contractor understands and agrees that failure to disclose relevant information in connection with this Agreement, and any certification, affidavit or acknowledgment made under oath that is made under penalty of perjury, and if false, is also cause for termination of this Agreement.
- H. That the Contractor is a duly organized and valid corporation under the laws of the State of Illinois and has and will continue to have at all times during the term of this Agreement, all licenses necessary to render the Services required hereunder.
- I. That the Contractor has the power and authority to enter into and perform all of its obligations under this Agreement, and that this Agreement, when executed will

constitute the duly authorized, valid and legally binding obligation of the Contractor.

In connection with the execution of this Agreement, the CHA represents to Contractor:

- A. That CHA has made its own independent decisions to enter the transaction and its decisions are based on its own judgment and upon advice from such advisors as it has deemed necessary;
- B. That the CHA is responsible for assessing the risks, strategies and determinations of gas acquisitions under this Agreement, and understands and accepts the terms, conditions of the Agreement;
- C. Contractor is not acting as a fiduciary for, or an advisor to, CHA in respect to the transaction;
- D. That CHA understands that any corresponding futures hedge referenced by Contractor is owned by Contractor for Contractor's price protection and that no representation has been made by Contractor that a position in futures is held by Contractor for CHA's benefit;
- E. That CHA has the ability to make and take delivery of the gas and is entering into transactions hereunder for purposes related to its business as such;
- F. That CHA is a "forward contract merchant" and that this Agreement is a "forward contract" as such terms are defined in the U.S. Bankruptcy Code.

#### Section 8.02 Joint and Several Liability

In the event that the Contractor or its permitted successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then each and every obligation or undertaking herein stated to be fulfilled or performed by the Contractor shall be the joint and several obligation or undertaking of each such individual or other legal entity.

#### Section 8.03 Business Documents and Contractor's Affidavit

To the extent applicable, the Contractor shall provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreements, and evidence of its authority to conduct business in the State of Illinois including, without limitation, registrations of assumed names.

The Contractor shall execute before a notary public a Contractor's Affidavit to be attached hereto as Exhibit III and incorporated by reference as if fully set forth herein.

The Contractor shall at all times during the term of this Agreement comply with, and be in compliance with, the terms of Contractor's Affidavit.

#### Section 8.04 Conflict of Interest

- A. No member of the governing body of the CHA or other units of government and no other officer, employee, or agent of the CHA or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains, shall have any personal interest, direct, or indirect, in this Agreement. No member of or delegate to the Congress of the United States of the Illinois General Assembly or CHA employee shall be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

Additionally, pursuant to the conflict of interest requirements in OMB Circular A-102 and 24 CFR §85.36(b)(3), no person who is an employee, agent, contractor, officer, or appointed official of the CHA and who exercises or has exercised any functions or responsibilities with respect to CHA or HUD assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such CHA and HUD activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties during his or her tenure or for one year thereafter.

- B. Furthermore, the Contractor represents that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 U.S.C. Subsection 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff (1989), as amended.

#### Section 8.05 Non-Liability of Public Officials

No official, officer, employee or agent of the CHA shall be charged personally by the Contractor, or by any assignee or subcontractor of the Contractor, with any liability or expense of defense or be held personally liable to the Contractor under any term or provision of this Agreement, because of the CHA's execution or attempted execution of this Agreement, or because of any breach hereof.

#### Section 8.06 Independent Contractor

The Contractor shall perform under this Agreement as an independent contractor to the CHA and not as a representative, employee, agent, or partner of the CHA.

### **ARTICLE 9 GENERAL CONDITIONS**

#### Section 9.01 Entire Agreement

This Agreement and all other Exhibits attached hereto and referenced herein shall constitute the entire agreement between the parties hereto relating to the subject matter hereof and no other warranties, indemnities, covenants, conditions or promises shall be implied between the parties that are not set forth herein. As to inconsistencies between the terms and conditions of this Agreement and the terms and conditions of the RFP and Proposal, which have been incorporated by reference, the express terms and conditions of this Agreement shall control, then the RFP, then the Proposal.

#### Section 9.02 Counterparts

This Agreement may be executed by several identical counterparts, each of which shall be deemed an original and constitute one agreement binding on the parties hereto.

#### Section 9.03 Amendments

No changes, amendments, modification or discharge of this Agreement, or any part thereof, shall be valid unless in writing and signed by the authorized agent of the Contractor and by the Chief Executive Officer of the CHA or his designated representative. The CHA shall incur no liability for additional Services without a written and signed amendment to this Agreement pursuant to this Section or as otherwise set out in this Agreement.

Whenever in this Agreement the Contractor is required to obtain prior written approval, the effect of any approval which may be granted pursuant to the Contractor's request shall be prospective only from the later of the date approval was requested or the date on which the action for which the approval was sought is to begin. In no event may approval apply retroactively to a date before the approval was granted.

