

RESOLUTION NUMBER: 23-040

PASSAIC VALLEY WATER COMMISSION

RESOLUTION TO ENTER INTO ENERGY EFFICIENCY PROGRAM WITH PSE&G

DATE OF ADOPTION: MARCH 22, 2023

Introduced by Commissioner: JOSEPH KOLODZIEJ

Seconded by Commissioner: CARMEN DE PADUA

WHEREAS, the Passaic Valley Water Commission (PVWC) desires to enter into an agreement with Public Service Electric and Gas (PSE&G) to utilize the Energy Efficiency Program; and

WHEREAS, PSE&G will provide engineering services for energy efficiency projects which include conducting energy audits at all PVWC facilities, make recommendations for improvements and perform design services or review design work performed by PVWC consultants; and

WHEREAS, PSE&G will provide PVWC up to a 50% grant for all work resulting in energy efficiency and will offer PVWC 5-year loans at zero percent interest; and

WHEREAS, the Master Customer Agreement is attached hereto as **Exhibit A**.

NOW, THEREFORE BE IT RESOLVED, by Passaic Valley Water Commission, in the County of Passaic, New Jersey:

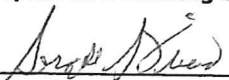
1. That the Agreement with PSE&G for entering into the Energy Efficiency Program is hereby authorized and approved.
2. That appropriate officers of PVWC are hereby authorized and directed to perform such acts and execute such documents as are necessary to implement the terms and intentions of this Resolution and the submissions provided in connection therewith, all as set forth hereinabove.

* Out of Room

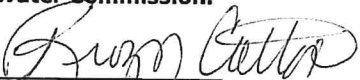
RECORD OF COMMISSION VOTE ON FINAL PASSAGE

	AYE	NAY	ABSTAIN	ABSENT
SANCHEZ, R.*	—	—	—	—
COTTON, R.	X	—	—	—
DEPADUA, C.	X	—	—	—
KOLODZIEJ, J.	X	—	—	—
LEVINE, J.	X	—	—	—
VAN RENSALIER, R.*	—	—	—	—
FRIEND, G.	X	—	—	—

Adopted at a meeting of Passaic Valley Water Commission.



President
GERALD FRIEND



Secretary
RUBY N. COTTON

This Resolution, when adopted, must remain in the custody of the Administrative Secretary.

CERTIFICATION

I, LOUIS AMODIO, Administrative Secretary of the Passaic Valley Water Commission in the County of Passaic, and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy thereof of the foregoing Resolution duly passed and adopted by a majority of a legal quorum of the full membership of the Passaic Valley Water Commission at its duly noticed and convened meeting of the said Commission on March 22, 2023.

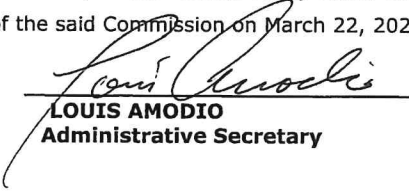

LOUIS AMODIO
Administrative Secretary

EXHIBIT A



Clean Energy Future – Energy Efficiency Program C&I Engineered Solutions Sub-Program

Master Customer Agreement

As part of its New Jersey Board of Public Utilities ("NJBP") approved Clean Energy Future - Energy Efficiency Program ("CEF-EE"), Public Service Electric and Gas Company ("PSE&G") is offering the Commercial and Industrial Engineered Solutions Sub-Program (the "Program"). PSE&G has performed a review of the Application dated [redacted], 20[redacted], which was submitted under the Program for the facilities located at [Insert Facility Address] (the "Facility") by [Insert Applicant Name] on behalf of itself, its principal, parent, affiliates, subsidiaries and/or the PSE&G customer of record (the "Customer"). PSE&G has additionally performed a review of the PSE&G utility account associated with the Facility. Participation in the Program is contingent upon an acceptable PSE&G utility bill payment record.

PSE&G will perform an energy audit (the "Audit") of the Facility at no cost to Customer to determine if Customer may benefit from participating in the Program. The Audit is the primary mechanism to identify energy efficiency investment opportunities to systems such as lighting, HVAC, building envelope, motor and others that are appropriate and cost effective (collectively, "Energy Efficiency Measures" or "EEMs") that meet the Program requirements. Customer acknowledges and agrees that it is entering into this Master Customer Agreement ("Agreement") in order to set forth an agreement regarding performance of the Audit and the installation of the EEMs at Customer's Facility. The Program has limited funding, and this Agreement does not guaranty available funding for this Program or the Project (as defined below).

EEMs that are recommended by the Audit and that meet all Program requirements (e.g., all EEMs with a simple payback less than or equal to its expected measured life, consistent with the NJBP's Clean Energy Program protocols and generally accepted engineering practices) may be considered under this Program.

