



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF COMPREHENSIVE ENERGY)
EFFICIENCY AND RENEWABLE ENERGY RESOURCE) ORDER
ANALYSIS FOR THE YEARS 2009 - 2012: REVISED)
2012 PROGRAMS LARGE SCALE COMBINED HEAT)
AND POWER/FUEL CELL GRANT PROGRAM)
AWARDEE APPROVAL) DOCKET NOs. EO07030203
and EO11100631V

Parties of Record:

Sandy Zeglarski, New Jersey Economic Development Authority
New CMC, Inc. d/b/a Barnabas Health Community Medical Center
Monmouth Medical Center
UMM Energy Partners, LLC
Nestle USA, Inc.
AtlantiCare Regional Medical Center

BY THE BOARD:

In this Order, the Board considers five potential awardees under the Large Scale Combined Heat and Power/ Fuel Cell Grant Program ("LSCHP-FC"). The New Jersey Economic Development Authority ("NJEDA" or "EDA") and Board established the LSCHP-FC, which was approved by the Board on April 11, 2012. The NJEDA began accepting program applications beginning April 25, 2012, and required applicants to submit a completed application by June 25, 2012.¹ In total, six companies completed applications - Nestle USA, Inc., AtlantiCare Regional Medical Center, Monmouth Medical Center, New CMC, Inc., Bristol Myers Squibb (Bristol Myers), and UMM Energy Partners, LLC - and the NJEDA determined that all were complete. The five projects² discussed in this order were determined to be financially feasible and are

¹ The NJEDA provided an additional week to all the applicants to submit omitted items that were found in their original applications. Applicants with omitted items resolved all concerns within the one week extension.

² The Bristol Myers project is addressed in a separate order due to the recusal of President Robert M. Hanna and Commissioner Joseph L. Fiordaliso.

being submitted for approval by the NJEDA. Board Staff recommends that the Board approve the five projects discussed below. In addition, Board Staff recommends approval of a standard Commitment Letter and Grant Agreement for the LSCHP-FC, which are in substantially final form.

BACKGROUND AND PROCEDURAL HISTORY

By Order dated December 20, 2011, Docket Nos. EO07030203 and EO11100631V, the Board approved programs and budgets for the 2012 New Jersey Clean Energy Program program year, including the LSHP-FC program which was to be administered with the assistance of the EDA. The program description for the LSCHP-FC broadly explained that the “program will offer assistance to support large sized CHP projects including stand-alone qualified fuel cells.” It also stated that this “program will be designed to assist those implementing a CHP or combined cooling heat and power or fuel cell project with an electric generating capacity of greater than one megawatt serving a commercial, institutional, or industrial electricity customer in New Jersey.” In approving the program concept, the Board directed Office of Clean Energy to work with the NJEDA to develop a detailed program description and solicitation for the LSCHP-FC. Consistent with the December 20, 2011, Budget Order, EDA coordinated with Board Staff and stakeholders to develop a detailed LSCHP-FC program description and solicitation. The Board subsequently approved the LSCHP-FC on April 11, 2012 and authorized Staff and EDA to release a competitive Solicitation for \$20 million with the expectation that a second Solicitation would occur at a later time.

The NJEDA released the Solicitation and began accepting program applications on April 25, 2012. Applicants were required to submit a completed application by June 25, 2012. In total, six companies responded to the competitive solicitation – Nestle USA, Inc., AtlantiCare Regional Medical Center, Monmouth Medical Center, New CMC, Inc., Bristol Myers, and UMM Energy Partners, LLC. The respondents’ applications were ranked by an evaluation committee comprised of representatives from NJEDA, Board Staff, and the New Jersey Department of Environmental Protection.

Using the scoring criteria set forth in the Solicitation, all six passed the technical review phase and proceeded to the due diligence and underwriting review phase. The goal of the NJEDA’s underwriting analysis is to determine that each respondent has the financial wherewithal to complete the project. Equally as important, the analysis determines if the operating activity of each respondent is sound and sufficient to service all existing forms of debt obligations and any new debt obligations that may be incurred as a result of the project. The due diligence and underwriting process included corporate background checks and verification of supplied documentation, among other things.

The five projects listed below passed due diligence and underwriting review and are recommended for awards as follows:

<u>COMPANY</u>	<u>NJ CITY</u>	<u>SIZE</u>	<u>PROJECT</u>	<u>INCENTIVE</u>
Nestle USA, Inc.	Freehold	7.96	\$15,162,700	\$3,000,000
AtlantiCare Regional Medical Center	Pomona	1.1	\$3,500,000	\$580,800
Monmouth Medical Center	Long Branch	3.0	\$6,415,000	\$1,584,000
New CMC, Inc.	Toms River	3.0	\$6,665,000	\$1,584,000
UMM Energy Partners, LLC	Little Falls	5.67	\$26,536,000	\$2,380,100

A description of each project is attached to this order, and is incorporated by reference.

Completion Guarantee

In part, the Solicitation required the applicants to submit proof of business for at least three years. UMM Energy Partners, LLC (UMM), however, is a special purpose company that was established for the purpose of the proposed project – a 5.67 megawatt cogeneration plant – and has not been in operation for three years. It is owned by Energenic-US, LLC, an energy development company that was formed in 2007. Energenic is owned by South Jersey Industries and DCO Energy, which have been in existence for more than three years.

South Jersey Industries and DCO Energy have represented that they will provide a completion guarantee prior to closing as a condition of the grant to UMM. Staff submits that a guarantee from UMM's parent companies satisfies this condition of the Solicitation and provides adequate assurances about the viability of the proposed project.

DISCUSSION AND FINDINGS

Upon consideration of the facts set forth above, and in the attached project descriptions, the Board **FINDS** that the LSCHP-FC Solicitation began on April 25, 2012, and ended on June 25, 2012. The Board **FURTHER FINDS** that five companies submitted applications and the NJEDA determined that all were complete under the stated evaluation criteria set forth in the Solicitation. The Board **FURTHER FINDS** that NJEDA conducted an underwriting review of the five applicants and recommended five be approved for grants in the amounts set forth above and for the purposes set forth in the project descriptions.

Concerning UMM, the Board **FINDS** that a completion guarantee from South Jersey Industries and DCO Energy is sufficient to satisfy the three-year business requirement set forth in the Solicitation. In addition, the Board **FINDS** that UMM's parents have been in operation for more than three years.

Now, therefore, the Board **HEREBY ACCEPTS** Staff's recommendation and **HEREBY APPROVES** the five awards in the aggregate amount of \$9,128,900 in accordance with the conditions herein.

The Board **FURTHER FINDS** that the commitment letter and grant agreement for the LSCHP-FC program are in substantially final form and accurately represent the terms of the Solicitation. The Board **ORDERS** that commitment letters and grant agreements, consistent with the terms

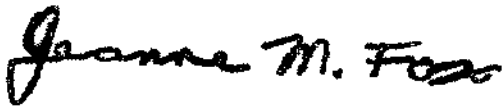
of this Order, be issued to the five awardees. The Board **AUTHORIZES** the President of the Board to approve non-material amendments to the grant agreement and sign the agreement, consistent with the terms of this Order and the Department of Treasury requirements. The Board also **AUTHORIZES** the President to review and approve matters within the scope of Section VII(B) of the Memorandum of Understanding between BPU and EDA dated March 24, 2011, consistent with the terms of this Order, subject to Board review as necessary.

