



PSE&G Residential Multifamily Housing Program

Building Owner Agreement – HMFA Projects

Date _____

BUILDING OWNER'S FULL NAME AND ADDRESS

Dear _____:

Public Service Electric & Gas Company ("PSE&G") has performed a review of a Program Application ("Application") submitted under the PSE&G Multifamily Efficiency Program by:

premises and buildings located at _____ (collectively, the (the "Project"). Based on the results of PSE&G's Application review, PSE&G has determined, and Building Owner ("Owner") agrees, that there is an opportunity for energy and/or operational savings based on current operations and energy rates to be realized at the Owner's Project through the implementation of various cost containment and reduction strategies. The cost effectiveness of such strategies, however, may only be determined through a more in-depth analysis of Owner's costs of operation, maintenance and energy usage at the Project.

1. The purpose of this letter agreement (the "Letter Agreement") is to set forth the understanding we have reached regarding the performance by PSE&G of an Investment Grade Audit (the "IGA") for the Project. The IGA will identify cost savings that are likely to be realized through the implementation of specific energy cost reduction strategies, measures and technologies to improve the efficiency of lighting, HVAC, steam system, insulation (roof and/or duct), humidification, building envelope, motor, refrigeration and other energy consuming equipment (collectively "Energy Conservation Measures"). The IGA will include without limitation an evaluation of the following systems and practices:

a) Evaluation of Operating Systems: PSE&G will conduct a detailed review and, where cost effective, propose alternative service arrangements and/or capital improvements for the operating systems at the Project; the scope of this review is more fully set forth in **Exhibit A**, Energy Efficiency Opportunities, attached hereto and made a part hereof.

b) Operations and Maintenance Practices: PSE&G will evaluate the Owner's operation and maintenance practices, where applicable, for each operating system at the Project.

During the course of conducting the IGA, PSE&G shall perform an on-site detailed inspection of the Owner's Project facility to establish a base usage ("Baseline") against which energy savings to be obtained from implementation of the Energy Conservation Measures shall be measured. During the IGA, Owner shall 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 the Owner's current operations and cost effectiveness of the implementation of various cost containment and reduction strategies. PSE&G's evaluation activities shall include, without limitation, a detailed visual inspection of the Project and operating systems and such other activities or measurements including kWh, temperature and flow rate as PSE&G determines to be needed to establish a Baseline for the Facility. The IGA shall be performed at a time mutually agreeable to PSE&G and the Owner.

2. The IGA will be completed on or before _____ (subject to extension for force majeure events beyond the reasonable control of PSE&G) and the results thereof will be set forth in a detailed written report setting forth proposed energy efficiency measures for the Project (the "IGA Report") which PSE&G will deliver to Owner and a copy to HMFA.

3. The IGA Project: After PSE&G has submitted the IGA Report to Owner, and a copy to HMFA PSE&G, Owner and HMFA will meet to review the IGA. Owner has 30 days from the date of that meeting to determine, based on the IGA Report, if the Owner will proceed with plans to construct and install all or a portion of the Energy Conservation Measures identified by the IGA (the "IGA Project"). If Owner indicates plans to proceed, as required, HMFA projects must go through 3-bid process and Owner shall have 30 days to develop and execute the Request for Proposal (RFP) process unless an extension of time is granted by PSE&G. At the conclusion of the RFP three (3) bid process, Owner has two (2) weeks to select a contractor and to submit a formal proposal (the "Proposal") to PSE&G for construction of the IGA Project, which shall specify the Energy Conservation Measures Owner proposes to construct and install, and the proposed costs to be incurred in construction of the IGA Project. PSE&G will evaluate the Proposal to determine the simple pay back period (the "Payback Period") based on construction cost estimates submitted by Owner and approved by PSE&G (the "Approved IGA Project Costs"), and the annual energy savings determined by PSE&G in its sole discretion to be produced by the IGA Project and confirm that all Energy Conservation Measures contained in the Proposal are as identified by the IGA and have a Payback Period not in excess of fifteen (15) years or less than two (2) years. Any Energy Conservation Measures proposed by Owner that based upon PSE&G's calculations shall require a Payback Period in excess of fifteen (15) years shall not be eligible to receive PSE&G's financial incentive. If PSE&G approves the IGA Project, PSE&G will offer the