#### Section 9.04 Compliance with HUD Regulations

The Contractor shall comply with all the provisions of HUD regulations, and other applicable federal, state and local laws, ordinances and executive orders including, but not limited to, the Uniform Administrative Requirements contained in 24 C.F.R. Section 85.1 et seq., (1993), as amended; Title VI of the Civil Rights Act of 1967 (42 U.S.C. 2000d et seq.); Fair Housing Act (42 U.S.C. 3601-20 et seq.); Executive Order 11063, as amended by Executive Order 12259; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Rehabilitation Act of 1973 (29 U.S.C. 794); Davis-Bacon Act, as amended (40 U.S.C. 327 et seq.); National Environmental Policy Act of 1969 (24 C.F.R. Part 58); Clean Air Act (42 U.S.C. § 1857(h)/et seq.); Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended; Executive Order 11246, as amended by Executive Orders 12086 and 11375; Executive Order 12372; Executive Order 11738; Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276); Byrd "Anti-Lobbying" Amendment (31 U.S.C. § 1352); and Debarment and Suspension (Executive Orders 12549 and 12689); Environmental Protection Agency regulators (40 C.F.R. part 15); and Energy Policy and Conservation Act (Pub. L. 94-163).



The Contractor upon notification shall take such actions as may be necessary to comply promptly with any and all governmental orders imposed by any duly constituted government authority whether imposed by Federal, State, country or municipal authority.

#### Section 9.05 Governing Law

This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois without regard to principles of conflicts of laws, including the Illinois Code of Civil Procedure and the local rules of the Circuit Court of Cook County, and applicable Federal laws including the Federal Rules of Civil Procedure and the local rules governing the U.S. District Court for the Northern District of Illinois. The Contractor hereby irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement.

#### Section 9.06 Severability and Interpretation

- A. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.
- B. Any headings of this Agreement are for convenience only and not intended to define or limit the provisions hereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such persons or entities in accordance with the terms and conditions of this Agreement.

#### Section 9.07 Assigns

All of the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

#### Section 9.08 Cooperation

The Contractor agrees at to reasonably cooperate with the CHA. If this Agreement is terminated for any reason, or if it is to expire on its own terms, the Contractor shall use reasonable efforts to assure an orderly transition to another Contractor, for uninterrupted provision of Services during any transition period and shall otherwise comply with the reasonable requests and requirements of the CHA in connection with the termination or expiration of this Agreement.

#### Section 9.09 Waiver

Whenever under this Agreement the CHA by a proper authority expressly waives in writing the Contractor's performance in any respect or expressly waives a requirement or condition to either the CHA or the Contractor's performance, the waiver in writing so granted, shall only apply to the particular instance and shall not be deemed a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of the Agreement regardless of the number of times the CHA may have waived the performance, requirement or condition.

A waiver by Contractor of any one or more defaults by the CHA in the performance of any provisions of this Agreement shall not operate as a waiver of any subsequent or future default, whether of a like or different character.

#### Section 9.10 No Third Party Beneficiaries

There is no third party beneficiary to this Contract.

### **ARTICLE 10 COMMUNICATION AND NOTICE**

#### Section 10.01 Communication Between the Parties

All communications, including required reports and submissions from the Contractor to the CHA shall be through the CHA's Department of Asset Management. Except as set forth specifically herein, no verbal communication between the parties shall change any of the terms and conditions of this Agreement.

#### Section 10.02 Notices

- (a) Any notices sent to the Contractor shall be mailed by certified mail return receipt requested, postage prepaid to:

Constellation NewEnergy – Gas Division, LLC  
9960 Corporate Campus Drive, Suite 2000  
Louisville, Kentucky 40223  
Attention: Contract Administration

Notices sent to the CHA shall be mailed by certified mail, postage prepaid to:

Chicago Housing Authority  
60 East Van Buren  
Chicago, Illinois 60605  
Attention: Inayat Khan, Energy Manager

With a Copy to:

Office of the General Counsel  
Chicago Housing Authority  
60 E. Van Buren, 12<sup>th</sup> Floor

Chicago, Illinois 60605  
Attn: General Counsel

(b) Notwithstanding the preceding subsection (a), all Transaction Confirmations, invoices, payments and other communications made pursuant to the Agreement shall be made to the addresses specified in writing by the respective parties from time to time, and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

Notice of Transaction Confirmations shall be given and effective 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 Transaction Confirmations 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.

#### **ARTICLE 11 AUTHORITY**

##### **Section 11.01 CHA's Authority**

Execution of this Agreement by the CHA is pursuant to the United States Housing Act of 1937, 42 U.S.C. § 1437 et seq., regulations promulgated by HUD, and the State Housing Authorities Act. 310 ILCS 10/1 et seq., as amended, and other applicable laws, regulations and ordinances.

##### **Section 11.02 Contractor's Authority**

Execution of this Agreement by Contractor is authorized by a resolution of its Board of Directors, if a corporation, and the signature(s) of each person signing on behalf of Contractor have been made with complete and full authority to commit Contractor to all terms and conditions of this Agreement.

**IN WITNESS WHEREOF**, the CHA and the Contractor have executed this Agreement as of the date first written above:

CHICAGO HOUSING AUTHORITY

By: 

Its: 5/6/2013

CONSTELLATION NEWENERGY –  
GAS DIVISION, LLC

By:  *all*

Its: BRIAN FRANZ *W*

MANAGER, RETAIL SUPPLY

APPROVED AS TO FORM AND LEGALITY BY:

Chicago Housing Authority  
Office of General Counsel

Scott W. Arnold

Title: General Counsel