DATED: 1/7/13

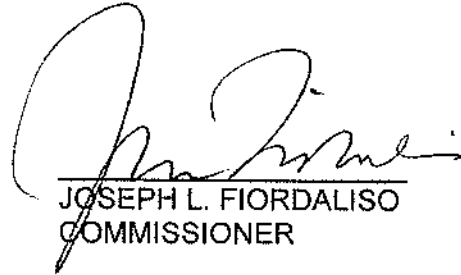
BOARD OF PUBLIC UTILITIES
BY:



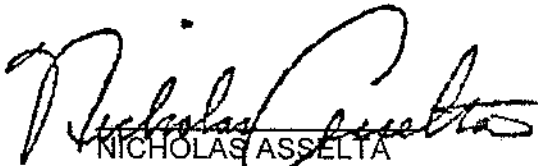
ROBERT M. HANNA
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



NICHOLAS ASSELTA
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



IN THE MATTER OF COMPREHENSIVE ENERGY EFFICIENCY AND RENEWABLE
ENERGY RESOURCE ANALYSIS FOR THE YEARS 2009 -2012: REVISED 2012
PROGRAMS -- LARGE SCALE CHP / FUEL CELL GRANT PROGRAM AWARDEES
APPROVAL

DOCKET NOs. EO07030203 and EO11100631V

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Toms River, NJ 37736

Monmouth Medical Center
300 Second Avenue
Long Branch City, NJ 37734

Agreement

For

Grant Award

Between

**New Jersey Board of Public Utilities
and**

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This AGREEMENT for a GRANT AWARD (the "Agreement"), dated _____, by and between the NEW JERSEY BOARD OF PUBLIC UTILITIES (the "BPU"), a public body corporate and politic constituting an instrumentality of the State of New Jersey (the "State") and _____, (the "Grantee") with principal place of business located at _____.

BACKGROUND

WHEREAS, as set forth at N.J.S.A. 48:3-49 et seq., the Electric Discount and Energy Competition Act ("EDECA"), the BPU is directed to establish funding levels and programs that promote and advance energy efficiency and renewable energy programs in New Jersey. Pursuant thereto, the BPU by various Orders has established funding levels and collects money from customers through the utilities subject to the EDECA to fund these programs, among them being the Large Scale Combined Heat and Power – Fuel Cells Program ("CHP – Fuel Cells Program"), a new clean energy funding initiative in the form of grants for eligible large scale combined heat and power or fuel cells projects in the State; and

WHEREAS, the New Jersey Economic Development Authority (the "EDA" and/or "Authority"), a public body corporate and politic constituting an instrumentality of the State, having expertise in managing various financial assistance programs for economic development projects, has agreed to provide administrative support services to BPU in connection with BPU's implementation of certain of its energy efficiency and renewable energy funding programs, including CHP – Fuel Cells Program; and

WHEREAS, pursuant to a memorandum of understanding, dated March 24, 2011, amended as of March 1, 2012 and as may be further amended from time to time (collectively the "MOU"), BPU and EDA have set forth their respective duties and responsibilities in connection with the joint implementation of the CHP – Fuel Cells Program; and

WHEREAS, notwithstanding the joint implementation of the CHP-Fuel Cells Program, as set forth in the MOU, in order to streamline and simplify the process for CHP-Fuel Cells Program recipients, the EDA has agreed to serve as the primary customer contact and to request BPU's involvement in any approvals and/or decision making activities , as may be necessary; and

WHEREAS, the BPU and the EDA jointly issued a solicitation on April 25, 2012 in connection with the CHP-Fuel Cells Program (the "Solicitation"), the terms of which are incorporated herein; and

WHEREAS, Grantee submitted a proposal, dated _____ (the "Proposal") for a Project, in response to the Solicitation. The terms of the Proposal are incorporated herein; and

WHEREAS, based on its Proposal, Grantee has been awarded a grant in the amount of {\$ amount; (the "Grant" or "Award") by the BPU under the CHP-Fuel Cells Program, the purpose of which is to fund eligible costs associated with its Project defined as _____ which Project will be located at _____ ("Project Facility").

Grantee and the BPU, intending to be legally bound hereto, for the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, accept and agree to abide by the following terms and conditions set forth in this Agreement from the Effective Date hereof until five (5) years from the date that the Project comes online ("Term of Agreement"), unless otherwise specified in this Agreement.

1. GRANTEE REPRESENTATIONS

1) Grantee represents that it is registered to do business in and is in good standing under the laws of the State of _____ on the date of full execution of this Agreement by both Grantee and the BPU, which shall be the Effective Date.

2) Grantee represents that it is duly organized as a {Limited Liability Company or Corp.}, is validly existing, and is in good standing under the laws of the State of _____ as of the Effective Date.

3) Grantee represents that it has the corporate power and authority and legal right to execute and perform its obligations under this Agreement and that it has taken all necessary corporate action to authorize its execution and performance of obligations under this Agreement.

4) Grantee represents that all statements, representations and warranties made by Grantee in this Agreement and in its Proposal are true and complete. For purposes herein, "Proposal" shall mean Grantee's submission dated _____, in response to the Solicitation, including without limitation the application, all certifications executed in connection therewith and any other materials furnished to the BPU or EDA in support of its request for funding submitted in response to the Solicitation. It is specifically understood by Grantee that all such statements, representations and warranties shall be deemed to have been relied upon by the BPU in its decision to make the Award, and that if any such statements, representations or warranties were materially false at the time they were made or are breached from the date hereof until all such warranties and covenants shall have been fully satisfied, the BPU may, in its sole discretion, consider any such misrepresentation or breach an Event of Default under Section 9 of this Agreement.

5) Grantee represents that after due inquiry there is no legal action or proceeding pending or, to its knowledge, threatened against Grantee before any court or administrative agency that might adversely affect the ability of Grantee to perform its obligations under this Agreement and all authorizations, consents and approvals of governmental bodies or agencies required in connection with the performance of Grantee's obligations

hereunder have been obtained and will be obtained whenever required hereunder or by law.

6) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by, or conflicts with or results in a breach of, the terms, conditions, or provisions of any corporate restrictions or any evidence of indebtedness, agreement or instrument of whatever nature to which Grantee is now a party or by which it is bound, or constitutes a default under any of the foregoing..

7) Grantee has, or will have, the right to occupy the Project Facility whenever acquired or arising free and clear of all liens and claims, encumbrances, set-offs, defenses and counterclaims, and has not made and will not make any assignment, pledge, mortgage, hypothecation or transfer (other than sales or leases in the ordinary course of business) of the Project Facility or the proceeds thereof, except as otherwise permitted herein.

8) Grantee agrees to use the Award solely in connection with funding eligible Project costs, as defined in the Solicitation and described in its Proposal.

9) The chief executive office of Grantee is located at _____. Grantee shall notify the EDA in writing of any change in the location of Grantee's chief executive office. Grantee's books or records are maintained at _____. None of Grantee's books or records are maintained at any other location. Grantee shall notify the EDA in writing of any change in the location of Grantee's books and records.

10) Grantee represents that it has at all times pertinent to this Agreement been represented by advisors of its own selection, including but not limited to attorneys-at-law and/or certified public accountants; that it has not relied upon any statement, representation, warranty, agreement or information provided by the BPU or the Authority, their employees, agents or attorneys; that it acknowledges that it is informed by its advisors of its respective rights, duties, and obligations with respect to the Award under all applicable laws.