Owner an Owner Reimbursement Agreement ("Form of Owner Reimbursement Agreement") in the form of **Exhibit B** for energy efficiency measures hereto. The Owner will need to receive HMFA approval prior to signing the Agreement. The Owner shall have two (2) weeks from the date of the Agreement to review and approve the Agreement. Upon approval, PSE&G and Owner will enter into the Form of Owner Reimbursement Agreement. Following execution of the Owner Reimbursement Agreement(s) and subject to the terms and conditions of Paragraph 5 of this Letter Agreement, PSE&G shall provide funding for Approved IGA Project Costs. PSE&G will provide financial incentives that will reduce the Owner's Payback Period for the IGA Project by buying down the payback by seven (7) years, to a level not less than two (2) years. PSE&G will pay to the Owner such portion of the Approved IGA Project Costs equal to the amount required, (the "PSE&G Permanent Financial Incentive") as determined by PSE&G in its sole discretion to achieve such buy down. All approved IGA Project Costs in excess of the PSE&G Permanent Financial Incentive (the "Owner's Share") shall be recaptured by PSE&G from the Owner over a ten (10) year period (the "Recovery Period") by means of an additional charge added to the Owner's monthly PSE&G bill as a separate item in an amount sufficient to fully amortize repayment of the principle amount of the Owner's Share over the Recovery Period. PSE&G shall not charge and the Owner shall not pay any interest on the Owner's Share. Owner shall construct and own the Project.

4. The Owner shall notify PSE&G when the Owner has signed a construction contract (the "Construction Contract") with the Owner's contractor, and shall provide a copy of the signed Construction Contract to PSE&G. Construction Contract shall be provided to PSE&G within two (2) weeks of executing the Form of Owner Reimbursement Agreement.

5. PSE&G will review the Construction Contract to determine if the Energy Conservation Measures (the "Measures"), as applicable, to be constructed pursuant to the terms of the Construction Contract conform are consistent with the Measures identified in the IGA and the construction costs for the Measures are equal to, and if PSE&G is satisfied in PSE&G's sole discretion that the Measures do so conform and that the construction costs set forth in the Construction Agreement are less than or equal to PSE&G Financial Incentive, PSE&G shall pay to the Owner the initial progress payment in an amount equal to one-third (1/3) of the PSE&G Financial Incentive for the Project. The Owner shall notify PSE&G when construction of the Project is commenced. At its discretion, PSE&G may, upon reasonable notice to the Owner, inspect the Project site during construction. This inspection shall be conducted at a time mutually agreeable to PSE&G and the Owner. The Owner shall notify PSE&G when construction of the Project is approximately fifty percent complete, so that PSE&G may inspect construction at that time. If following its inspection PSE&G determines in its discretion that fifty percent (50%) of the Energy Conservation Measures have been installed, PSE&G shall pay the second progress payment in an amount equal to one-third (1/3) of the PSE&G Financial Incentive for the Project. The Owner shall notify PSE&G when construction of the Project is complete for the Energy Conservation Measures, so that PSE&G may inspect and approve the Project for the purpose of establishing the Owner's eligibility to receive the final progress payment (the "Final Progress Payment") in an amount equal to

one-third (1/3) of the PSE&G Financial Incentive for the Project. PSE&G shall make a reasonable effort to perform the final inspection (the "Final Inspection") for the IGA identified energy efficiency measures within thirty (30) business days after the Owner serves notice on PSE&G that the Project is ready for the audit. The Final Inspection shall be performed at a time or times mutually agreeable to PSE&G and the Owner. 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, and other measurements as determined by PSE&G. PSE&G shall maintain records of energy usage and inspection results for the purpose of evaluating the effectiveness of the Project, and for calculation of the Payback Period. In the event that after conducting the Final Inspection PSE&G approves the Project construction, PSE&G shall pay the Final Progress Payment in an amount equal to one-third (1/3) of the PSE&G Financial Incentive for the Project (or the PSE&G Permanent Financial Incentive as applicable) to the Owner within thirty (30) days following approval of the Project construction by PSE&G. In the event that after conducting the Final Inspection, PSE&G disapproves the Project construction, PSE&G shall provide the Owner and New Jersey Housing and Mortgage Finance Agency, (hereinafter "Lender") as the first mortgage lien holder on the Project with written notice specifying the reasons for its disapproval. The Owner shall have fourteen (14) days to submit a written plan to PSE&G, with a copy to Lender, to remedy (the "Remedial Plan") the deficiencies specified by PSE&G. PSE&G shall have fourteen (14) days following receipt of Owner's Remedial Plan to review and approve or disapprove the Remedial Plan. If PSE&G disapproves the Remedial Plan, PSE&G may terminate this Letter Agreement in writing to Owner with a copy to Lender and have no further liability hereunder. If the Remedial Plan is approved by PSE&G, the Owner shall implement and complete the Remedial Plan within six (6) months following approval thereof by PSE&G or if the Remedial Plan is not susceptible of being implemented and completed within six (6) months, the Owner shall undertake diligent efforts in good faith within such six (6) months period to implement and complete the Remedial Plan, and the Owner shall continue to actively implement and complete the Remedial Plan; provided, however, that notwithstanding any provisions contained in this Letter Agreement to the contrary, PSE&G may terminate this Letter Agreement in writing to Owner with a copy to Lender 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. The Final Progress Payment shall not be payable by PSE&G unless and until the Project is one hundred (100%) complete and Owner has paid all retainage amounts to the Owner's contractor and the Project shall have reached the date of commercial operation. Notice shall be provided by certified or registered mail, postage prepaid, return receipt requested, or by facsimile to the Owner at the address noted on the first page of this Letter Agreement, and to Lender at: New Jersey Housing and Mortgage Finance Agency, P.O. Box 18550, Trenton, New Jersey 08650-2085, Attention: Executive Director.

