

**DESIGN, PROCUREMENT,
PROJECT MANAGEMENT AND OWNER REPRESENTATIVE SERVICES
AGREEMENT**

THIS DESIGN, PROCUREMENT, PROJECT MANAGEMENT AND OWNERS REPRESENTATIVE SERVICES AGREEMENT (this "*Agreement*") is made effective April 2011 (the "*Effective Date*"), by and between FS ENERGY LLC ("FS Energy") and THE CON Edison REGENCY CORP. (the "*Owner*").

RECITALS

WHEREAS, FS Energy provides design, design/build, procurement, owner representative, system integration, engineering, consulting, project management and other services to the residential and real estate industry;

AND WHEREAS, the Owner is the owner of that certain real property and the building(s) located thereon at 137 East 36th Street, New York, New York (the "*Property*");

AND WHEREAS, the Owner wishes to engage FS Energy and FS Energy wishes to be engaged, (i) to provide engineering, design, project management and owner representative services relating to the conversion of the Property's existing heating and domestic hot water system from utilizing Con Edison Steam to an in-house gas fired boiler system and for the removal and replacement of a new electric chiller system (the "*Project*"); (ii) to assist with the procurement and installation of the replacement heating system; (iii) to obtain all approvals and permits from any governmental or quasi governmental authority with jurisdiction over the Project and (iv) to provide consulting, owner representative and other services relating to the Project, all on the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Scope of Services. FS Energy agrees to furnish to the Owner, on a timely basis, the design, design/build, procurement, owner representative, project management, system integration, engineering, consulting and other services required for the Project, as more specifically set out in the Scope of Services attached hereto as Exhibits A and B and incorporated into this Agreement (the "*Scope of Services*").

2. FS Energy's Duties. FS Energy shall perform and complete the services and other work contemplated by the Scope of Services. Each phase of the work shall be carried out by FS Energy recognizing and, in compliance with "Applicable Law," "Manufacturer's Requirements" and good engineering practices. As used herein, the term "Applicable Law" shall mean all city, state, federal and other municipal laws, requirements, statutes, rules, codes, standards, regulations, orders of governmental and quasi-governmental authorities, industry standards, and testing standards and specifications which, to any extent, pertain to the Project, as all such laws, requirements, statutes, rules, codes, standards, regulations, orders, industry