1. During the course of conducting the Audit, PSE&G and its engineering contractors will perform an on-site detailed inspection of the Facility to assess the current and historical pattern of energy usage ("Baseline") against which energy savings to be obtained from the implementation of the EEMs shall be measured. Customer acknowledges and agrees that it will provide for PSE&G's review and analysis all documentation and data including, without limitation, utility bills and historic operating equipment data reasonably requested by PSE&G to evaluate Customer's current operations and the cost effectiveness of the implementation of various energy efficiency strategies. Any withholding or misrepresentation of such documentation and data may result in an inaccurate Baseline and jeopardize the Project (as defined below), funding and/or Customer's participation in the Program. PSE&G's evaluation activities will include, without limitation, a detailed visual inspection of the Facility and operating systems and such other activities or measurements as PSE&G determines in its sole discretion to be needed to establish a Baseline for the Facility.

[Insert Project Name]

2. PSE&G will review and submit a copy of the Audit report to Customer identifying those EEMs that PSE&G has preliminarily determined, based on the Audit recommendations, to be eligible under the Program for installation at Customer's Facility. PSE&G and Customer will meet to review the Audit and agree upon any proposed EEMs (the "Project"). Customer will then execute a Limited Notice to Proceed Letter, the form of which is attached hereto as Exhibit I, agreeing to proceed with the engineering phase of the Program. PSE&G's engineering vendor may provide technical assistance in the form of an engineering analysis to determine the EEMs eligible under the Program. PSE&G's engineering vendor will also develop the engineering and design drawings and documents (*i.e.*, bid-ready construction documents) required to develop a description of the work to be performed to obtain price quotations for implementation of the agreed upon EEMs. If Customer chooses to proceed with Program participation after the Engineering Phase of the Program has been completed, Customer will then proceed with the solicitation of contractor bid phase of the Program. If Customer chooses *not* to proceed with Program participation after the Engineering Phase of the Program has begun or has been completed for a Project that meets all Program requirements, Customer will be responsible to reimburse PSE&G 100% of all costs associated with that work and those costs will become immediately due and payable to PSE&G.

3. Customer will submit to PSE&G the contractor proposal(s) (the "Proposal") for construction of the Project, which specifies the EEMs that Customer proposes to install and the proposed costs to be incurred for the installation thereof. PSE&G will evaluate the Proposal in accordance with Program requirements and will approve the cost estimates and the annual energy savings at its sole discretion. PSE&G, at its sole discretion, will determine which EEMs it will fund through this Program. The Program will consider all relevant Project costs including the cost of the EEMs (including construction management, if any), and Project engineering (collectively, the "Total Project Costs"). Note that, while the cost of the Audit shall be included in all Project analysis and reporting, it is not included in calculating the Total Project Cost. However, in determining the amount to be funded to Customer and the amount to be repaid by Customer, PSE&G will review the cost of (i) the installation of EEMs including construction management, if any (the "EEM Costs"), and (ii) Project engineering (the "Engineering Costs"). Upon review and approval by PSE&G, the EEM Costs and the Engineering Costs will be collectively referred to as the "Approved Project Costs." Note that PSE&G pays its third-party engineering vendors directly for the Engineering Costs.

4. Customer represents that it will properly and timely manage the installation of the EEMs. The construction documents will specify the scope of work and Customer will provide on-site coordination and management, including responsibility for addressing safety issues; directly interface with Customer's Facility staff; and oversee other day-to-day activities. The cost for site coordination and management by a third party, if any, may be included in the Total Project Costs used to determine Customer's repayment amount.

5. Once PSE&G has approved the Project, PSE&G and Customer will agree to funding the installation costs of the EEMs, by entering into the Customer Repayment Agreement, the form of which is attached hereto as Exhibit II. Customer shall have fourteen (14) days from receipt of the Customer Repayment Agreement in which to review, execute and return the Customer Repayment Agreement to PSE&G. Failure of Customer to timely return the executed Customer Repayment Agreement may result in Customer's Project being moved to the end of PSE&G's review queue and as a result of the number of Program applicants and limited Program funding available, Customer might not receive funding for its

[Insert Project Name]

Project.

6. PSE&G's Financial Commitment: All funding will be provided in accordance with the terms and conditions of this Agreement. PSE&G will advance funds pursuant to and in accordance with Paragraph 11 but in no event in excess of one hundred percent (100%) of the Approved Project Costs. PSE&G's permanent financial incentive (the "PSE&G Permanent Financial Incentive") shall equal the amount which is required to reduce Customer's payback period for the Project by buying down the payback period by not more than six (6) years, to a period of not less than three (3) years, while also meeting Program requirements including cost effectiveness. All Approved Project Costs in excess of the PSE&G Permanent Financial Incentive (the "Customer's Share") shall be recaptured by PSE&G from Customer interest-free following completion of the Project over a five (5) year period (ten (10) years for multi-family facilities financed by the New Jersey Housing and Mortgage Finance Agency ("NJHMFA")) (the "Recovery Period") by means of a charge to Customer's monthly utility bill, in an amount sufficient to fully amortize repayment of the principal amount of Customer's Share over the Recovery Period. If Customer ceases to be a PSE&G customer prior to the expiration of the Recovery Period, Customer shall immediately pay the unpaid balance of the Approved Project Costs to PSE&G. Customer shall construct and own the Project, however, Customer acknowledges and agrees that PSE&G shall own the rights to all energy savings and to retain the right to bid all energy efficiency attributes derived as a result of the Program into the PJM Capacity Market or any other markets that monetize the value of the energy savings attributable to EEMs.