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6. All labor provided by or on behalf of the Owner in connection with work on Projects that qualify as a "public work" under the New Jersey State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. (the "Act"), shall be performed by union craft or will be provided in compliance with all aspects of the Act. All Labor provided by or on behalf of

the Owner in connection with work on Projects that do not qualify as a "public work" as defined by the Act, shall be performed by union craft paid in accordance with the union contract or by non-union employees paid at a rate equivalent of the prevailing wages for the county in which the work is to be performed.

Assembly Bill 3372 ("Act"), concerns prevailing wage for certain construction contracts undertaken in connection with Board of Public Utilities financial assistance and supplementing Title 48 of the Revised Statutes. PSE&G may, in its sole and exclusive discretion, require that the terms of these contracts only as they relate to services provided in PSE&G's service territory where PSE&G supplies both gas and electric service, be revised to reflect the requirements of the new Act, (or similar proposed legislation) irrespective of whether the Act, or regulations implemented pursuant thereto, will mandate compliance with the Act's requirements during the term of the contracts.

7. PSE&G will undertake the preparation of IGA and the IGA Report utilizing its professional knowledge and judgment, according to sound work practices and accepted professional and industry standards, in a well-managed, organized and efficient manner.

8. The relationship of PSE&G and Owner shall be that of independent parties, and neither this Letter Agreement nor anything done pursuant to this Letter Agreement shall be deemed to create any partnership, joint venture, agency or other relationship between the parties.

9 This Letter Agreement is intended for the sole benefit of the parties and there are not third party beneficiaries, express or implied, to this Agreement.

10. The parties hereto agree that the information furnished to PSE&G by the Owner in connection with the performance of its obligations hereunder is confidential unless and until the Owner either (i) submits a Proposal to PSE&G or (ii) chooses not to submit a Proposal to PSE&G within thirty (30) days of the delivery of the IGA Report. PSE&G shall consider all information furnished by Owner 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 this Letter Agreement without the Owner's prior written consent. The Owner shall consider all information furnished by PSE&G 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 this Letter Agreement and any subsequent agreements contemplated by the parties hereunder, without PSE&G's prior written consent. 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 provided further 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. Provided further it is expressly understood and agreed that this Letter Agreement is entered into in connection with and is subject to PSE&G's Multifamily Efficiency Program (the "Program"), and upon completion of the Program PSE&G may be required to prepare a program evaluation report (the "Program Evaluation Report") and submit it to the NJ Board of Public Utilities (the "BPU"). The Program Evaluation Report may among other participant information identify the

Program participants by name and Facility address, identify the Energy Conservation Measures implemented by each Program participant and the savings achieved by each Program participant.

11. Owner will provide PSE&G with any existing information concerning the Project, the operational systems and costs, Owner's operation and maintenance practices and other available information which reasonably relates to the services to be undertaken by PSE&G ("PSE&G's Services") pursuant to this Letter Agreement. Owner will also provide PSE&G with access to the Project and the operating systems upon reasonable advance notice. Owner will be the primary contact for assisting PSE&G in connection with PSE&G's Services, and PSE&G will rely on, the accuracy and completeness of the information furnished by Owner as contemplated herein. PSE&G and Owner will otherwise cooperate with each other in connection with PSE&G's Services.