11) If during any time the Grant remains outstanding, Grantee becomes aware of any facts, occurrences, information, statements, or events that render any of the foregoing representations or warranties herein made untrue or materially misleading or incomplete, Grantee shall immediately notify the EDA in writing of such facts, occurrences, information, statements or events.

12) Grantee represents and warrants that the Project Facility, as defined in the Proposal, is located within the service territory of an electric public utility whose customers pay a Societal Benefits Charge pursuant to N.J.S.A.48:3-60.

2. ENTITLEMENT TO FUNDS

Upon full execution of this Agreement, Grantee shall be entitled to receive a total amount not to exceed \$ _____ in CHP-Fuel Cells Program funding from the BPU, subject to the terms and conditions stated herein, for the purposes set forth in its Proposal. Based on the Proposal, the BPU has determined that the technology is eligible and that Grantee qualifies for the Award.

Grantee acknowledges and agree that both the initial provision of funding and the continuation of such funding under the Agreement is expressly dependent upon the availability to the BPU of funds appropriated by the State Legislature from State and/or Federal revenue or such other funding sources as may be applicable. A failure of the BPU or EDA to make any payment under this Agreement or to observe and perform any condition on its part to be performed under the Agreement as a result of the failure of the Legislature to appropriate shall not in any manner constitute a breach of the Agreement by the BPU or EDA or an Event of Default under the Agreement and the BPU or EDA shall not be held liable for any breach of the Agreement because of the

absence of available funding appropriations. In addition, future funding shall not be anticipated from the BPU beyond the duration of the award period set forth in this Agreement and in no event shall the Agreement be construed as a commitment by the BPU to expend funds beyond the funding period set in this Agreement.

3. PAYMENT OF FUNDS

Payment of the Grant is expressly contingent on Grantee providing evidence satisfactory to the BPU that the Project has received all required local, State and/or Federal permits and/or approvals prior to _____ (first disbursement date). If such evidence is not supplied, the BPU may, in its discretion, decide to reduce the Award or rescind the Award without any further obligation, financial or otherwise on the part of the State, the BPU or the EDA.

Subject to the terms of this Agreement and availability of funds, disbursements shall be made to Grantee by the EDA on behalf of the BPU and shall be in three main payment streams, as follows: i) up to 30% of the Award upon the non-refundable deposit on Project equipment to be purchased; ii) up to 70% of the Award upon delivery of equipment (but not to exceed 90% of total amount awarded when combined with the prior disbursement amount disbursed to date) upon equipment delivery; and iii) balance of the Award upon system installation. Payments shall be based on achievement of mutually agreed upon specific milestones, as set forth in a certain milestone agreement dated the date hereof, and shall not be made until and unless Grantee submits detailed purchase orders supporting such requests for disbursement. Subject to the terms of this Agreement, disbursements shall be made during the Funding Period, as defined in Section 35 herein.

Notwithstanding anything herein to the contrary, Grantee understands and agrees that the EDA shall be under no obligation to make any disbursement with respect to a requisition that has been submitted by Grantee, if, at the time of said submission, Grantee is in default under Section 9 of this Agreement.

4. USE OF FUNDS

Grantee agrees to use the Award solely in connection with funding the Project, as more fully described in its Proposal. The Award funds may be used only for allowable Project-costs which are supported with detailed purchase orders, which costs are described in Section 2.2 of the Solicitation {and Appendices F, G and H to the Solicitation}. Grantee acknowledges that the use of New Jersey contractors, suppliers, labor and products is preferred and agrees that, to the extent feasible and as represented in its Proposal, it shall use such New Jersey goods and services in connection with the Project. Failure to use of New Jersey contractors, suppliers, labor and products shall not constitute an Event of Default under Section 9 of this Agreement.

Grantee may not use the Award to satisfy any obligation which arose prior to _____, which is the acceptance of its application by the BPU, as documented by the BPU commitment letter to Grantee.

5. GRANTEE WARRANTIES AND COVENANTS

1) Grantee agrees that its Project shall be commenced and completed expeditiously, as set forth in its Proposal, consistent with the preferences of the CHP-Fuel Cells Program.

2) Grantee acknowledges that combined State and Federal funding for the Project cannot exceed fifty percent (50%) of the total Project costs. Total Project costs are currently estimated to be \$_____. Grantee represents that it has obtained a firm commitment for a cash match of a minimum of fifty percent (50%) of the total Project costs from non-State and non-Federal derived sources. In the event that Grantee should receive public monies which would cause a violation of the foregoing restriction, Grantee agrees to

promptly return such Grant funds to the BPU as are necessary so that it is no longer in violation of said restriction.

3) Grantee agrees that it shall establish by contract or other arrangement that the electric output generated by the Project shall, to the maximum extent feasible, be consumed at the Project Facility and that any surplus power produced that is not needed may be sold into the interstate PJM grid.

4) Grantee agrees that the combined heat and power or fuel cell equipment used in connection with the Project shall be commercially available and permanently installed and will have a useful life of at least five (5) years, subject to necessary major maintenance, including engine core change-out and rebuild. This provision shall survive expiration or earlier termination of this Agreement.

5) Grantee agrees to comply with all applicable environmental monitoring and data collection obligations prior to, during and following construction of the Project, including without limitation, information related to regulated pollutants, site-specific carbon emissions and displaced emissions from offsite energy production which would have occurred absent the Project. Grantee agrees to confer with the State Department of Environmental Protection ("DEP") Office of Climate and Energy when compiling the data.

6) Grantee agrees that it shall create and/or retain jobs, reduce greenhouse gas emissions, increase sources of renewable energy, and/or reduce energy consumption in the State, as more fully set forth in its Proposal.

7) Grantee agrees that it shall not subcontract or assign any of the work or services to be performed by it in relation to the Project, except as may otherwise be set forth in its Proposal and except with the prior written consent of the BPU.

8) Grantee agrees that it shall not assign or transfer the whole or any part of this Agreement without the prior written consent of the BPU. Grantee further agrees that it shall not sell, lease, convey, assign, transfer or otherwise dispose of any use or possessory interest in the Project Facility without the prior written consent of the BPU, except that the Grantee may grant utility, access and other easements and rights-of-way which will not impair the Grantee's use of the Project Facility. No permitted subleasing or assignment shall relieve Grantee from primary liability under the Agreement.

6. PUBLICITY POLICY

All publications resulting from publicity releases concerning the Project shall acknowledge the support of the BPU and the CHP - Fuel Cells Program, and the BPU shall have the right to review for accuracy any press release or other public statement prior to issuance by Grantee in connection with the Project. When feasible, Grantee shall provide notice to BPU or EDA at least 48 hours prior to any publicity release concerning the Project.