7. Customer shall notify PSE&G when Customer has signed a construction contract with Customer's prime contractor(s) (the "Construction Contract") and shall provide a copy of each such signed Construction Contract to PSE&G. Customer shall enter into the Construction Contract with a prime contractor or issue purchase orders ("POs") for the requisite labor, materials and/or services, within sixty (60) days of receipt of bids, provided that the pricing and energy savings for same continue to meet the Program requirements. Customer shall deliver or cause to be delivered in a timely manner copies of all approved applications and certificates for payment (*i.e.*, invoices) submitted by Customer's contractor, as well as labor records (*i.e.*, hours worked, type of trades and union locals). Customer shall also submit upon request, in a timely manner, accounting of all payments made to the contractor or material supplier.

8. Energy Efficiency Jobs.

A. PSE&G is committed to creating Energy Efficiency Jobs ("EE Jobs") through the implementation of its Clean Energy Future - Energy Efficiency Program in the State of New Jersey. Customer shall use best efforts to create EE Jobs during the course of the Project and shall use its best efforts to cause its prime contractor(s) to do the same. Customer shall use best efforts to hire only New Jersey residents, with particular attention to hiring residents from underserved urban communities within New Jersey and shall use its best efforts to cause its prime contractor(s) and their subcontractors to do the same.

On a monthly basis, for any new hire that is not sourced from the local union for temporary employment, Customer shall report the following:

- i. Full name;

- ii. Date of hire; and
- iii. City/town, zip code and state of residence.

On a monthly basis, Customer shall report the following for each worker:

- i. Full name;
- ii. The number of hours worked each month;
- iii. A description of their trade and local; and
- iv. City/town, zip code and state of residence.

B. PSE&G is committed to assist Customer in its hiring efforts related to this Project. Customer shall participate in PSE&G's pre-screening and pre-job placement process ("Clean Energy Jobs Program") for filling new EE Jobs. Customer shall use its best efforts to cause its prime contractor(s) to participate in the Clean Energy Jobs Program for filling new EE Jobs. The Customer shall, among other things, provide PSE&G with a summary of the skills needed for each new EE Job, review the resumes and other documentation of all candidates presented through the Clean Energy Jobs Program, and hire all qualified candidates presented to Customer through the Clean Energy Jobs Program. Customer shall cause prime contractors that participate in the Clean Energy Jobs Program to do the same. A description of the Clean Energy Jobs Program is attached as Exhibit III.

For each candidate hired directly from the Clean Energy Jobs Program that works full-time on the Project for at least six (6) months, Customer will be eligible for a Two Thousand, Five Hundred and 00/100 Dollars (\$2,500.00) incentive from PSE&G ("Jobs Incentive"). Customer may elect to instruct PSE&G to pay the Jobs Incentive directly to the prime contractor(s) if the candidate was hired as a result of the prime contractor(s) participation in the Clean Energy Jobs Program. The Jobs Incentive is not taken into account in calculating the Approved Project Costs. Customer will request the Jobs Incentive payment from PSE&G, which shall include documentation that shows the candidate was hired through the Clean Energy Jobs Program and has met the six (6) month work requirement. Total Job Incentives for Customer and its prime contractor(s) combined will be limited to one half of one percent (0.5%) of the Approved Project Costs. All Job Incentive payment requests must be submitted to the Company prior to Final Payment. Company will review and approve the Job Incentive request on a first-come, first-served basis.

9. Diversity Initiative.

PSE&G is committed to increasing the number of minority, women, veteran and service disabled veteran owned businesses ("MWVBEs"), as well as LGBTQ+ owned businesses (collectively, "Diverse Businesses") that perform work and to increase the total amount of spend with such businesses. Customer shall make best efforts to contract, either directly with its prime contractor(s) or through subcontracts of the prime contractor(s), no less than thirty percent (30%) of construction costs, including all labor, materials, overhead and profit, to qualified Diverse Businesses. On a monthly basis, Customer shall submit to PSE&G a report that includes the name and address of each Diverse Business utilized by it or its prime contractor(s), a general description of the services provided by each such Diverse Business, the category of each Diverse Business (e.g., minority-owned business), the total amount of spend with each Diverse Business during the performance of the work, and the certification credentials of each Diverse Business.