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

13. This Letter 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. This Letter Agreement may be executed by the parties hereto on separate counterparts each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

14. **This Letter Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New Jersey.**

15. **PSE&G may subcontract all or a portion of its obligations under this Letter Agreement without the prior written consent of Owner.** This Letter Agreement may not be assigned or delegated in whole or in part by Owner without the written consent PSE&G.

16. Limitation of Liability: In no event will PSE&G or its subcontractors be liable for any losses, damages, cost or expenses however caused, arising from this Letter Agreement. PSE&G's total liability to Owner for all actions, claims, or suits of any kind, whether based upon warranty, contract, tort (including negligence and strict liability) or otherwise, for any losses, damages, costs or expenses of any kind whatsoever arising out of, resulting from, or related to the performance or breach of this Letter Agreement shall, under no circumstances, exceed the Cost of the IGA. 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 Letter Agreement, whether claims for said losses or 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 Letter Agreement shall be filed no later than one (1) year after the cause of action has occurred. The provisions of this paragraph 16 shall survive termination or expiration of this Letter Agreement.

17. OWNER SHALL DEFEND AND HOLD PSE&G HARMLESS FOR ALL NEGLIGENT OR INTENTIONAL ACTS OF THIRD PARTIES.

18 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 IGA, THE ENERGY CONSERVATION MEASURES, THE CONSTRUCTION OF THE PROJECT OR THE CALCULATION OF PAYBACK PERIODS. 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. ANY INFORMATION PROVIDED BY PSE&G, WHICH RELATES TO THE IGA, THE ENERGY CONSERVATION MEASURES, THE PROJECT, OR THE CALCULATION OF PAYBACK PERIODS, SHALL BE FOR INFORMATIONAL PURPOSES ONLY AND SHALL NOT BE GUARANTEED OR WARRANTED.

If you agree to the terms set forth in this Letter Agreement, please so indicate by signing and returning to me the additional copy of this Letter Agreement provided for that purpose.

Sincerely,

Public Service Electric & Gas Company

By: _____

Name: _____

Title: _____

Acknowledged, accepted and agreed

This _____ day of, _____, 2009

OWNER'S FULL LEGAL NAME _____

By: _____

Printed Name: _____

Title: _____



Exhibit A
Energy Efficiency Opportunities

- Lighting Systems:
- HVAC Systems:
- Steam System:
- Insulation (roof and/or duct):
- Humidification:
- Building Envelope
- Windows
- Doors
- Motor:
- Refrigeration:
- Other Energy Consuming Equipment or Systems:

Exhibit B
Form of Owner Reimbursement Agreement
For Energy Efficiency Upgrades

RECITALS:

WHEREAS Public Service Electric & Gas Company ("PSE&G") and _____ (the "Owner") have entered into a Letter Agreement, dated _____ for the purpose of providing certain financial incentives to the Owner in connection with implementation of specific energy efficiency cost reduction strategies, measures and technologies to improve the efficiency of lighting, HVAC, humidification, steam system, building envelope motor, refrigeration and other energy consuming equipment (collectively "Energy Conservation Measures") at Owner's _____ premises _____ and _____ building _____ located _____ at _____

 (collectively, the "Facility");

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

1. This Owner Reimbursement Agreement is made expressly subject to the Letter Agreement which is incorporated herein by reference. All terms capitalized herein and not otherwise defined shall have the meanings ascribed thereto in the Letter Agreement.
2. It is expressly understood and agreed that:
 - (a) the amount of the Approved Project Costs to be advanced by PSE&G is \$ _____;
 - (b) the amount of the PSE&G Permanent Financial Incentive is \$ _____;
 - (c) the amount of each progress payment toward the PSE&G Permanent Financial Incentive to be paid is \$ _____.
 - (d) the amount of the Owner's Share that the Owner shall reimburse to PSE&G is \$ _____;
 - (e) the Owner's Share shall be reimbursed to PSE&G by the Owner through an additional charge added to the Owner's monthly PSE&G electric bill as a separate charge in an amount of \$ _____ for one hundred twenty (120) months commencing _____ and which shall be paid _____ by Owner;

[Signatures are on the following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Owner Reimbursement Agreement to be executed by their duly authorized representatives as of the day and year first above written.

Public Service Electric & Gas Company

By: _____

Name: _____

Title: _____

Acknowledged, accepted and agreed

this ___ day of, _____, 2009

INSERT OWNER'S FULL LEGAL NAME _____

By: _____

Printed Name: _____

Title: _____