7. COMPLIANCE WITH EXISTING LAWS

Grantee agrees to comply with, and require all contractors and consultants used by it in relation to the Project to comply with, all Federal, State and municipal laws, rules and regulations applicable to all activities performed by, or on behalf of, Grantee in pursuit of and in relation to the Project. These laws and regulations include, but are not limited to: Federal Office of Management and Budget documents; NJ Treasury Circular Letters 04-04-OMB, 07-05-OMB found at <http://www.state.nj.us/infobank/circular/cir0404b.htm> and <http://www.state.nj.us/infobank/circular/cir0705b.pdf>, and State Grant Compliance Supplement found at <http://www.state.nj.us/treasury/omb/publications/grant/index.shtml>; N.J.A.C. 17:27, applicable provisions of

N.J.S.A 10:5, et. al., and P.L. 1975, c.127 and all implementing regulations (Affirmative Action Rules), where applicable; N.J.S.A. 48:2-29.47 et seq (“Prevailing Wage Act”), as amended by P.L. 2009, ch. 203, where applicable; P.L. 1975, c.127 N.J.S.A. 10:5-31 et. seq. (Equal Opportunity in Public Works Contracts), where applicable, and all implementing regulations; the Americans with Disabilities Act and implementing regulations and guidelines, where applicable; all applicable Federal, State or municipal environmental laws, rules and regulations, and all applicable requirements set forth in any Appendix to the Solicitation and to this Agreement. Failure to comply with such laws, rules or regulations shall be considered an Event of Default under Section 9 herein, giving the BPU the right to exercise any or all of its remedies set forth herein, including without limitation, the right to terminate this Agreement.

8. CONFLICT OF INTEREST

Grantee agrees to abide by the provisions of N.J.S.A 52:13D et seq. (the New Jersey Conflicts of Interest Law) governing activities between Grantee and State officers and employees, Special State officers and employees, and members of the Legislature. The provisions of N.J.S.A. 52:13D-12 et seq. are incorporated herein in their entirety, by reference thereto. Grantee represents and warrants that it has not and will not at any time in the future act in violation of said statutory provisions or the regulations promulgated thereunder. Any violation of said prohibitions shall render Grantee liable to debarment in the public interest.

9. EVENTS OF DEFAULT

Any one or more of the following shall constitute an Event of Default under this Agreement:

1) Breaches of Covenants. Grantee shall fail to observe or perform any covenant, obligation, condition or agreement contained in this Agreement and (i) such failure shall continue for a period of thirty (30) days after receipt by Grantee of written notice by the EDA to Grantee, specifying the nature of such failure and requesting that it be remedied; or (ii) if by reason of the nature of such failure the same cannot be remedied within the said 30 days, Grantee fails to commence a cure in a manner reasonably satisfactory to the BPU after receipt of said notice to cure same. ; or

2) Representations and Warranties. Any representation, covenant, warranty, certificate, or other statement (financial or otherwise) made or furnished by or on behalf of Grantee to the BPU or EDA in writing in connection with this Agreement, or as an inducement to the BPU to enter into this Agreement, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished; or

3) Other Payment Obligations. Any indebtedness under any bonds, debentures, notes or other evidences of indebtedness for money borrowed, or any guarantees thereof, by Grantee in an aggregate principal amount in excess of \$100,000 is not paid when due either at its stated maturity or upon acceleration thereof, and such indebtedness is not discharged, or such acceleration is not rescinded or annulled; or

4) Voluntary Bankruptcy or Insolvency Proceedings. Grantee shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) be unable, or admit in writing its inability, to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated, (v) become insolvent (as such term may be defined or interpreted under any applicable statute), (vi) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vii) take any action for the purpose of effecting any of the foregoing; or

5) Involuntary Bankruptcy or Insolvency Proceedings. Proceedings for the appointment of a receiver, trustee, liquidator or custodian of Grantee or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to Grantee or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within thirty (30) days of commencement; or

6) Judgments. A final judgment or order for the payment of money in excess of \$100,000 shall be rendered against Grantee and the same shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed, or any judgment, writ, assessment, warrant of attachment, or execution or similar process shall be issued or levied against a substantial part of the property of Grantee and such judgment, writ, or similar process shall not be released, stayed, vacated or otherwise dismissed within thirty (30) days after issue or levy; or

7) Transaction Documents. This Agreement or any material term thereof shall cease to be, or be asserted by Grantee not to be, a legal, valid and binding obligation of Grantee enforceable in accordance with its terms; or

8) Material Adverse Effect. One or more conditions exist or events have occurred which could reasonably indicate, or reasonably result in, a Material Adverse Effect. For purposes of this Agreement, "Material Adverse Effect" shall mean a material adverse effect on (a) the business, assets, operations, prospects or financial or other condition of Grantee; (b) the ability of Grantee to perform the obligations in accordance with the terms of this Agreement and to avoid an Event of Default, or an event which, with the giving of notice or the passage of time or both, would constitute an Event of Default under this Agreement; or (c) the rights and remedies of the BPU under this Agreement, or any related document, instrument or agreement; or

9) Cross-default. It is specifically understood and agreed that this Grant is *cross-defaulted* with any existing assistance and any new assistance provided by the BPU, the EDA or the State to the Grantee and/or any of its subsidiaries, including but not limited to, entities that may not be related to the Grantee and/or any of its subsidiaries, but contain common principals.

10) Performance: Any violation under section 11 of this Agreement shall constitute an Event of Default. Any remedies identified in section 11 shall be in addition to those described in section 10.

10. REMEDIES IN EVENT OF DEFAULT

Whenever any Event of Default shall have occurred and be continuing, the BPU may take one or more of the following actions, as appropriate in the circumstances:

a) suspend the Award and withhold further funding pending corrective action by the Grantee;

b) terminate this Agreement in whole or in part. The BPU shall promptly notify the Grantee, in writing, of the termination and the reasons for the termination, together with the effective date of such termination. In case of a partial termination, the BPU shall specify that portion being terminated. When the Agreement is terminated pursuant to this paragraph, payments made to the Grantee shall be terminated and any funds already distributed that are determined by the BPU to be recoverable shall be returned within thirty (30) days of demand thereof by the BPU.

c) terminate any obligation it may have to make a payment to Grantee;

d) pursue other remedies at law or in equity as may be within its legal right.

The costs of the Grantee resulting from obligations incurred by it during a suspension of the Award or after termination of the Agreement are not allowable unless the BPU expressly authorizes them in the notice of suspension or termination or subsequently. Such costs may be allowed if the BPU in its sole discretion determines that they are: (1) necessary; (2) not reasonably avoidable; (3) were properly incurred by the Grantee before the effective date of suspension or termination; (4) are not in anticipation of suspension or termination; (5) in the case of a termination, are non cancelable; and (6) the costs would be allowable if the Award were not suspended or the Agreement terminated.

No remedy herein conferred or reserved to the BPU is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof.

11. PERFORMANCE-BASED RIGHT TO TERMINATE/REDUCE GRANT

1) The Project must operate and provide the amount of electric power and thermal energy and meet the efficiency requirements that the Grantee committed to in its Proposal. In the event that the Project does not provide such amount of electric power, thermal energy or meet such efficiency requirements, the Grantee shall take such actions as are necessary in order to ensure that the Project meets or exceeds the performance goals set forth in the Proposal.

2) The amount of the Grant is a function of the system size and amount of electricity that the CHP-Fuel Cells project generates as estimated at the time of approval of the Award and based upon expectations and assurances set forth in the Proposal. In the event that there are downward changes in such expectations and/or assurances from the date of the Proposal or this Agreement, or changes in the Project after completion, the BPU shall have the right, in its sole discretion, to terminate the Agreement in whole or in part and/or reduce the amount and change the timing of the payments made under the Grant.