10. New Jersey Based Company.

Customer shall make best efforts to engage and contract solely with prime contractor(s) that are a New Jersey Based Company, meaning that: (i) the prime contractor(s) maintains an office or fixed facility in underserved urban communities within New Jersey from which the management and operational activities relating to the Project will be conducted and which will function as the principal work location for its employees performing work, and (ii) the full-time dedicated personnel performing the work are New Jersey residents, meaning that such full-time dedicated employees maintain a permanent residence within the State of New Jersey. Customer shall make best efforts to ensure that any subcontractors to the prime contractor(s) will be New Jersey Based Companies within the meaning described above, except that subcontractors that are Small Businesses as defined by the U.S. Small Business Administration will not be required to have an office or fixed facility in one of the underserved urban communities within New Jersey. At the end of the Project, Customer shall report to PSE&G the following: (i) the total amount of spend with its prime contractor(s) and all subcontractors to complete the work, and (ii) the percentage of the total amount of spend with its New Jersey based prime contractor(s) and all subcontractors relative to the Total Project Costs. The definition of a small business can be found at: https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf

11. Progress Payments: PSE&G shall fund the EEM costs in three stages of progress during the course of the Project. Customer acknowledges and agrees that only those EEMs that have been approved by PSE&G shall be eligible for funding under this Program and that no work has commenced, nor materials purchased, with regard to those EEMs, prior to the execution of the Customer Repayment Agreement.

A. The three stages of the Program progress payments are:

1. Stage One - Execution of Contract Payment: PSE&G will pay to Customer the Stage One - Execution of Contract Payment equal to 30% of the EEM Costs when all of the following conditions have been satisfied: (a) Customer has committed to install all of the agreed-upon EEMs by delivering to PSE&G: (i) executed Construction Contracts with the prime contractors or issuance of POs for the purchase of labor, materials and/or services; (ii) confirmation that (x) 100% of the Project has acceptable bids and no less than 75% have been contracted for by firm, fixed price contracts or (y) a guaranteed maximum price contract has been issued by the contractors covering the installation of the EEMs; (iii) a construction schedule with a start date has been submitted; and (iv) all required permits have been identified; (b) Customer and PSE&G have executed the Customer Repayment Agreement; (c) PSE&G has reviewed the Customer's Construction Contract and/or POs along with any such other documentation necessary or useful in its review; and (d) approval at PSE&G's sole discretion that the EEMs to be installed conform to and are consistent with the EEMs identified as the Approved Project Costs.

2. Stage Two - Progress Payments: As the Project proceeds and as Customer requests additional funding, supported by contractor invoices, engineering inspections and periodic PSE&G site inspections, and PSE&G is satisfied in its sole discretion that installation of the EEMs is satisfactorily progressing or complete, PSE&G shall pay to Customer the Stage Two - Progress Payments equal to 50% of the EEM Costs, which may be in a single payment or in a series of payments. Prior to PSE&G releasing payments to Customer, which in the aggregate exceed one-half (1/2) of the EEM Costs

[Insert Project Name]

committed to in the Customer Repayment Agreement including the Stage One and Stage Two payments, Customer shall deliver to PSE&G such documents, contracts, purchase orders and the like verifying that 100% of the Project, including all EEMs, and construction management, if any, has been secured by Customer through fixed price contracts through the completion of the Project. Customer shall deliver any and all required documents that PSE&G may need, at its sole discretion, in order to be eligible to receive the Stage Two - Progress Payments. Documentation may include construction progress, purchase and delivery receipts of major equipment, approved contractor requisitions for payment, inspection reports or such other evidence relevant to the Project and requested funding.

3. **Stage Three - Final Payment:** PSE&G shall make the Stage Three - Final Payment when the Project has achieved Final Completion (as defined below). The Stage Three - Final Payment shall be equal to approximately 20% of the EEM Costs, subject to adjustment in the Cost True-Up (as defined below). For purposes herein, Final Completion means that (i) all punch list items related to the energy efficiency project have been completed, (ii) all commissioning has been successfully completed, (iii) Customer shall have use of the EEMs for the purposes for which they were installed (collectively, "Beneficial Use") and (iv) Customer has approved the final invoice(s) reflecting that the energy efficiency Project is one hundred percent (100%) complete (as evidenced by the punch list being complete, Customer and its contractor(s) agreeing that the net amount of the contract and the total completed to date including retainage are equal to each other). After Customer notifies PSE&G that the Project has achieved Final Completion, PSE&G will perform a final inspection on all work performed (the "Final Inspection"). If the Project passes the Final Inspection, the amount of the Approved Project Costs will be "trued-up" based on actual costs incurred (the "Cost True-Up"). If the actual EEM Costs are less than the approved EEM Costs, the Stage Three - Final Payment will be adjusted down to reflect the actual costs set forth in the Cost True-Up. If the actual EEM Costs are equal to or greater than the approved EEM Costs, the Stage Three - Final Payment will not be adjusted and will be paid according to the EEM Costs set forth in the Customer Repayment Agreement. After the Cost True-Up has been completed, PSE&G will pay to Customer the Stage Three - Final Payment as determined above within thirty (30) days' receipt by PSE&G of all final engineering reports and Project close-out documents. Project close-out documents shall include but not be limited to (a) Record of Completion (the form of which is attached hereto as Exhibit IV), which shall include the Cost True-Up, and (b) final engineering reports including Certification of Completion, Commissioning Report, the Final Inspection Report, and Supplement #2 which the engineer delivers to PSE&G. In addition, the Stage Three - Final Payment shall also be conditioned upon the delivery to PSE&G of all items set forth on the closing checklist, including but not limited to construction documents, EEM data from the project engineer for reporting purposes, all contracts with prime contractors as well as and to the extent applicable certificates of final inspection and acceptance or approval and the like issued by the applicable governmental code inspector(s).

The parties acknowledge and agree that PSE&G shall not under any circumstances be required to make an aggregate payment in excess of the Approved Project Costs. The Cost True-Up includes, but is not limited to, the review of all Project expenses, invoices, contracts, agreements, receipts of inventory and such documents or other information necessary for proper financial management, consistently applied or as deemed necessary by PSE&G in its sole discretion to identify, calculate and audit all actual Project expenditures. Maintaining proper records shall not relieve Customer of its responsibility to properly document all invoices submitted to PSE&G in connection with the Cost True-Up. All equipment or materials, payroll documents, records and time sheet data used to prepare invoices shall be maintained in an electronic native file format. All Project close-out documents shall be provided to PSE&G within thirty

[Insert Project Name]

(30) days of the Final Inspection. Following receipt of these various close-out documents by PSE&G, the Project is considered complete and Customer repayments will begin within thirty (30) days thereof. Customer's failure to provide all required documents within thirty (30) days will result in the withholding of the final payment to Customer, however, billing for the repayment of Customer's Share of the Approved Project Costs will begin within thirty (30) days of the earlier to occur of (x) the Project Completion Date (as defined in the Customer Repayment Agreement) or (y) the Final Inspection.

B. Customer Guaranty of Final Completion Date: Customer warrants and guarantees to PSE&G, and Customer shall require its contractors to guaranty (the "Contractor Guaranty"), that the Project shall achieve Final Completion not later than the date set forth in the executed Customer Repayment Agreement ("Final Completion Date"). To secure performance of the Contractor Guaranty for any contract equal to or greater than \$250,000.00, the contractor shall be required by Customer to furnish performance and payment bonds covering the faithful performance of the underlying contract and the payment of all obligations arising thereunder (collectively, the "Bonds"). The surety that issues the Bonds must be rated no less than "A-" by AM Best and retain such rating until the obligations of the surety to the contractor have been satisfied. The form of the Bonds must be substantially similar to those available from AIA. All contracts related to the Project shall recognize PSE&G as a third-party beneficiary for the limited purpose of enforcing the Contractor Guaranty. All Bonds required hereunder shall name PSE&G as additional obligee. In the event that additional cost is incurred in completing the Project, such as in the case of Customer substituting one contractor for another, Customer shall remain responsible to pay any cost increase as a result thereof, regardless of any remedies available under the Bonds. In the event that the Customer fails to deliver the completed Project by the Final Completion Date, PSE&G shall deliver written notice thereof to Customer, which notice shall specify a date by which the Project shall be completed and the Stage 3 – Final Payment shall be reduced by ten percent (10%). If Customer thereafter fails to complete the Project to PSE&G's satisfaction by the date specified in PSE&G's written notice, PSE&G may declare Customer's Share immediately due and payable, and retain the Stage Three – Final Payment that would otherwise have been due to Customer.

12. Customer shall notify PSE&G when installation of the EEMs has commenced. At its discretion, PSE&G may, upon reasonable notice to Customer, inspect the Project site during various intervals. Inspections shall be conducted at a time mutually agreeable to PSE&G and Customer. Customer shall notify PSE&G as installation progresses and additional funding is desired so that PSE&G and/or its representative may observe the progress of installation at that time to determine eligibility for Stage Two - Progress Payments. Customer shall also notify PSE&G when construction of the Project achieves Final Completion so that PSE&G may inspect and approve the Project in conjunction with completing the Cost True-Up for the purpose of establishing Customer's eligibility to receive the Stage Three - Final Payment. PSE&G shall make a reasonable effort to perform the Final Inspection for the Project within thirty (30) business days after Customer serves notice on PSE&G that the Project is ready for inspection. The Final Inspection shall be performed at a time or times mutually agreeable to PSE&G and Customer. The Final Inspection may be conducted in a single or a series of on-site, detailed inspections of the Project as determined by PSE&G in its discretion, and shall include, without limitation, a visual inspection of all areas and systems associated with the Project. PSE&G, with Customer's assistance, may maintain records of energy usage and inspection results for the purpose of evaluating the effectiveness of the Project, in conjunction with the Program requirements. In the event that after conducting the Final Inspection PSE&G approves the Project installation, PSE&G shall pay the balance of the Stage Three – Final Payment, subject to the Cost True-Up and as set forth in Paragraph 11.A.3 above. In the event that after