3) If the Project consistently generates less than the estimates set forth in the Proposal or any revised estimates which have thereafter been approved by the BPU, the BPU shall have the right, in its sole discretion, to reduce the Grant amount accordingly, or to terminate the Agreement, as appropriate or require repayment of disbursed funds, as appropriate. The BPU will have the final determination as to the qualifying energy production at the Project.

4) The Project as described in the Proposal is expected to come on-line by the date specified in the Proposal. In the event that the Project fails to come on-line by said date, the amount of the Grant may be reduced or the Grant may be terminated, and thereupon the Grantee shall not be entitled to receive any further amounts under the Grant.

12. CHANGES IN PROJECT

The Project was designed and proposed as a feasible, viable project that can be permitted by all relevant jurisdictions. The BPU, however, recognizes that some changes to the Project as described in Grantee's Proposal may be required during the term of this Agreement. Grantee shall notify the BPU in advance in writing and obtain advance written BPU consent for any such proposed change.

If the BPU determines that the proposed change will not have a Material Adverse Effect, it shall so advise Grantee in writing of this determination, and Grantee shall be authorized to make such change, subject to any conditions imposed by the BPU thereon.

If the BPU determines that the proposed change will have a Material Adverse Effect and denies the request to make the change, Grantee shall be barred from making the change or risk causing an Event of Default under Section 9 of this Agreement.

13. MODIFICATIONS

Grantee shall notify the BPU in writing and obtain advance written consent from BPU when a revision or modification to the Agreement is purported to be necessary for any of the following reasons:

- 1) changes in the scope, objective, key personnel, timing of the Project, or deviation from the approved budget;
- 2) the need for additional funding or to extend the period of availability of funds;
- 3) to secure the services of a third party to perform activities that are central to the purpose of the Award;
- 4) adjustments between cost categories and/or shifts of funding to direct cost categories that are not part of the approved budget;
- 5) Grantee plans to transfer funds that would cause the Award, or part thereof, to be used for a purpose other than that originally indicated.

The BPU, at its option, may establish a policy to restrict transfers of funds among direct cost categories, and Grantee is required to comply with any applicable Federal or State requirements concerning prior approval of budget changes.

The BPU may further request changes in the scope of services of the Grantee to be performed hereunder. Such changes, which are mutually agreed upon by and between the BPU and Grantee, must be incorporated in written amendments to this Agreement.

14. INDEMNIFICATION

Grantee covenants and agrees that neither the BPU, the Authority, the State, nor their members, agents, servants, officers or employees shall be liable for: (1) any loss, damage or injury to, or death of, any person occurring at or about or resulting from any defect in the Project Facility; (2) any damage or injury to the persons or property of Grantee, or its officers, agents, servants or employees, or any other person who may be about the Project Facility, caused by any act of negligence of any person (other than the BPU or its members, officers, agents, servants or employees); or (3) any costs, expenses or damages incurred as a result of any lawsuit commenced because of action taken in good faith by the BPU or the Authority in connection with the Project Facility. Grantee shall indemnify, protect, defend and hold the BPU, the Authority, the State, their respective members, agents, servants, officers and employees (each an "Indemnified Party"), harmless from and against any and all such losses, damages, injuries, costs or expenses and (except for claims, demands, suits, actions or other proceedings brought against an Indemnified Party resulting from willful or wanton misconduct of such Indemnified Party) from and against any and all claims, demands, suits, actions or other proceedings whatsoever, brought by any person or entity whatsoever, (except Borrower) and arising or purportedly arising from this Agreement, or from the

construction, ownership and operation of the Project Facility. This provision shall survive the expiration or earlier termination of this Agreement.

15. NOTICES

1) Environmental Events. Grantee shall promptly give written notice to the BPU (i) of any violation of any environmental law, rule or regulation that could reasonably be expected to result in a Material Adverse Effect or that Grantee reports in writing (or for which any written report supplemental to any oral report is made) to any governmental authority, (ii) upon becoming aware thereof, of any inquiry, proceeding, investigation, claim, complaint, suit or other action, including a notice from any agency of potential environmental liability, of any governmental authority or any third party, that could reasonably be expected to result in a Material Adverse Effect, and (iii) of any environmental, health or safety condition that could reasonably be expected to result in a Material Adverse Effect.

2) Notice of Litigation and Judgments. Grantee shall give notice to the BPU in writing within fifteen (15) days of becoming aware of any litigation or proceedings threatened in writing or any pending litigation and proceedings affecting Grantee or to which Grantee is or becomes a party involving any claim against Grantee that could reasonably be expected to result in a Material Adverse Effect and stating the nature and status of such litigation or proceedings. Grantee will give notice to the BPU, in writing, in form and detail reasonably satisfactory to the BPU, within ten (10) days of any judgment, final or otherwise, against Grantee.

3) Notice of Material Events. Grantee will give notice to the BPU in writing within ten (10) days of becoming aware of any fact, circumstance, occurrence or event that could reasonably be expected to result in a Material Adverse Effect.

Any notices, demands and communications hereunder shall be given by certified or overnight mail and shall be addressed to:

For Grantee: ^

For the BPU: New Jersey Board of Public Utilities
44 South Clinton Avenue
Trenton, NJ 08625
Attn: Director-Office of Clean Energy

For the Authority: New Jersey Economic Development Authority
36 West State Street, P.O. Box 990
Trenton, NJ 08625-0990
Attn: Finance and Bond Portfolio Management

Any changes or additions to the notice provisions above shall be made in writing and delivered to the other parties as provided above.

16. IDENTIFICATION OF KEY PERSONNEL

Grantee shall identify and maintain an individual with the principal responsibility for the management of the Project, and maintaining an adequate financial management system designated as the Project Manager, and shall

advise the BPU in writing of the identity of this individual. Grantee must advise BPU of changes to any key personnel within _____ days of the change.

17. FINANCIAL MANAGEMENT SYSTEM

The Project Manager shall be responsible for maintaining a financial management system in compliance with this Agreement. The Project Manager shall notify the BPU immediately if the Grantee cannot comply with the requirements established herein.

Compliance with any provision of this Agreement relating to financial or accounting computation or reporting shall be determined in accordance with generally accepted principals of accounting ("GAAP"). The financial management system shall provide for:

- 1) accurate, current and complete records of the financial results of the Project capable of being reported in a format in accordance with the financial reporting requirements as described herein; and
- 2) records that adequately identify the source and application of CHP - Fuel Cells Program funds - supported activities, containing information pertaining to awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays of expenditures, and income; and
- 3) effective internal and accounting controls over funds, property, and other assets, which shall be safeguarded by the Grantee and used solely for authorized purposes; and
- 4) comparison of actual expenditures or outlays with budgeted amounts for the Award, which shall be related to physical Project site assessment, design and procurement in the State; and
- 5) procedures for determining reasonableness, allowability, and allocability of costs, consistent with the provisions of Federal and State requirements; and
- 6) accounting records that are supported by source documentation; and
- 7) procedures to minimize the time elapsing between the advance of funds by the BPU and the use by the Grantee.

The BPU may review the adequacy of the Grantee's financial management system at any time for two (2) years commencing from the the Effective Date . If the BPU determines that the Grantee's system does not meet the standards described in this Section 17, additional information may be required by the BPU upon written notice to the Grantee. This information shall be provided to the BPU until such time as the BPU determines that the system meets with the BPU approval. If Grantee fails to provide such information to the satisfaction of the BPU, or if the BPU determines that the Grantee has consistently failed to maintain the proper financial management system, the BPU may consider such failure an Event of Default under this Agreement. The BPU may also require the submission of a "Certification to Adequacy of Accounting System" as provided in Attachment A of this Agreement .