[Insert Project Name]

conducting the Final Inspection, PSE&G does not approve the Project installation, PSE&G shall provide Customer with written notice specifying the reasons for its disapproval. Customer shall have fourteen (14) days to submit a written plan to PSE&G to remedy the deficiencies specified by PSE&G (the "Remedial Plan"). PSE&G shall have fourteen (14) days following receipt of Customer's Remedial Plan to review and approve or disapprove the Remedial Plan. If PSE&G disapproves the Remedial Plan, PSE&G may terminate this Agreement by delivering written notice of its intent to terminate to Customer, and PSE&G shall have no further liability hereunder. PSE&G shall provide Customer with written notice specifying the reasons for its disapproval. Any monies (progress payments, engineering costs, etc.) previously paid shall become immediately due and payable to PSE&G. If the Remedial Plan is approved by PSE&G, Customer shall implement and complete the Remedial Plan within six (6) months following approval thereof by PSE&G. If the Remedial Plan is not susceptible of being implemented and completed within six (6) months, Customer shall undertake diligent efforts in good faith within such six (6) month period to implement and complete the Remedial Plan; provided, however, that notwithstanding any provisions contained in this Agreement to the contrary, PSE&G may terminate this Agreement in writing to Customer and have no further liability hereunder if the Remedial Plan is not fully implemented and completed within six (6) months following approval thereof by PSE&G. Any monies (progress payments, engineering costs, etc.) previously paid shall become immediately due and payable to PSE&G. The Stage Three - Final Payment shall not be payable by PSE&G unless and until the Project achieves Final Completion.

13. Default:

A. Each of the following events shall constitute an "Event of Default": (i) Customer fails to repay any portion of Customer's Share when due under this Agreement and/or the Customer Repayment Agreement; (ii) Customer fails to observe or perform any covenant or agreement to be observed or performed by Customer hereunder; (iii) the Facility or Customer's interest therein is sold or transferred in violation of Paragraph 14; (iv) Customer or any guarantor of this Agreement ceases doing business as a going concern or makes an assignment for the benefit of creditors; (v) Customer or any guarantor hereunder commences or has commenced against it any insolvency or bankruptcy proceeding or has its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors; (vi) any financial or credit information submitted by or on behalf of Customer shall prove to have been false or misleading in any material respect when submitted; (vii) any representation or warranty made by or on behalf of Customer shall prove to have been false or misleading in any material respect when made; (viii) a default shall occur under any other obligation Customer owes to PSE&G; (ix) any indebtedness Customer may now or hereafter owe to PSE&G shall be accelerated or, if any such indebtedness is payable on demand, payment thereof shall be demanded; or (x) Customer shall assign or attempts to assign, including an assignment or attempt to assign for collateral purposes, this Agreement or any right or obligation hereunder in violation of Paragraph 32.

B. Upon written notice of an Event of Default from PSE&G to Customer, Customer shall have thirty (30) days from the date of such notification, or such other additional period of time PSE&G may approve, in which to cure such default to PSE&G's entire satisfaction. Should Customer fail to cure such default, PSE&G may at any time thereafter, upon notice to Customer, terminate this Agreement, declare Customer's Share immediately due and payable, and (i) if Customer has Beneficial Use of the EEMs, retain the Stage Three - Final Payment and apply it to Customer's Share and any damages PSE&G incurred as a result of Customer's default, or (ii) if Customer has not realized Beneficial Use, Customer shall reimburse

[Insert Project Name]

PSE&G for all incurred Project costs. To the extent any amount remains unpaid, such amount shall be immediately due and payable to PSE&G by Customer.

14. Sale or Transfer of Property:

Customer must provide PSE&G with ninety (90) days advance written notice of a change of ownership of the Facility, change of billing account information, or if a "customer of record" modification is made to the billing account. If the Facility or any portion thereof, including property and any improvements thereupon, or any of Customer's ownership interest in the Facility, direct or otherwise, is sold or transferred during the course of the Project, including during the Recovery Period, without PSE&G's prior written consent, the full amount of the outstanding balance of Customer's Share due to PSE&G shall become immediately due and payable. Customer acknowledges and agrees that PSE&G may notify third parties of the existence of this Agreement including the filing of a memorandum in the real property records in the county where the Facility is located.

15. Customer shall at all times use diligent efforts and act in good faith in advancing the progress of the Project toward completion. Upon the earlier to occur of (i) the date of Final Completion or (ii) the date on which Customer has Beneficial Use of the EEMs and regardless of progress toward Final Inspection and project close-out, Customer's Share shall become due and payable and shall be repaid as set forth in Paragraphs 11.A.3 and 11.B above.

16. PSE&G reserves the right to participate in the PJM Capacity Market through the demand reductions achieved by the EEMs installed as part of this Program. Customer acknowledges and agrees that PSE&G shall own the rights to all such demand reductions without cost or obligation to Customer. PSE&G's ownership of the Project's demand reductions does not affect Customer's ownership of the EEMs nor the energy savings derived from the EEMs.

As required by PJM, PSE&G reserves the right to perform measurement and verification ("M&V") at all participating facilities. PSE&G M&V activities at the Facility may, in PSE&G's sole discretion, include but not be limited to, meter installation, calibration and maintenance of M&V equipment, data gathering and screening, verification of M&V reports and the use of customer energy and cost savings, and billing information. PSE&G will notify Customer if an EEM installed at the Facility requires M&V, will inform Customer of the PSE&G M&V activities, and will work with Customer to minimize any adverse effects on Customer's normal operations. PSE&G, or its subcontractor, may audit the Facility to verify the operation of all installed EEMs for up to four (4) years following installation to ensure compliance with PJM Capacity Market rules and regulations. Customer shall cooperate with and support PSE&G's ownership of the demand reductions as set forth in this Paragraph 16.

17. Customer understands and agrees that for purposes of preliminary and ongoing energy analysis and benchmarking its Facility data and energy consumption history may be entered into the Energy Star Portfolio Manager Database or such other databases for analysis. Customer may have access to the information once the data is entered.

18. Customer's contractors shall be required to adhere to and comply with all aspects of the New Jersey State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. (the "Act"), applicable to contractors as a result of this Agreement and shall require the same of all subcontractors. All contractors must use the job classification that most closely aligns to the work being performed. Any work associated with the

installation of energy savings measures (i.e., marketing and analysis activities for the project are excluded) is subject to this prevailing wage requirement. If the work falls under the jurisdiction of the New Jersey Division of Property Management and Construction, each contractor must comply with and require its subcontractors to comply with all requirements of that agency and any related statutes and regulations.

19. Incentives: Customer represents and warrants to PSE&G that Customer has not received or applied for incentives or services for the same EEMs from another utility, state, or local program.

20. Property Rights: Customer represents that it has the right to install the EEMs at the Facility and that any necessary consents have been obtained.

21. Term and Termination:

A. Term. The term of this Agreement shall not exceed the term of the Program and shall automatically terminate upon the later to occur of (i) repayment in full of Customer's share of the Total Project Costs, (ii) expiration of the time period set forth in Paragraph 16 above with respect to PJM, or (iii) conclusion of any M&V activities by PSE&G following the installation and Beneficial Use of the energy efficiency improvements.

B. Termination Without Cause. PSE&G may terminate this Agreement without cost to Customer prior to execution of the Customer Repayment Agreement by providing Customer with thirty (30) days advance written notification.

C. In the event of (i) a sale or transfer of all or part of the Facility and/or Customer's ownership interest therein, (ii) bankruptcy, insolvency or liquidation of Customer or (iii) forced shut down of Customer's operations and/or the Facility, PSE&G's rights to capture and monitor energy savings shall survive.

22. The relationship of PSE&G and Customer shall be that of independent parties and neither this Agreement nor anything done pursuant to this Agreement or any other document prepared, completed or entered into pursuant to, in connection with or as a result of this Agreement shall be deemed to create any partnership, joint venture, agency or other relationship between PSE&G and Customer.

23. This Agreement is intended for the sole benefit of the parties and there are no third-party beneficiaries, express or implied, to this Agreement.

24. PSE&G shall consider all information furnished by Customer to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than in connection with and as set forth in this Agreement and any subsequent agreements contemplated by the parties hereunder without Customer's prior written consent. Customer shall consider all information furnished by PSE&G to be confidential and shall not disclose, without PSE&G's prior written consent, any such information to any other person, or use such information itself for any purpose other than in connection with and as set forth in this Agreement and any subsequent agreements contemplated by the parties hereunder; provided, however, either party may disclose such information as may be required to be disclosed by law or court order from a court of competent jurisdiction, and provided further

[Insert Project Name]

that, unless otherwise prohibited by law, the party whose information is required to be disclosed is given reasonable time to take legal action to quash such action and seek other protection. Customer expressly understands and agrees that PSE&G is required to report to New Jersey regulators on a periodic basis all Program data, including customer-specific information ("Regulatory Reporting") as well as to prepare and submit to New Jersey regulators a Program evaluation report (the "Program Evaluation Report"). Customer expressly further understands and agrees that both the Regulatory Reporting and the Program Evaluation Report may, among other participant and Project information, identify the Program participants by name and Project address, identify the EEMs implemented by each Program participant and the energy and cost savings estimates for each Project.

25. Customer will provide PSE&G with any existing information concerning the Project, the operational systems and costs, Customer's operation and maintenance practices, and Facility expansion/renovation plans (short or long term). Customer will also provide PSE&G with access to the Project and the operating systems upon reasonable advance notice. Customer will be the primary contact for assisting PSE&G in connection herewith and PSE&G will rely on the accuracy and completeness of the information furnished by Customer as contemplated herein.

26. This Agreement shall not be amended, modified or otherwise altered, except pursuant to a written agreement signed by the parties.

27. This Agreement constitutes the full, complete and only agreement between the parties hereto with respect to the foregoing and supersedes any previous agreements, representations or undertakings, either oral or written.

28. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New Jersey. Any legal claim, suit, proceeding, or action shall be brought before the NJBPU and, where the NJBPU does not have jurisdiction, in New Jersey state courts or, if the claim, suit, proceeding or action is to be brought in Federal Court, in the United States Court, District of New Jersey. By execution and delivery of this Agreement, each of the parties hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts and appellate courts. Each of the parties hereby irrevocably consents to the service of process of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof to it by registered or certified mail, postage prepaid, return receipt requested, to its address set forth herein. Each of the parties hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in such respective jurisdictions. To the extent permitted by applicable law, each of the parties hereby irrevocably waives all right of trial by jury in any action, proceeding, or counterclaim arising out of or in connection with this Agreement or any matter arising hereunder.