18. FINANCIAL AND PERFORMANCE REPORTING

Grantee agrees to furnish to the EDA on behalf of the BPU:

(a) within 120 days of the end of each fiscal year, annual audited financial statements for Grantee prepared by an independent certified public accountant, along with updated annual financial projections for the fiscal year with an explanation of variances from planned projections; and

(b) within 15 days of the end of each quarter, quarterly management prepared Project report of Grantee on the form attached hereto as Attachment C, which shall summarize proposed Project progress, any difficulties, planned solutions and funds spent to date;

(c) together with the Project report described in paragraph (b) within 45 days from the end of each fiscal quarter, internally prepared financial statements including balance sheet, income statement and statement of cash flows for the preceding twelve-month period ending on such June 30; and

(d) within ten (10) days of filing, signed copies of Grantee's Federal and State income tax return; and

(e) concurrently with the annual financial statements, a certificate of Grantee stating that:

(i) all taxes, assessments and charges which have become due have been paid or specifying which have not been paid and stating why they remain so; and

(ii) Grantee has not failed to comply with any obligations under this Agreement or specifying any such failure and the reasons for such failure; and

(iii) a summary report of all non-CHP-Fuel Cells Program resources expended by the Grantee in support of the Project.

Failure to submit any of the above reports or records as required shall constitute an Event of Default under this Agreement.

19. PROPERTY MANAGEMENT STANDARDS

Property furnished by the State or acquired in whole or in part with Federal or State funds or whose cost was charged to a project supported by State or Federal funds shall be utilized and disposed of in a manner generally consistent with State or Federal requirements.

20. PROCUREMENT STANDARDS

Procurement of supplies, equipment, or other services with funds provided by this Grant shall be accomplished in a manner generally consistent with applicable Federal and State requirements. Adherence to the standards contained in the applicable Federal and State laws does not relieve the Grantee of the contractual responsibilities arising under its procurements. The Grantee is the responsible entity, without recourse to the BPU, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurement entered in support of the Grant.

21. REPORTING

The Grantee shall fully cooperate with the BPU and the Authority, and their respective consultants and agents, in meeting the various reporting requirements of the CHP - Fuel Cells Program, including, but not limited to, Attachment B.

22. MONITORING OF PERFORMANCE

The Grantee shall continually monitor the performance of the Project to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved, as applicable. The Grantee must ensure compliance with any applicable Federal performance requirements.

The Grantee shall inform the EDA on behalf of the BPU of the following types of conditions which affect the Project objectives and performance as soon as they become known:

1) problems, delays or adverse conditions which will materially impair the ability to complete the Project, prevent the meeting of time schedules and goals, or preclude the attainment of Project work units by established time periods, accompanied by a statement of the action taken, or contemplated; and

2) favorable developments or events which enable meeting time schedules and goals sooner than anticipated or at less cost, or producing more beneficial results than originally planned.

The BPU and the EDA may, at their discretion, make site visits to review Project accomplishments and management control systems, and perform fiscal reviews to ensure Grant funds are being properly expended in a timely manner.

23. AUDIT REQUIREMENTS

Grantees shall perform an annual audit for each fiscal year in which the Grantee expends Grant funds, consistent with the New Jersey Department of Treasury Circular Letter (04-04-OMB), "Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid Payments"; and with the Federal Single Audit Act of 1984, as amended.

All audits will be conducted on an organization wide basis and on the Grantee's fiscal year, which ends on _____ . Any changes in fiscal year must be reported immediately to the BPU.

24. ACCESS TO RECORDS

The Grantee agrees to make available to the BPU, the EDA and any State or Federal agency whose funds are expended in the course of this Project, or any of their duly authorized representatives, pertinent accounting records, books, documents, electronic files, and other items as may be necessary to monitor and audit operation finances. All visitations, inspections and audits, including visits and requests for documentation, in discharge of the BPU's or EDA's responsibilities shall as a general rule provide for prior notice when reasonable and practical to do so. However, the BPU and EDA retain the right to make unannounced visitations, inspections, and audits as deemed necessary. The BPU reserves the right to have access to all work papers produced in connection with audits made by the Grantee or by independent certified public accountants, registered municipal accountants, registered municipal accountants, or licensed public accountants hired by the Grantee to perform such audits.

25. INSURANCE

Grantee agrees to carry general liability insurance and other such insurance against loss, damage and liability as is customary within its industry, to be held with insurance companies licensed to do business in the State that extends to include the purposes and intent of this Award. The BPU, the EDA and the State shall be named as additional insured parties on any such policies, evidence of which shall be provided at closing.

26. TAXES, ASSESSMENTS AND GOVERNMENTAL CHARGES

Grantee warrants and represents that all tax returns and reports of Grantee required by law to be filed have been duly filed and all taxes, assessments, fees and other governmental charges upon the Grantee or upon any of its respective properties, assets, income or franchises which are due and payable pursuant to such returns and reports, or pursuant to any assessment received by the Grantee have been paid, other than those which may be presently payable without penalty or interest.

Grantee agrees to pay as they become due, all taxes, assessments and governmental charges, which may be required by law or contract to be paid by the Grantee. Grantee may in good faith contest such taxes and governmental charges and such taxes and charges may remain unpaid during the period of such contest, without triggering an Event of Default under Section 9 of this Agreement.

27. PROGRAM INCOME

Program income shall be defined as gross income earned by the Grantee from Grant-supported activities. Such earnings include, but will not be limited to, income from service fees, sale of commodities, usage of rental fees and royalties on patents and copyrights. If the Grantee receives interest earned of \$250 or more in a fiscal year on advances of Grant funds, interest shall be reported to the BPU. All program income shall be retained by Grantee in accordance with the terms and conditions of this Agreement.

28. RECORD RETENTION

Except as otherwise noted herein in this Agreement, financial and Project records, supporting documents, statistical records, and all other records pertinent to this Agreement shall be retained for a period of seven years after the Date of Completion, as defined in Section II Award Closeout. If any litigation, claim, negotiation, action or audit involving the records is started before the expiration of the seven year period, the records must be retained until final completion of the action and resolution of all issues which arise from it, or until the end of the regular seven year period, whichever is later. Records for nonexpendable property acquired with Grant funds shall be retained for seven years after its final disposition, unless otherwise directed by the BPU.

The BPU may request the transfer of certain records to its custody from the Grantee when it determines that the records possess long-term retention value and will make arrangements with the Grantee to retain any records that are continuously needed for joint use.

29. ENTIRE AGREEMENT

This Agreement and the attachments hereto embody the entire Agreement and understanding between the Grantee and the BPU and supersede all prior agreements and understandings, both written and oral, between the parties relating to the subject matter herein. All modifications, waivers, and amendments hereto must be made in writing by mutual agreement of the parties, except as otherwise stated herein.

30. JURISDICTION AND CHOICE OF LAW

Jurisdiction of any action hereunder shall lie in a court of competent jurisdiction in the State and shall be construed in accordance with the laws of the State applicable to contracts made and performed in the State.