29. **LIMITATION OF LIABILITY:** IN NO EVENT WILL PSE&G OR ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS OF ANY TIER BE LIABLE FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES HOWEVER CAUSED, ARISING FROM THIS AGREEMENT. PSE&G SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSSES, DAMAGES, COSTS, OR EXPENSES WHATSOEVER (INCLUDING FOR LOST PROFITS, TIME OR REVENUE) FOR ANYTHING ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, WHETHER CLAIMS FOR SAID LOSSES OR

[Insert Project Name]

DAMAGES ARE PREMISED ON WARRANTY, NEGLIGENCE, STRICT LIABILITY, CONTRACT OR OTHERWISE. ANY ACTION AGAINST PSE&G ARISING OUT OF, RESULTING FROM, OR RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL BE FILED NO LATER THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS OCCURRED. THE PROVISIONS OF THIS PARAGRAPH 29 SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

30. Customer shall defend, indemnify and hold harmless PSE&G and all of its officers, directors, agents, employees, contractors or subcontractors of any tier from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, in any way arising out of or resulting from the performance of Customer under this Agreement, the existence or condition of the Project, including but not limited to claims, damages, losses and expenses related to (a) personal injury, death, or occupational disease of any person (including, but not limited to, any of the contractor's or any subcontractor's employees or agents); (b) loss or damage to any real or personal property; (c) the use, operation, or possession of any equipment or materials; (d) the nature or condition of the Facility; or (e) Customer's, its contractor's or any subcontractor's failure to provide adequate preventative and protective measures, safeguards or devices. Customer's obligation to defend, indemnify, and hold harmless under the provisions of this paragraph shall exclude only those instances which are the result of PSE&G's sole negligence. Customer expressly acknowledges that the parties are contractually allocating these risks to Customer and Customer has procured and shall maintain for the term of this Agreement insurance coverage for the purpose of providing a financial means to support this indemnification provision. For purposes of fulfilling its duties to defend, indemnify, and hold harmless PSE&G and all of its officers, directors, agents, employees, contractors or subcontractors of any tier, Customer waives the immunities, rights and defenses which may be available under applicable workers' compensation laws.

31. It is expressly understood and agreed that PSE&G makes no warranty and assumes no responsibility, expressed or implied, for the condition, performance, maintenance, manufacture, or design of the Audit, the EEMs, the construction of the Project or the calculation of savings. PSE&G MAKES NO REPRESENTATIONS AND DISCLAIMS ANY WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS, OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. CUSTOMER ACKNOWLEDGES AND AGREES THAT PSE&G DOES NOT GUARANTY THAT CUSTOMER WILL ACHIEVE ANY ENERGY SAVINGS FROM THE PROJECT, AND THAT THE ACTUAL ENERGY SAVINGS THAT CUSTOMER ACHIEVES WILL BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED WITH PRECISION SUCH AS THE ACTUAL HOURS OF OPERATION AND THE SPECIFIC OPERATING CONDITIONS PRESENT IN THE FACILITY. Any information provided by PSE&G, which relates to the Audit, the EEMs, the Project, or the calculation of savings, shall be for informational purposes only and shall not be guaranteed or warranted.

32. Assignment: Customer may not assign this Agreement to any other party without the express prior written consent of PSE&G, which consent may be withheld in PSE&G's sole and absolute discretion. PSE&G has the unrestricted right to assign any or all of its rights, remedies or obligations under this Agreement. Anything to the contrary notwithstanding, Customer may assign, via an assignment and assumption agreement in form acceptable to PSE&G and executed by all parties to the transaction, this

[Insert Project Name]

Agreement to a purchaser of all or substantially all of Customer's assets and/or the Facility, with the prior written consent of PSE&G, which consent shall not be unreasonably withheld.

33. Counterparts; Notices: This Agreement may be executed and delivered by the parties in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. This Agreement and all notices required hereunder may be sent either via mail, overnight courier or electronic mail (scanned PDF image) to the applicable address set forth below.

34. Authorization: The individual signing this Agreement certifies that the party represented has duly authorized such individual to execute this Agreement that binds and obligates such party.

35. Effective Date: This Agreement shall be effective as of the date signed by PSE&G.

(signature pages follow)

[Insert Project Name]

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[insert Customer's full legal name]

By: _____

Printed Name: _____

Title: _____

Date: _____

Public Service Electric and Gas Company

By: _____

Printed Name: _____

Title: _____

Date: _____

80 Park Plaza, T8
Newark, NJ 07102
Attn: C&I Engineered Solutions Program Administrator
PSEG-EngSolutions@pseg.com

[Insert Project Name]

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EXHIBIT I

[Insert Limited Notice to Proceed Letter]

[Insert Project Name]

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EXHIBIT II

[Insert Customer Repayment Agreement]

[Insert Project Name]

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EXHIBIT III

[Insert Description of Clean Energy Jobs Program]

[Insert Project Name]

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EXHIBIT IV

[Insert Record of Completion]