31. CONSTRUCTION

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law, but, if any provision of this Agreement shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement. The parties hereto agree that to the extent there is any inconsistency between the terms of this Agreement and the terms of the Solicitation or the Proposal, the Agreement shall control. To the extent there is any inconsistency between the terms of the Solicitation and the terms of the Proposal, the Solicitation shall control .

32. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument and may be delivered by telecopier, e-mail, PDF or other facsimile transmission all with the same force and affect as if the same were fully executed and delivered original manual counterpart.

33. EFFECT OF AGREEMENT

All terms and conditions of this Agreement shall remain in full force and effect until the expiration or earlier termination of this Agreement as provided for hereunder, or if the BPU otherwise releases Grantee, in writing, from some or all obligations contained herein, subject to any provisions which by their terms expressly survive any such events.

34. WAIVER OF RIGHT TO TRIAL BY JURY

Grantee waives any right to trial by jury on any claim, demand, action or cause of action arising under this Agreement or the transactions related hereto, in each case whether sounding in contract or tort or otherwise. Grantee agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of Grantee to the waiver of its right to trial by jury. Grantee acknowledges that it has had the opportunity to consult with counsel regarding this section, that it fully understands its terms, content and effect, and that it voluntarily and knowingly agrees to the terms of this section.

35. FUNDING PERIOD

The period of funding ("Funding Period") shall commence on the Effective Date and shall end upon the earlier to occur of the following: i) twenty four (24) months from the Effective Date; and ii) that date upon which the Award has been fully disbursed. The Grantee must satisfy all obligations incurred under this Award not later than thirty (30) days after the end of the Funding Period unless specific authority to extend this deadline is granted, in writing, by BPU.

II. AWARD CLOSEOUT

Section I. PROCEDURES.

EDA upon instruction from BPU shall close out the Award provided herein when it determines that all applicable administrative action and all required work pertaining to the Award have been completed by the Grantee.

The "Date of Completion" of this Agreement shall be when all activities related to the Award are completed or the Funding Period has expired, whichever occurs first.

The Grantee shall submit a final report pursuant to Section II.2. below upon the Date of Completion or termination of the Award, whichever occurs first.

Upon the Date of Completion or termination of the Award by BPU, the Grantee will, together with the submission of the final report, refund BPU any unexpended funds or unobligated (unencumbered) cash advanced, except such sums that have been otherwise authorized in writing by BPU to be retained.

Section 2. AWARD CLOSE OUT FINANCIAL AND PERFORMANCE REPORTING.

Final reports shall be submitted to EDA by Grantee no later than thirty (30) days after the Date of Completion or termination of the Award. At minimum, these final reports shall include:

- (a) a summary report of all non-BPU resources expended by Grantee in support of the Project; and
- (b) a final comparison of actual to budget expenditures. The accuracy of this financial report shall be certified, in writing, by the Financial Manager.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties, duly authorized and intending to be legally bound hereto, execute this Agreement, as of the date last written below, which shall be the Effective Date.

WITNESS:

Date: _____

^

By: _____

Name:

Title:

WITNESS:

NEW JERSEY BOARD OF PUBLIC
UTILITY

By: _____

Date _____

Robert M. Hanna
President

STATE OF NEW JERSEY :

: SS.:

COUNTY OF :

BE IT REMEMBERED, that on this ____ day of _____, 2012, before me, the subscriber, personally appeared ^, a ^ of ^, a limited liability company, who, I am satisfied is the person who executed the foregoing Instrument on behalf of said limited liability company, and who thereupon acknowledged that he signed and delivered said Instrument as ^, and that said Instrument is the voluntary act and deed of said limited liability company.

MILESTONE AGREEMENT

This Milestone Agreement dated as of _____ ("Milestone Agreement") sets forth the Milestone referred to in that certain Agreement for Grant Award between the New Jersey Board of Public Utilities ("BPU") and _____ ("Grantee").

Grantee has received a grant from the BPU in the Amount of _____ ("Grant").

The Grant will Finance _____.

Grant Proceeds to be advanced as set forth below:

STATEMENT OF ADEQUACY OF ACCOUNTING SYSTEM*

If Grantee is a governmental agency, complete Section A. If Grantee is a non-governmental agency, complete Section B.

=====
Section A: Governmental Agency

I am the _____ of _____ and, in this capacity, I will be responsible for _____ (Print title of Chief Financial Officer) (print name of Grantee) establishing and maintaining the financial statements for _____ (print project name)

The accounting system that will be established and maintained for the purpose of this agreement will be adequate to:

1. provide for accurate identification of the receipts and expenditures of funds by approved budget cost categories;
2. provide for documentation supporting each book entry, filed in such a way that it can be easily located;
3. provide accurate and current financial reporting information;
4. be integrated with a strong system of internal controls; and
5. conform to any and all requirements or guidelines that the Board may issue.

Date: _____

(signature)

(print name)

=====
Section B: Non-governmental Agency

I am a certified public accountant duly licensed public accountant and have been engaged to examine the financial statements of _____ which will be maintained for

_____ (print name of Grantee)

_____ (print project name)

In my opinion, the accounting system and internal controls in use to be established on _____ for this agreement are will be adequate to:

1. provide for accurate identification of the receipts and expenditures of funds by approved budget cost categories;
2. provide for documentation supporting each book entry, filed in such a way that it can be easily located;
3. provide accurate and current financial reporting information; and

4. conform to any and all requirements or guidelines that the Board may issue.

Date: _____

(signature)

(print name)

(print title)



<p>Attachment B Quarterly Progress Report</p>

Applicants must submit progress reports to the designated project manager by the 15th of the month following the reporting period covered. Quarterly reports shall summarize progress, difficulties, and planned solutions associated with developing and installing the CHP Project. After construction, quarterly reports shall summarize the CHP Project's performance and identify all reported energy production which will form the basis for payments under the Grant. The PJM Generator Attribute Tracking System (PJM GATS) will be utilized to report the electrical production of the CHP units and onsite metering will be utilized for the purpose of reporting thermal energy production.

An example of a quarterly activity progress report follows:
(Include Milestone activity as submitted in application. Modify to include your specific project activities.)

	Actual		Scheduled/Budgeted*		Explain Difference in Actual Status/Funding vs. Schedule/Budget
	Date/Status	\$	Date/Status	\$	
Milestone activities:					
Air Emissions Permit Application					
150 Day Go/No Go Decision Point					
Project Financing					
Equipment Procurement					
Construction Permits					
Equipment Delivered to site					
System Installation Complete					

Installed System Shakedown Complete					
Full Scale System Verification (commercial operation) minimum 160 continuous hours					
CHP Project Complete					
Total Funds Spent to Date					

*As approved/revised

Attachment C

**Template for EDA-BPU Large Scale CHP-Fuel Cells Program (LSCHP-FC)
Quarterly Reporting**

Date: _____

<p>1. Detail the project contribution to lower the cost of Energy Efficiency for New Jersey's ratepayers, year-to-date and cumulative since LSCHP-FC project inception.</p>
<p>2. Explain the environmental benefits, including but not limited to, reduced fuel usage, for New Jersey resulting from the LSCHP-FC project since inception.</p>
<p>3. Describe the reduction in Greenhouse Gas (GHG) and Criteria Pollutant emissions as a result of the Combined Heat and Power (CHP) or Fuel Cells Project. (e.g., tons of Carbon Dioxide Equivalent (CO₂e) & criteria pollutants reduced)</p>

4. Describe the energy to be created or saved as a result of the CHP or Fuel Cell project.
(e.g., electric reduction, thermal reduction)

5. List any additional project benefits that have not been mentioned.

BPU Letterhead
Commitment Letter- Large Scale Combined Heat and Power - Fuel Cells

Date

Via Email and Regular Mail

^

Re: Project Name
P#Project Name

Salutation:

I am pleased to inform you that at a meeting on _____, the New Jersey Board of Public Utilities (“BPU”) approved the application of _____ (“Grantee”) for grant assistance from the Clean Energy Solutions Large Scale Combined Heat and Power-Fuel Cells Program (“CHP-Fuel Cells Program”) for {Project Description} _____ as stated in your application dated _____ (“the Project”).

The BPU, unless stated otherwise in this commitment letter, has approved the assistance upon the terms and conditions set forth in this commitment letter, the Solicitation approved by the BPU on April 25, 2012. No act of omission by or on behalf of BPU shall be deemed as a waiver to any of the terms and conditions contained in this letter. Such a waiver may be made only by an instrument in writing duly executed by an authorized representative of BPU. Pursuant to the terms of a certain Memorandum of Understanding, as amended between BPU and the New Jersey Economic Development Authority (the “Authority”), the Authority will close and service the Grant.

GRANTEE:

PROJECT SITE:

_____, New Jersey

GRANT:

Up to \$

PURPOSE:

^ {Purpose of Grant}

GUARANTEE:

{description of performance guarantee if applicable}

FINANCIAL STATEMENTS:

Statements due to the Authority on behalf of BPU:

(a) Grantee shall provide an annual audit for each new year in which Grantee expends Grant funds, submitted within 120 days of the end of each fiscal year, in accordance with the New Jersey Department of Treasury Circular Letter 04-04-OMB (Single Credit Policy for Recipients of Federal Grants, State Grants and State Aid Payments) and with the Federal Single Audit Act of 1984 as amended.

(b) within 15 days of the end of each quarter, quarterly management prepared Project report of Grantee on the form attached hereto as Attachment A, which shall summarize proposed Project progress, any difficulties, planned solutions and funds spent to date;

(c) together with the Project report described in paragraph (b) within 45 days from the end of each fiscal quarter, internally prepared financial statements including balance sheet, income statement and statement of cash flows for the preceding twelve-month period ending on such June 30; and

(d) within ten (10) days of filing, signed copies of Grantee's Federal and State income tax return; and

(e) concurrently with the annual financial statements, a certificate of Grantee stating that:

(i) all taxes, assessments and charges which have become due have been paid or specifying which have not been paid and stating why they remain so; and

ii) Grantee has not failed to comply with any obligations under this Agreement or

specifying any such failure and the reasons for such failure; and

(iii) a summary report of all non-CHP-Fuel Cells Program resources expended by the Grantee in support of the Project.

Failure to submit any of the above reports or records as required shall constitute an Event of Default.

Additional financial statements may be required at the sole discretion of the Authority.

DISBURSEMENTS:

Subject to availability of funds, disbursements made to Grantee by the Authority on behalf of the BPU shall be in three main payment streams as follows:

i) up to 30% of the Grant upon the non-refundable deposit on Project equipment to be purchased;

ii) up to 70% of the Grant upon delivery of equipment (but not to exceed 90% of total amount awarded when combined with the prior disbursement); and

iii) balance of the Grant upon system installation.

CONDITIONS:

1. The Authority shall receive current financial statements for the Grantee at least 10 days prior to the disbursement of funds hereunder. Such financial statements must be satisfactory to the Authority and must not be more than ninety (90) days old at the time of closing.
2. The Authority shall receive prior to closing, a Tax Clearance Certificate for the Grantee, issued by the New Jersey Division of Taxation, not more than 90 days old as of the date of closing.
3. It is specifically understood and agreed that the Project Site must be located in New Jersey within the service territory of an electric public utility whose customers pay the Societal Benefits Charge pursuant to NJSA 48:3-60.
4. This financing is contingent upon receipt by the Authority of an executed commitment to complete the project.

5. The Borrower will comply with and require all contractors performing work in relation to the Project to comply with BPU's prevailing wage requirements set forth in NJSA 48: 2-29 47, P.L. 2009, c. 203 and the affirmative action rules and regulations imposed by the State of New Jersey-- Department of Treasury N.J.A.C. 17:27.
6. Installation of Project equipment must comply with the host utility's interconnection requirements. Grantee must not have any unresolved obligations, past due unresolved financial obligations to the State of New Jersey, and must be current in all payment of all state and local taxes at time of applications submittal and through the entire duration of Project funding received by Grantee.
7. The Grantee acknowledges that BPU financial assistance provided pursuant to this commitment letter and the grant agreement is subject to availability of funds and State appropriations law.

The interests of the Grantee, BPU and the Authority are or may be different and may conflict. The BPU and the Authority's attorneys represent only the BPU and the Authority and do not represent the Grantee in this Grant transaction. The Grantee, therefore, is advised to employ an attorney licensed to practice in the State of New Jersey, of Grantee's own choice, to represent the Grantee's interest in this Grant transaction.

The credit of the Grantee and all other features of the transaction shall be as represented to the BPU and/or the Authority without material adverse change. The Grantee shall not be involved in any bankruptcy, reorganization or insolvency proceeding.

This Commitment is subject to acceptance by the Grantee of the terms and conditions contained herein and in the Grant Agreement.

Counsel to BPU and/or the Authority must be satisfied with respect to the legality, validity, binding effect, and enforceability of all instruments, agreements, and documents used to effect and consummate the transactions contemplated herein. All documentation shall be in form and substance satisfactory to BPU and/or the Authority.

The liability of the BPU, the Authority and their directors, officers, agents and employees shall be subject to all provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

It is specifically understood and agreed that the Grant is *cross-defaulted* with any existing assistance and any future assistance provided by BPU, the Authority and/or the State of New Jersey to the Grantee and/or any of its subsidiaries, including but not limited to, entities that may not be related to Grantee, but have common principals.

BPU and/or the Authority, at its option, may announce and publicize the source of financing contemplated hereunder, by means and media selected by BPU and/or the Authority.

This commitment shall terminate and BPU shall have no further obligation or liability hereunder if this letter is not signed and returned on or before _____ ("Acceptance Date") to the Authority c/o. _____ {Credit Underwriter} at 36 West State Street, Trenton, NJ 08625 via FedEx or UPS.

This commitment letter may be executed and delivered by telecopier, e-mail, PDF or other facsimile transmission all with the same force and affect as if the same were a fully executed and delivered original manual counterpart.

In the event this financing is not closed on or before _____ (“Closing Date”), BPU’s obligation to provide financing hereunder shall terminate unless an extension has been requested by the Grantee and approved by BPU.

Please contact _____, Credit Underwriter, at _____ or _____@njeda.com if you have any questions regarding this matter.

Please contact _____, Closing Officer, at _____ or _____@njeda.com if you have any questions regarding the closing of this transaction.

We are pleased to be of service to your financing needs.

NEW JERSEY BOARD OF PUBLIC UTILITIES

By: _____

Elizabeth Ackerman
Acting Director
Division of Economic Development and Energy Policy
NJ Board of Public Utilities

Your initials

C: eu

ACCEPTED AND AGREED THIS _____ DAY
OF _____, 20____

GRANTEE:
Grantee Name

By: _____

Name:

Title: