

New York State Energy Research and Development Authority (NYSERDA)

# Clean Energy Communities Program

## Guidance Document

Program Opportunity Notice (PON) 3298

### APPLICATION DUE DATES

**Clean Energy Communities Program:** NYSERDA will accept applications for PON 3298 on a rolling basis until 4:00p.m. Eastern Time on September 30, 2019, until funds are exhausted, or until the solicitation is revised by NYSERDA, whichever comes first.



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## INTRODUCTION

Local governments are critical partners in achieving a new energy vision for New York State. As such, municipal leaders play a critical role in affecting energy choices in their communities, both in terms of government operations, and also across homes, businesses, and community institutions. The Clean Energy Communities Program provides grants, direct technical support to communities, and recognition to local governments that demonstrate leadership in the area of clean energy.

NYSERDA has identified ten high-impact actions that local governments can take to save money, foster a vibrant economy, and improve the environment. By completing four of the ten high-impact actions, the applying jurisdiction shall earn the Clean Energy Community designation as well as a grant, up to \$250,000 per municipality with no local cost share, to support additional clean energy projects. To earn the Clean Energy Community designation, at least two of the high-impact actions must be completed after August 1, 2016.

Dedicated and knowledgeable local Clean Energy Coordinators are available to applicants to provide on-demand technical assistance, step-by-step guidance, case studies, model ordinances, project development support and other tools and resources. To access this support, please send an email to [cec@nyserda.ny.gov](mailto:cec@nyserda.ny.gov) or visit [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec).

The Clean Energy Communities Program is funded through the Cleaner, Greener Communities (CGC) Program with proceeds from the Regional Greenhouse Gas Initiative (RGGI) and the Clean Energy Fund (CEF).

## PROGRAM REQUIREMENTS

### Eligible Applicants

Municipalities (county, city, town, village, or Native American tribes and nations located within NYS) in New York State are eligible to apply for funds. Municipalities may form partnerships and submit a joint proposal, but one entity must be identified as the lead applicant on behalf of the group or consortium. A single municipality, or a group or consortium of municipalities, may choose to designate a non-municipal entity (private, non-profit, etc.) to be the lead applicant, but the lead applicant must provide letters of support from each municipality involved in the project. The lead applicant, if successful, will have a contractual obligation to NYSERDA and will act as the main point of contact for NYSERDA for all project-related matters. Municipalities who have previously received funding through Cleaner, Greener Communities PON 3106 Category 2 Flexible Funding Pilots are not eligible for funding under this solicitation. However, these municipalities are encouraged to apply for the Clean Energy Communities designation.

### Funding Levels

In each of New York State's Economic Development Regions (REDCs), funding levels are as follows:

Municipality Size by Population	Tier 1 Awards Number of Awards in each Economic Development Region and Amount		Tier 2 Awards Number of Awards in each Economic Development Region and Amount	
	Large (40,000+)	2	\$250,000	2
Small/Medium (0-39,999)	4	\$100,000	10	\$50,000

Grants are available to designated Clean Energy Communities on a first-come-first-served basis until the funds are exhausted. NYSERDA reserves the right to adjust funding levels and eligibility criteria as necessary to ensure the success of the program. Any changes to this solicitation will be posted on the Clean Energy Communities website at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec).

## **Application Process**

The application process includes two steps. The first step is to document completion of at least four high-impact actions to earn the Clean Energy Community designation. Please visit [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec) to submit action item documentation. In the second step, once you have been designated a Clean Energy Community, you are eligible to apply for a grant at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec).

NYSERDA will accept applications on a rolling basis until 4:00p.m. Eastern Time on September 30, 2019, until funds are exhausted, or until the solicitation is revised by NYSERDA, whichever comes first.

### **STEP 1: BECOME A CLEAN ENERGY COMMUNITY**

Demonstrate that you have completed at least four of the ten high-impact actions by submitting the requested documentation at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec). To earn the Clean Energy Community designation, at least two of the high-impact actions must be completed after August 1, 2016. Applicants are encouraged to submit documentation in stages as each high-impact action is completed.

### **STEP 2: ACCESS GRANT FUNDING**

Once the applying jurisdiction receives email confirmation that it has earned the Clean Energy Community designation, **the applicant has three months** to submit a proposal for grant funding at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec). Projects must be ready to commence within six months of NYSERDA award notification and should be completed within three years of contract execution.

## STEP 1: BECOME A CLEAN ENERGY COMMUNITY

### Complete Four of Ten High-Impact Actions

To become a Clean Energy Community, the applicant must demonstrate completion of at least four of the ten high-impact actions listed below by submitting the requested documentation using the online submittal form at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec). To earn the Clean Energy Community designation, at least two of the high-impact actions must be completed after August 1, 2016. More information on how to meet the requirements for each high-impact action, including what documentation is required, is provided on separate pages following the high level list below. Applicants are encouraged to submit documentation in stages as each high-impact action is completed.

For assistance implementing these actions including technical support, step-by-step guidance, case studies, model ordinances, RFPs, and other tools and resources, please visit [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec).

The High-Impact Actions include:

**1. Benchmarking**

Adopt a policy to report the energy use of municipal buildings on an annual basis. If the applicant is a large city, town, or village, it must also adopt legislation requiring the annual disclosure of energy use in large private buildings.

**2. Clean Energy Upgrades**

Achieve a 10 percent reduction in the greenhouse gas emissions from municipal buildings through energy efficiency upgrades and renewable energy.

**3. LED Street Lights**

Convert at least half of the municipal cobra-head-style street lights within the jurisdiction to energy-efficient LED technology.

**4. Clean Fleets**

Install an EV charging station and/or other alternative fuel infrastructure or deploy alternative fuel vehicles in the municipal fleet.

**5. Solarize**

Undertake a solarize campaign to increase the number of solar rooftops in the jurisdiction through group purchasing, locally-organized community education and outreach, and a limited time offer.

**6. Unified Solar Permit**

Pass legislation to adopt the New York State Unified Solar Permit to reduce costs and delays for solar projects in the jurisdiction.

**7. Energy Code Enforcement Training**

Train code compliance officers and other municipal officials in best practices in energy code enforcement through training, collaborative plans reviews, and joint onsite inspections of local construction projects.

**8. Climate Smart Communities Certification**

Earn Climate Smart Community (CSC) Certification at the certified, bronze, silver or gold levels through compliance with this robust, comprehensive rating system.

**9. Community Choice Aggregation**

Transition to a cleaner, more affordable energy supply by facilitating the aggregated purchase of electric supply for residential and small commercial customers within the jurisdiction.

**10. Energize NY Finance**

Allows property owners to pay back the cost of clean energy upgrades to their commercial or non-profit property through a special charge on their property tax bill.

# 1

## Benchmarking

Applicable to All Communities

### Rationale

Benchmarking is a policy that a local government adopts that requires the annual reporting of energy used in municipal buildings and, in large communities, also requires the annual disclosure of energy used in large private buildings. It's important because buildings account for over 60% of the energy used in New York State. Setting up a system for measuring and sharing data on building energy use over time will allow owners and occupants to compare energy usage against other buildings, and better identify opportunities to cut energy waste. Collecting, reporting, and sharing benchmarking data regularly also helps the public and government agencies make smarter investment decisions, reward efficiency, and drive widespread, continuous improvement.

### Requirements

Demonstrate completion of the Benchmarking action by submitting the following documentation:

#### **For small and medium size communities (0-39,999 population) and all county governments**

Submit a copy of adopted legislation that requires the applying jurisdiction to make available to the public on the internet on an annual basis, energy use information for each municipal building that is owned or occupied by the applying jurisdiction that is 1,000 square feet or larger. At a minimum, publicly disclosed energy use information shall include each building's energy use intensity (EUI), annual greenhouse gas emissions, and an energy performance score where available. The legislation must require the following:

#### **Benchmark**

- Create a EPA Portfolio Manager Account
- Gather basic information required by Portfolio Manager and set up property profile(s)
- Obtain monthly, whole building energy use data for all fuel types including, but not limited to, electricity, natural gas, fuel oil, chilled water, steam, and diesel
- Enter property uses and details into profile(s)
- Enter energy use data for all fuel types

#### **Report**

- Generate and review the building's report in Portfolio Manager
- Submit the report to the municipality through Portfolio Manager
- Make available to the public on the internet annual summary statistics for each covered property including Energy Use Intensity (EUI), annual greenhouse gas emissions, an energy performance score where available, and other descriptive information as required by EPA Portfolio Manager

#### **For large-size cities, towns, and villages (40,000+ population)**

Submit a copy of adopted legislation as described for Small communities above, but also include a requirement for the owners of commercial and multifamily buildings 25,000 square feet or larger to also comply.

### Recommendations

- Use benchmarking data to streamline outreach efforts to building owners about specific efficiency programs

### Resources

- Dedicated and knowledgeable local Clean Energy Coordinators are available to assist municipal staff as they implement this action. To access this support, please send an email to [cec@nyserda.ny.gov](mailto:cec@nyserda.ny.gov).
- A toolkit of resources is available at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec).

**Rationale**

Clean Energy Upgrades are energy efficiency and renewable energy projects in municipal buildings and facilities. By replacing outdated equipment with new smart and efficient technology, municipalities are well positioned to save energy and money over time. State programs can help get these projects accomplished with no or low up-front cost while generating net savings to your bottom line. Everything from municipal headquarters to public works facilities, fire stations, police precincts, parks facilities, and even water treatment plants are good candidates for upgrades. Perhaps most important, Clean Energy Upgrades show leadership and contribute to building healthier, more vibrant communities.

**Requirements**

Demonstrate completion of the Clean Energy Upgrades action by submitting the following documentation:

- Submit an EPA Portfolio Manager benchmarking report including energy use information for each municipal building that is owned or occupied by the applying jurisdiction that is 1,000 square feet or larger. The report shall include each building's energy use intensity (EUI), annual greenhouse gas emissions, and an energy performance score where available. The report should cover at least 12 months of energy use of the portfolio from the year prior to the date of the upgrades as the baseline.
- Submit succinct and relevant documentation that demonstrates a minimum 10 percent reduction in greenhouse gas emissions against the baseline. The documentation may include an ASHRAE Energy Audit or an approved pre-and-post engineering study that identifies implemented Energy Conservation Measures.
- Submit a complete Clean Energy Upgrades Calculator, available in the Clean Energy Upgrades toolkit at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec). Please be sure to complete the most recent version. Information requested will include, but is not limited to, specific equipment or infrastructure upgrades and estimated energy savings of implemented measures.
- Up to half of the required reduction in greenhouse gas emissions may be achieved with renewable energy sources including solar, wind, geothermal, premium-efficiency wood pellets, anaerobic digester gas, or renewable energy attributes or credits certified by Green-e.
- The upgrades must have been substantially completed after January 1, 2014.

**Recommendations**

- The New York Power Authority (NYPA) provides turn-key energy efficiency upgrades to municipal buildings of qualifying jurisdictions. Working closely with your team, NYPA and their contractors handle every aspect of design and construction. NYPA offers low-interest rate financing and projects can typically be accomplished with no or low up-front cost while generating net savings to your bottom line.
- Energy performance contracts can also be used to procure energy savings and facility improvements with no or low up-front capital costs.
- Consult your utility to identify incentives that may be available for energy efficiency improvements.

**Resources**

- Dedicated and knowledgeable local Clean Energy Coordinators are available to assist municipal staff as they implement this action. To access this support, please send an email to [cec@nyserda.ny.gov](mailto:cec@nyserda.ny.gov).
- A toolkit of resources is available at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec).

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## LED Street Lights

Applicable to All Communities

### Rationale

By replacing conventional street lights with energy efficient LED technology, communities can reduce street light energy use by as much as 65 percent, generating cost savings and emission reductions. In addition, street light projects can contribute to creating a well-lit, safer, and more attractive community. LED street lights last up to 100,000 hours and require much less maintenance than conventional street lights. The opportunity to incorporate smart, connected technology such as dimming functions, enhanced law enforcement response, and parking management offers a world of almost unlimited possibilities. Even those communities that do not own their own streetlights have options for converting street lights in their jurisdiction to LED.

### Requirements

Demonstrate completion of the LED Street Lights action by submitting the following documentation:

- Submit documentation showing that a minimum of 50 percent of all municipal and utility-owned cobra-head-style street lights have been converted to LED within the geographic jurisdiction. This documentation should include the number of street lights converted, including the proportion of converted cobra-head street lights to total cobra-head street lights.
- A minimum of 10 fixtures must be converted to LED to qualify.

### Recommendations

- Consult with NYSERDA regarding which LED conversion and technology options make the most sense to meet your economic and operational goals.
- Check with your utility regarding options for converting street lights to LED.
- Municipalities that do not own their own street lights may pursue a negotiated agreement with their utility for transfer of ownership of the complete system of street lights and supporting infrastructure.
- Energy performance contracts may be used to upgrade street light systems with no or low up-front capital costs.
- The New York Power Authority (NYPA) offers a program to convert street lights to LEDs using low-interest rate financing.

### Resources

- Dedicated and knowledgeable local Clean Energy Coordinators are available to assist municipal staff as they implement this action. To access this support, please send an email to [cec@nyserda.ny.gov](mailto:cec@nyserda.ny.gov).
- A toolkit of resources is available at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec).

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## Clean Fleets

Applicable to All Communities

### Rationale

Clean Fleets is an effort by local governments to invest in alternative fuel vehicles and infrastructure while increasing opportunities for constituents to access electric vehicle charging stations. Compared to gasoline-powered cars, Electric Vehicles (EVs) are more energy efficient and cost about 50 to 70% less to operate per mile. Clean vehicles reduce greenhouse gas emissions and pollutants that cause smog and acid rain. Charging stations are being installed at a wide variety of locations across New York State. In communities large and small, urban and rural, there are sites well-suited to hosting charging stations.

### Requirements

Demonstrate completion of the Clean Fleets action by submitting the following documentation:

- Submit documentation to demonstrate municipal provision of at least one electric vehicle charging station or compressed natural gas (CNG) fueling station. Electric vehicle charging stations must consist of either two (2) or more Level 2 charging ports or one (1) or more DC fast charge ports. Equipment may have been installed at any time prior to the application date, but must be active at the time of submittal. The municipality or a state or local government entity located wholly within the municipality (i.e. a parking authority) must own or lease the equipment. Alternative fuel supply infrastructure may be used for government operations or public use.

OR

- Submit a copy of documentation to demonstrate municipal deployment of at least one alternative fuel vehicle in the municipality's fleet. Qualifying alternative fuel vehicles include plug-in electric vehicles, CNG vehicles, and hydrogen fuel cell vehicles. Vehicles may be light-duty, medium duty, or heavy-duty vehicles. Vehicles may have been purchased or leased at any time prior to the application date, but must be active at the time of submittal.

### Recommendations

- Applicants should gauge local and regional demand for alternative fueling stations and consider the most appropriate fuel type for the area.
- The first step in supporting alternative fuel transportation infrastructure is assessing the demand for and feasibility of an alternative fueling station.

### Resources

- Dedicated and knowledgeable local Clean Energy Coordinators are available to assist municipal staff as they implement this action. To access this support, please send an email to [cec@nyserda.ny.gov](mailto:cec@nyserda.ny.gov).
- A toolkit of resources is available at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec).

**Rationale**

Solarize is a short term (approximately 6-9 months, including planning and outreach), local effort that brings together groups of potential solar customers through widespread outreach and education. This model helps customers choose a solar installation company that is offering competitive, transparent pricing. Historically, Solarize campaigns lower the cost of solar 10 to 20 percent. After a thorough pre-qualification process, a designated solar installer(s) will be named for the campaign. Residents and businesses who sign up for solar installations by a specific deadline will be able to take advantage of group rates below market prices. The more customers who sign up, the lower the price will be for everyone. Well-organized Solarize campaigns are a great way to support solar while being active and visible in your community.

**Requirements**

Demonstrate completion of the Solarize action as follows:

- Submit documentation to demonstrate direct municipal participation in previous rounds of NYSERDA Community Solar NY. To earn credit for this action, the Solarize campaign must have been launched after January 1, 2014. Documentation may include, but is not limited to, a letter of commitment submitted with the Community Solar NY application, a press release, flyers from an event in the jurisdiction, a screenshot of the solarize website, newspaper article, or adopted resolution.
- Submit a list of at least ten (10) solar customers that resulted from the solarize campaign within your jurisdiction including, but not limited to, the location, installer, date contract was signed, type of financing, and date contract was canceled if applicable.

OR

- For new Solarize campaigns, before you start the planning process, please send an email to [cec@nyserderda.ny.gov](mailto:cec@nyserderda.ny.gov) to ensure all NYSERDA requirements are met to earn credit for this action, including those outlined in the Solarize Scoping Document Terms and Conditions.
- Submit a completed Solarize Campaign Scoping Document, available in the Solarize toolkit at [www.nyserderda.ny.gov/cec](http://www.nyserderda.ny.gov/cec). Please be sure to complete the most recent version. The scoping document will detail the campaign's goals and objectives, roles and responsibilities of project partners, deliverables, and milestones. The applicant shall sign off on the Terms and Conditions included with the Scoping Document to earn credit for this action.
- Submit a list of at least ten (10) solar customers that resulted from the solarize campaign within your jurisdiction including, but not limited to, the location, installer, date contract was signed, type of financing, and date contract was canceled if applicable.

**Recommendations**

- Team up with individuals, organizations, and nearby jurisdictions that are willing and able to conduct community-wide education and outreach around solar energy.
- Consider incorporating Shared Solar projects into your campaign. NYSERDA's Shared Renewables initiative (also referred to as community distributed generation) provides opportunities for renters, homeowners, low-income residents, schools, and businesses to join together to set up shared solar, wind, and other renewable energy projects.
- Adopt a local resolution in support of the Solarize campaign.

**Resources**

- Dedicated and knowledgeable local Clean Energy Coordinators are available to assist municipal staff as they implement this action. To access this support, please send an email to [cec@nyserderda.ny.gov](mailto:cec@nyserderda.ny.gov).
- A toolkit of resources is available at [www.nyserderda.ny.gov/cec](http://www.nyserderda.ny.gov/cec).

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## Unified Solar Permit

Applicable to All Communities that Issue Building Permits

### Rationale

The Unified Solar Permit is a standardized permit application designed to streamline the approval process for installing solar in the community. The standardized permit is expected to cut costs by creating a uniform permitting process in municipalities across the State. As municipalities adopt the permit, installers and municipalities alike will save time and resources permitting solar electric systems. An expedited process will allow these standard systems to pass quickly through the jurisdictional review process, freeing up time for all involved parties, decreasing the overall installation time for customers, and allowing non-standard systems the necessary time for detailed review.

### Requirements

Demonstrate completion of the Unified Solar Permit action by submitting the following documentation:

- Submit a copy of the notification of eligibility email from NYSERDA indicating the jurisdiction is eligible to receive the Streamlined Permitting PV incentive (formerly known as Cleaner, Greener Communities Category 1).
- This can be attained by meeting program participation requirements for Streamlined PV Permitting as detailed in the Streamlined Permitting funding opportunity. Municipalities that adopt the Unified Solar Permit are eligible for up to \$5,000, depending on population, through the Streamlined Permitting PV incentive to implement the new procedures. For more information, please visit the Unified Solar Permit toolkit at [www.nyserderda.ny.gov/cec](http://www.nyserderda.ny.gov/cec).

OR

- Submit a copy of NYSERDA's official list of communities that have adopted the Unified Solar Permit showing that the applying jurisdiction is listed. This list can be accessed in the Unified Solar Permit toolkit at [www.nyserderda.ny.gov/cec](http://www.nyserderda.ny.gov/cec).

### Recommendations

- Adopt the permit as a way to reduce the amount of time both applicants and the building department spend applying for, reviewing, and issuing permits.
- Consider a flat fee that fairly reflects the time needed for municipal staff to review and issue a permit.
- Post information about the permit application process online including timelines for permit application review and issuance.

### Resources

- Dedicated and knowledgeable local Clean Energy Coordinators are available to assist municipal staff as they implement this action. To access this support, please send an email to [cec@nyserderda.ny.gov](mailto:cec@nyserderda.ny.gov).
- A toolkit of resources is available at [www.nyserderda.ny.gov/cec](http://www.nyserderda.ny.gov/cec).

## Energy Code Enforcement Training

Applicable to All Communities that Issue Building Permits

### Rationale

The Energy Code is a minimum building standard for energy efficiency, applicable to new construction and renovation of commercial and residential buildings in New York State. The Energy Code is a complex document and one of nine building codes in New York State, making implementation and enforcement complex and time consuming. Since buildings represent roughly 60% of New York's total energy consumption, there is significant opportunity for energy savings through improved Energy Code compliance. This training focuses on what code enforcement officials need to know about the Energy Code in the context of its practical application on active construction projects.

### Requirements

Demonstrate completion of the Energy Code Enforcement Training action as follows:

- Enroll in the Clean Energy Communities Energy Code Enforcement Training Module by sending an email to [cec@nyserderda.ny.gov](mailto:cec@nyserderda.ny.gov).
- Take part in a preliminary meeting between the NYSERDA training provider, the local code enforcement officer and at least two other municipal officials followed by collaborative plans review and joint onsite inspection of two (2) building projects in the municipality. The entire building department staff is encouraged to participate.
- Participate in a presentation by the NYSERDA Training Provider summarizing results of the module, including key considerations and guidance for moving forward. Once complete, you will receive a notification of completion email from the NYSERDA Training Provider.
- Submit a copy of this notification of completion email to earn credit for this action.

### Recommendations

Follow up the training module by hosting or attending a NYSERDA Energy Code Essentials training course (in person or online). To register for a course, please visit [www.nyserdacodetraining.com](http://www.nyserdacodetraining.com)

### Resources

- Dedicated and knowledgeable local Clean Energy Coordinators are available to assist municipal staff as they implement this action. To access this support, please send an email to [cec@nyserderda.ny.gov](mailto:cec@nyserderda.ny.gov).
- A toolkit of resources is available at [www.nyserderda.ny.gov/cec](http://www.nyserderda.ny.gov/cec).

## Climate Smart Communities Certification

Applicable to All Communities

### Rationale

The Climate Smart Communities Certification (CSC) program provides local governments with a robust framework to guide their climate action and enables high-performing communities to achieve recognition for their leadership. Designed around the CSC pledge elements, the certification program recognizes communities for their accomplishments through a rating system leading to four levels of award: Certified, Bronze, Silver and Gold.

### Requirements

Demonstrate completion of the Climate Smart Communities Certification action by submitting the following documentation:

- Submit documentation that demonstrates your community has been listed as a Certified Climate Smart Community at the certified, bronze, silver or gold level on the New York State Department of Environmental Conservation (NYSDEC) website.

### Recommendations

- For more information, please visit the DEC website at <http://www.dec.ny.gov/energy/56876.html>. If you are interested in Climate Smart Communities, please contact the DEC Office of Climate Change at (518) 402-8448 or by email at [climatechange@dec.ny.gov](mailto:climatechange@dec.ny.gov).

### Resources

- Dedicated and knowledgeable local Clean Energy Coordinators are available to assist municipal staff as they implement this action. To access this support, please send an email to [cec@nyscrda.ny.gov](mailto:cec@nyscrda.ny.gov).
- A toolkit of resources is available at [www.nyscrda.ny.gov/cec](http://www.nyscrda.ny.gov/cec).

**Rationale**

Community Choice Aggregation (CCA) is a municipal energy procurement model that replaces the utility as the default supplier of electricity for virtually all homes and small businesses within your jurisdiction. CCA puts control of choosing energy supply in local hands. By pooling demand, communities build the clout necessary to negotiate lower rates with private suppliers, and are able to choose cleaner energy. A CCA can allow whole communities to participate in the clean energy economy by ensuring that a greater percentage of electricity is coming from renewable sources. CCA has the potential to simultaneously deliver lower monthly bills and cleaner energy for your constituents.

**Requirements**

Demonstrate completion of the Community Choice Aggregation action by submitting the following documentation:

- Submit a copy of the adopted legislation authorizing the municipality's participation in an opt-out CCA program.
- Submit a copy of an executed electric service agreement between the applying jurisdiction and an Energy Services Company (ESCO) to supply electricity to participating customers on an opt-out basis that is a 100% renewable clean energy product mix, to be produced in North America and certified by Green-e.

**Recommendations**

- Consider teaming up with other nearby municipalities and allowing a local or regional group to administer the CCA program.

**Resources**

- Dedicated and knowledgeable local Clean Energy Coordinators are available to assist municipal staff as they implement this action. To access this support, please send an email to [cec@nyserda.ny.gov](mailto:cec@nyserda.ny.gov).
- A toolkit of resources is available at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec).

**Rationale**

Energize NY Finance, also known as Property Assessed Clean Energy (PACE) Financing, is a program adopted by an eligible local government that allows property owners to pay back the cost of clean energy upgrades to their commercial or non-profit property through a special charge on their property tax bill. Energize NY Finance enables eligible commercially-owned buildings in New York State to secure funds to tackle significant energy upgrades and renewable energy projects. This financing structure is available through the Energy Improvement Corporation (EIC) for projects that aim to install permanent improvements that reduce energy costs in existing buildings. EIC is a local development corporation and a New York State nonprofit established specifically to assist municipalities and property owners achieve long-term energy savings and/or generate renewable power for use on site.

**Requirements**

Demonstrate completion of the Energize NY Finance action by submitting the following documentation:

- Submit a copy of the adopted legislation authorizing the municipality to establish an Energize NY Finance Program.
- Submit a copy of an executed Energy Improvement Corporation (EIC) Municipal Agreement.
- Submit a copy of a letter confirming EIC membership.

**Recommendations**

- If you are interested in establishing an Energize NY Finance program, please contact the Energy Improvement Corporation at (914) 302-7300 or by email at [info@energizeny.org](mailto:info@energizeny.org).
- If your municipality has been allocated Qualified Energy Conservation Bonds (QECBs), consider using them in support of your Energize NY Finance Program.

**Resources**

- Dedicated and knowledgeable local Clean Energy Coordinators are available to assist municipal staff as they implement this action. To access this support, please send an email to [cec@nyscrda.ny.gov](mailto:cec@nyscrda.ny.gov).
- A toolkit of resources is available at [www.nyscrda.ny.gov/cec](http://www.nyscrda.ny.gov/cec).

## STEP 2: ACCESS GRANT FUNDING

Applicants must earn the Clean Energy Community designation to be eligible for grant funding under this program. Once the applying jurisdiction receives email confirmation that it has earned the Clean Energy Community designation, **the applicant has three months** to submit a proposal for grant funding at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec). Projects must be ready to commence within three months of award notification and should be complete within three years of contract execution. At NYSEDA's discretion, one extension may be granted.

No local cost share is required and up to 25% of the grant funds may be available as an advanced payment upon contract execution.

### Eligible Project Types

Applicants must propose a project(s) or initiative(s) for funding. Good projects will score highly when evaluated according to the criteria outlined in the section of this document entitled "Selection Criteria."

### Ineligible Project Types

Projects that do not meet the Selection Criteria outlined in the section of this document entitled "Selection Criteria" are not eligible.

### Proposal Requirements

Projects will be scored and awarded on a rolling basis. No project or applicant is guaranteed funding. Applications will be reviewed as outlined below.

- The grant application is available at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec).
- Required attachments, described in more detail on the website, include the following:
  - Project Subcontractors
  - Signed Letter of Commitment(s)
  - Statement of Work (SOW)
  - Contract Pricing Proposal Form (CPPF)
  - Terms and Conditions
  - Disclosure of Prior Findings of Non-Responsibility form
- NYSEDA may reach out to applicants via email with specific follow-up questions after reviewing proposals. Should NYSEDA request additional information, applicants will have five business days to respond in order for that information to be considered in the evaluation process.
- Applicants must earn a minimum of 50% of available selection criteria points to be considered eligible.
- Review meetings will be held periodically, on at least a quarterly basis, depending on the volume of applications.
- NYSEDA may condition awards upon applicant acceptance of requests for minor modifications to project scopes to ensure that NYSEDA program goals are met. NYSEDA reserves the right to request additional information.
- NYSEDA reserves the right to reject proposals that would otherwise be eligible for other existing NYSEDA or other New York State funding opportunities.
- NYSEDA, in order to avoid double-funding projects or measures within projects, may adjust awarded funding amounts at any time based on new information regarding other project funding secured.
- NYSEDA reserves the right to adjust award amounts at its sole discretion.
- Applicants must agree, or provide written exceptions, to NYSEDA's standard contracting Terms and Conditions, which can be found at [www.nyserda.ny.gov/cec](http://www.nyserda.ny.gov/cec).

## Selection Criteria

Applications will be evaluated based on the following criteria, with a total number of possible points allocated to each. Applicants must earn a minimum of 50% of the selection criteria points to be considered eligible.

1. To what extent does the proposer present a thorough, sound, detailed approach for accomplishing the objectives of their proposal within a reasonable timeframe? (25 possible points)
2. To what extent does the project/initiative have a positive direct impact on energy use and greenhouse gas emissions? (15 possible points)
3. To what extent does the project/initiative have other sustainability benefits? (15 possible points)
4. To what extent will efforts be made to collaborate with other municipalities and to transfer knowledge to the broader region and state? (15 possible points)
5. To what extent does the project/initiative involve an innovative and/or replicable approach? (15 possible points)
6. To what extent will the project/initiative leverage public and private dollars and/or generate economic development benefits (i.e. temporary or permanent job creation and investment)? (15 possible points)

## Project Benefits Metrics Report

It is important to begin considering project benefits at the application stage. Anticipated benefits associated with Clean Energy Communities projects should be measured. Each successful applicant shall, throughout the course of the contract with NYSERDA, collect the required metrics described in the "Project Benefits Metrics Report" section of the Statement of Work (SOW), which can be found on the [www.nyserdera.ny.gov/cec](http://www.nyserdera.ny.gov/cec) webpage.

## GENERAL CONDITIONS

**Proprietary Information:** Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://www.nyserdera.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

## Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k

NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

**Tax Law Section 5-a** – NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)). Prior

to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. See, ST-220-CA (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

**Omnibus Procurement Act of 1992** - It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises, as bidders, subcontractors, and suppliers on its procurement Agreements.

Information on the availability of New York subcontractors and suppliers is available from:

Empire State Development  
Division For Small Business  
625 Broadway  
Albany, NY 12207

A directory of certified minority- and women-owned business enterprises is available from:

Empire State Development  
Minority and Women's Business Development Division  
625 Broadway  
Albany, NY 12207

### **Contract Award**

NYSERDA may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the submitted proposal. Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

### **Limitation**

This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest. NYSERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Agreement.

### **Disclosure Requirement**

The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSERDA after the award of a contract, NYSERDA may exercise its stop-work right pending further investigation, or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

**Disclaimer**

All projects must address the qualifications and eligibility requirements listed in this Guidance Document. NYSERDA reserves the right to issue revisions to this solicitation at any time. Any revisions will be announced and posted on NYSERDA's website at [www.nyserderda.ny.gov](http://www.nyserderda.ny.gov). High-Impact Actions may be adjusted, phased out, or newly developed based on a variety of factors including, but not limited to, new opportunities to help communities drive local energy action, level of uptake in communities relative to other actions, changes in the regulatory environment, consistency with NYSERDA and other New York State agency program offerings, and availability of external assistance, such as federal programs, tools, and resources.

**Additional Resources**

All program resources and guidelines can be found on the Clean Energy Communities webpage at the following location: [www.nyserderda.ny.gov/cec](http://www.nyserderda.ny.gov/cec). All other questions about this solicitation should be submitted to NYSERDA, in writing, at [cec@nyserderda.ny.gov](mailto:cec@nyserderda.ny.gov). Due to the large number of inquiries expected, NYSERDA may not be able to return phone calls.



**ATTACHMENT A  
PON3298 PROPOSAL CHECKLIST (MANDATORY)**

Proposal Title		Due Date	
<b>Primary Contact</b> (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
<input type="checkbox"/> By checking this box I certify that the TIN number submitted is <b>not</b> a social security number. If your tax id number is your social security number please leave information blank and contact NYSERDA.		<b>Federal Tax Identification Number:</b>	
Address	City	State or Province	Zip
<b>Secondary Contact</b>		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip
<b>THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:</b>			
Do you accept all Terms & Conditions in the Sample Agreement? (If no, explain on separate page) <b>(NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.)</b>			
			___ Yes ___ No
Do you wish to have any information submitted in your proposal package treated as proprietary or confidential trade secret information? If yes, you must identify and label on each applicable page "confidential" or "proprietary" (For additional information regarding this, please refer to the section entitled "Proprietary Information" in the solicitation document).			
			___ Yes ___ No
Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg.)			
			___ Yes ___ No
Are you a Minority or Women-Owned Business Enterprise?			
			___ Yes ___ No
Does your proposal contain Minority or Women-Owned Business enterprises as subcontractor?			
			___ Yes ___ No
Are you a certified Service-Disabled Veteran-Owned Business Enterprise?			
			___ Yes ___ No
Does your proposal contain certified Service-Disabled Veteran-Owned Business Enterprises as Subcontractors?			
			___ Yes ___ No
Are you submitting the required number of copies? (See proposal instructions.)			
			___ Yes ___ No
Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? (if yes, explain on separate page)			
			___ Yes ___ No
<b>ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?</b>			
Provide list of items consistent with Proposal Requirements section of solicitation:		Indictment/Conviction of Felony _____(if applicable) NYSERDA Contracts Awarded _____(if applicable) Prior and/or Competing Proposals _____(if applicable) Exceptions to Terms & Conditions _____(if applicable) Completed and Signed Contract Pricing Proposal Form(s) _____. Disclosure of Prior Findings of Non-responsibility Form _____ .	
<b>AUTHORIZED SIGNATURE &amp; CERTIFICATION</b>			
I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, that I have read and reviewed the Standard Terms and Conditions set forth in the attached Sample Agreement and that I accept all terms unless otherwise noted herein, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I, the undersigned, am authorized to commit my organization to this proposal.			
Signature		Name	
Title		Organization	
Phone			

**NOTE:** This completed form **MUST** be signed and attached to the front of all copies of your proposal.

## Disclosure of Prior Findings of Non-responsibility Form

**(Mandatory)**

Name of Individual or Entity seeking to enter the procurement contract:		
Address:		
Date:		
Solicitation or Agreement Number: PON2951 (Cleaner Greener Communities Phase II Implementation Funding, Round 2)		
Name and Title of Person Submitting this Form:		
Has any Governmental Entity made a finding of non-responsibility regarding the Individual or Entity seeking to enter the Procurement Contract in the last four years? (Please indicate with an "X")		Yes
		No
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law? (Please indicate with an "X")		Yes
		No
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please indicate with an "X")		Yes
		No
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.		
Government Agency or Authority:		
Date of Finding of Non-responsibility:		
Basis of Finding of Non-responsibility: (Add additional pages as necessary)		

Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information? (Please indicate with an "X")		Yes
		No
If you answered yes, please provide details below.		
Government Agency or Authority:		
Date of Termination or Withholding of Contract:		

Basis of Termination or Withholding: (Add additional pages as necessary)

Offerer certifies that all information provided to NYSERDA with respect to State Finance Law §139-k is complete, true, and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_ Title: \_\_\_\_\_



New York State Energy Research and Development Authority Contract Pricing Proposal Form			Solicitation/Contract No.	Page	
Contractor:			Name of Proposed Project:		
Address:					
Location (where work is to be performed):			NYSERDA funding:		
			Total Project Cost:		
Cost Element			Total Project Cost	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding
1. Direct Materials					
a. Purchased Parts					
b. Other					
Total Direct Materials					
2. Materials Overhead			Rate:		
3. Direct Labor (specify names/titles)			Hours	Rate/hr	
Total Direct Labor					
4. Labor Overhead			Rate %	\$ Base	
Total Labor Overhead					
5. Outside Special Testing					
6. Equipment					
7. Travel					
8. Other Direct Costs					
9. Subcontractors/Consultants					
Total Subcontractors/Consultants					
10. General & Administrative Expense			Rate %	Element(s)	
11. Fee or Profit (If allowable)			Rate:		
12. Total Estimated Project Cost					

This proposal reflects our best estimates as of this date, in accordance with the instructions to proposers.		
Typed Name and Title:	Signature:	Date:
Has any executive agency of the U.S. government performed any review of your records in connection with any prime contract or subcontract within the past twelve months?    ___ Yes        ___ No If yes, identify:		

Supporting Schedule - Contract Pricing Proposal Form		
Element No.	Item Description	Amount

**INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE**

Your cost proposal may be the basis of contract negotiation; it should be specific and complete in every detail. Supporting schedules (as described in Section B) providing the basis for your estimates must be provided.

**A. GENERAL**

The schedule must be submitted on NYSERDA's Contract Pricing Proposal Form.

**B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL**

(Title each supporting schedule and cross-reference it to the item number on the Contract Pricing Proposal Form)

**1a. DIRECT MATERIALS - PURCHASED PARTS**

Provide the following information for each proposed item with an estimated unit cost in excess of \$15,000.

- o Description of item
- o Proposed vendor
- o Quantity needed
- o Unit cost
- o Basis for cost (i.e., catalog, prior purchase, quote, etc.)
- o Total cost
- o Evidence of a competitive selection process in accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement.

**1b. OTHER DIRECT MATERIALS**

In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, for all items in excess of \$5,000, provide whatever information would be necessary to understand what is being obtained, how it is being obtained, what it will cost and how the estimated cost was determined with justification for all items.

**2. MATERIALS OVERHEAD (also applicable to other Indirect Rate categories: 4. LABOR OVERHEAD and 10. G&A EXPENSE)**

- o If Government-approved indirect rates are proposed, then supply a copy of an appropriate Government document verifying those rates.
- o If Government-approved rates are not proposed, supply the following, unless previously provided, for the years comprising the proposed period of contract performance.
  - o A description (chart or other) of the organization of the indirect cost center.
  - o The budget of indirect costs, by account, for each proposed indirect expense rate.
  - o The budget for the base, for each proposed rate, (direct labor dollars, hours, costs, etc.) itemized as to contract hours or costs, research and development hours of costs, and any other direct base effort.
  - o Actual incurred rates for the prior three years, including actual base and pool amounts.

3. DIRECT LABOR
  - a. Commercial Enterprises
    - (1) Attach supporting schedules showing:
      - o Each category or type of labor being estimated
      - o Applicable labor rates per hour (straight-time)
    - (2) Explain the method used for computing the rates (i.e., actual of an individual, actual average of a category or other grouping, etc.) Also identify any proposed labor escalation and the bases for it.
  - b. Educational Institutions  
Provide the following for each calendar year of the contract:
    - (1) For individuals not on an "actual hours worked" basis:
      - o individual's name
      - o annual salary and the period for which the salary is applicable (preferably in weeks)
      - o the proportionate time to be charged to this effort.
    - (2) For individuals who maintain time records as the basis for charging costs, supply the detail as requested in Instructions 3(a)(1)
4. LABOR OVERHEAD (Same as Instructions for 2. MATERIALS OVERHEAD)
5. OUTSIDE SPECIAL TESTING
  - a. Describe the effort.
  - b. Provide the units of time (hours, days, weeks), cost rates, and the vendor.
  - c. In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, provide the basis for selection of the vendor. Identify M/WBE vendors contacted for quotes and if none, explain why. Explain and justify the basis for any non-competitive selection.
6. EQUIPMENT  
Capability to perform the work with existing facilities and equipment is assumed. It is NYSERDA's policy not to compensate for general purpose facilities or equipment. If some special purpose items are needed solely for this contract and are not available by other means (contractor assets, lease, etc.), then provide the following information for each item of required equipment.
  - o vendor
  - o model number
  - o quantity
  - o competitive selection process
  - o unit cost and source of cost/price (i.e., quote, catalog, purchase history)
  - o description of the use or application (NYSERDA dedicated, contract dedicated, other)
7. TRAVEL
  - a. NYSERDA will accept as a direct charge only that travel required to perform the statement of work.
  - b. Attach a schedule indicating the need for the proposed travel, the estimated number of person-trips required, destinations, mode and cost of transportation, and number of days subsistence per trip for each destination.
  - c. Identify and support any other special transportation costs required in the performance of this project.
8. OTHER DIRECT COSTS
  - a. Identify the type of cost (i.e. postage, telephone, publications, graphics, etc.)
  - b. Provide cost details for the amounts estimated (hours or units, rates, etc.)
  - c. If any internal service center rates are applied, provide details similar to that required in Instruction #B.
  - d. For computer costs identify the make, model and type of computer, hours of service and appropriate rates, and whether the machine is company owned or leased.
9. SUBCONTRACTORS/CONSULTANTS
  - a. Explain the specific technical area in which such service is to be used and identify the contemplated consultants.
  - b. State the number of days and the hours per day of such service estimated to be required and the consultant's

quoted rate per day. Document when/where the consultant has received the proposed rate in performing similar services for others.

10. GENERAL & ADMINISTRATIVE (G&A) EXPENSE (Same as instructions for 2. MATERIALS OVERHEAD)

11. FEE OR PROFIT

List the rate proposed for profit. No fee or profit is allowed under product development, demonstration or other certain cost-sharing projects.

**Attachment D**  
**Exhibit A – Statement of Work**  
**Clean Energy Communities Program**  
[Insert NYSERDA Project Title]  
CEC #####/Contract #####

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**Project Background**

[Insert Project Background here]

**Definitions**

**{CONTRACTOR TEAM DEFINITION – SELECT MOST APPROPRIATE OPTION}**

*{Option 1 - If no subcontractors are identified, language should read as follows:}*

**Contractor Team:** At the beginning of the Project Period, the Contractor Team for this Agreement shall consist of the Contractor, and any Subcontractors to be identified and selected in accordance with Article V of this Agreement. Any Subcontractors selected for work performed under the Agreement shall be promptly communicated to the NYSERDA Project Manager. The Contractor shall have the sole responsibility for satisfactory completion of all Tasks and Deliverables outlined in this Agreement.

*{Option 2 - If subcontractors are identified, language should read as follows:}*

**Contractor Team:** At the beginning of the Project Period, the Contractor Team for this Agreement shall consist of the Contractor and its Subcontractors [insert Subcontractors here]. Any additional Subcontractors shall be identified and selected in accordance with Article V of this Agreement and shall be promptly communicated to the NYSERDA Project Manager. The Contractor shall have the sole responsibility for satisfactory completion of all Tasks and Deliverables outlined in this Agreement.

**NYSERDA Project Manager:** NYSERDA shall assign a staff member as the NYSERDA Project Manager, designated to oversee and serve as the main point of contact for the Contractor. The NYSERDA Project Manager shall review Deliverables and provide direction to the Contractor in a streamlined fashion. The NYSERDA Project Manager shall be responsible for approving Deliverables and ensuring compliance with this Statement of Work.

**Cost Share:** In kind or financial contributions by the Contractor, excluding grants or incentives from NYSERDA and other New York State agencies.

**Performance Metrics:** The standards of comparison, determined and documented as outlined in Exhibit F, NYSERDA shall use to: assess activities in the project, capture the extent of benefits delivered, and gauge performance of the project and of the CEC Program.

**Deliverable Review Process**

The Contractor shall submit all Deliverables outlined in this Agreement to the NYSERDA Project Manager once a Task is completed. The Contractor shall submit all Deliverables in Microsoft Word and PDF format (or other format as identified in the Tasks below). Within fifteen (15) business days of receipt of each Deliverable, the NYSERDA Project Manager shall provide comments to the Contractor or, if the Deliverable is acceptable, the NYSERDA Project Manager shall provide final approval. The Contractor shall prepare revisions to the Deliverable reflecting the NYSERDA Project Manager's comments, and resubmit the revised Deliverable in Microsoft Word and PDF format (or other format as identified below), within fifteen (15) business days after receipt of these comments.

The NYSERDA Project Manager may provide additional comments and requests for information following receipt of the Contractor’s revisions. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall specify the additional amount of review time necessary up to fifteen (15) business days. All Deliverables shall not be considered final unless approved by NYSERDA in writing to the Contractor.

### **Tasks**

The total NYSERDA award amount for all Tasks shall not exceed \$[insert total NYSERDA contribution]. The Contractor shall be required to provide a cost share of \$[insert total Contractor cost share]. The total project cost is \$[insert total project cost]. Any modifications to this amount shall be by mutual agreement. All cost overruns shall be the sole responsibility of the Contractor.

Regardless of any subcontracting arrangements, the Contractor is solely responsible for all Tasks in this Statement of Work. The Contractor shall conduct all work as outlined in the following Tasks:

#### **Task 1: Contract Management and Reporting**

The Contractor shall be responsible for overall Contract management and coordination of all Tasks in this Agreement. Contract management activities shall include, but not be limited to, the following Tasks:

##### **Task 1.1 Project Execution Plan\***

To ensure the successful development of the Deliverables, the Contractor shall submit a Project Execution Plan (“PEP”), limited to no more than 10 pages and in a template provided by NYSERDA within four (4) weeks of the execution of this agreement.

The PEP shall include the following components:

- Partner Organizations or Municipalities– A list of all partner organizations, including both a primary and secondary contact person for each organization, with a breakdown of any financial or staff assistance that each organization or municipality has committed to provide in support of the project;
- Contractor Team Members - An organizational chart of the Contractor Team and list of contributing partner organizations by deliverable;
- Subcontractors- A list of all entities that will contribute, either directly or indirectly, to completion of the Project, with a description of their scope of work, deliverables with which they will be involved, and a budget for each member of the Contractor Team performing work specifically outlined in this Agreement.
- Work Plan – A Work Plan that more narrowly define the Tasks and deliverables outlined in this agreement, including detailed task descriptions. The Work Plan shall include approximate dates for when key deliverables are expected to be submitted for NYSERDA approval. The Work Plan shall also set forth how the deliverables relate to one another. Lastly, the Work Plan shall provide a summary of how approvals will be attained by the Contractor’s internal team for key deliverables and list the point people for each stage of approval.
- Performance Metrics – Include a draft Project Benefits Metrics Report (PBMR) with proposed performance metrics and projected benefit values, including methods for data collection and calculations as described in Exhibit F.

#### **Deliverable:**

- 1.1 PEP including the draft PBMR

\*GO/NO GO DECISION – THE CONTRACTOR SHALL NOT BE ALLOWED TO WORK ON ANY FURTHER TASKS UNDER THIS AGREEMENT WITHOUT WRITTEN PERMISSION FROM THE NYSERDA PROJECT MANAGER, WHICH SHALL BE ISSUED AT NYSERDA’S SOLE DISCRETION.

**Task 1.2: Contract Management and Quarterly Progress Reports**

The Contractor shall participate in conference calls and meetings as outlined below; prepare and submit quarterly reports as outlined below; coordinate and manage all Subcontractors; provide documentation and information as requested by NYSERDA for creation of press releases or case studies to showcase the success of the Tasks completed in this Agreement; and review all Deliverables prior to submission to the NYSERDA Project Manager. The Contractor shall submit Quarterly Progress Reports to NYSERDA, in a template provided by NYSERDA, within 30 days after the end of each quarter. During each calendar year, quarter start and end dates are as follows: Quarter 1: January 1-March 31, Quarter 2: April 1-June 30, Q3: July 1-September 30, Quarter 4: October 1-December 31.

The Contractor shall complete the following activities for Contract management:

- The Contractor shall review all Contract expenditures by itself and its Subcontractors for accuracy and completeness. The Contractor shall prepare and submit invoices utilizing a template provided by NYSERDA and all necessary backup documentation;
- Provide oversight of the schedule, resources, budgets, and program outcomes including subcontractors;
- Report any significant events, program feedback, or issues to the NYSERDA Project Manager; and
- Participate with NYSERDA in monthly calls and face-to-face meetings as needed to gauge project status. NYSERDA shall schedule and conduct on an as-needed basis in-person visits, conference calls, or face-to-face meetings to verify project requirements and the completion of project Tasks.

Each Quarterly Report shall include:

- A summary of progress and accomplishments over the previous quarter, including a discussion of major Tasks and Deliverables worked on and/or completed in the prior quarter;
- Explanation of Contract management activities completed in the previous quarter with backup documentation including timesheets showing hours worked, hourly rate, staff person, and title;
- Explanation of current quarter’s activities and plans, including Tasks and Deliverables to be completed; and
- Discussion of any major issues or problems encountered during the prior quarter, deviations from schedule and budget as outlined in this Agreement and in the PEP approved under Task 1.1, and other issues related to the successful outcome of this Agreement.

If the Project timeline is extended past the end of the Project Period as specified in the Milestone Payment Schedule (attached at the end of this Exhibit A), the Contractor shall continue to submit Quarterly Reports but no additional payments shall be allocated for those Deliverables.

NYSERDA reserves the right to request additional analysis, clarification on certain Tasks, or other content for inclusion in the Quarterly Reports.

**Deliverable:**

- 1.2A Contract Management and Quarterly Progress Report #1
- 1.2B Contract Management and Quarterly Progress Report #2
- 1.2C Contract Management and Quarterly Progress Report #3
- 1.2D Contract Management and Quarterly Progress Report #4
- 1.2E Contract Management and Quarterly Progress Report #5

1.2F Contract Management and Quarterly Progress Report #6  
[Insert additional Contract Management and Quarterly Progress Reports as needed, based on your expected project timeline.]

### **Task 1.3: Public Outreach Strategy**

***{ONLY INCLUDE THIS TASK IF APPLICABLE (e.g. Comprehensive Plans, Zoning Ordinances, Site Development Plans, etc.)}***

The Contractor shall develop and submit a Public Outreach Strategy for the Project. The Public Outreach Strategy shall include, but not be limited to, the components listed below.

- A description of stakeholders or Steering Committee to guide development of the [insert planning activity], including a description of the Steering Committee's purpose, the selection process for Steering Committee members, list of members (including names, titles, and contact information), purpose of each planned meeting and tentative schedule of meetings. The Steering Committee shall include residents and local business representatives, and may include, but are not limited to, members of the [insert municipality type (city, town, village, or county)] Planning and Development Committee, [insert municipality type (city, town, village, or county)] Council/Board, and other public organizations.
- Outline for public meetings, public hearings, and public workshops that are open to the general public and focus on discussion of the Project, including meeting format, purpose and objectives, anticipated locations, advertising strategy, presentation materials including slide presentations and handouts to be prepared by the Contractor prior to each meeting, and tentative dates for the proposed public meetings.
- Interviews, surveys or other outreach methods used to reach directly impacted property owners or other stakeholders. The Contractor shall submit a draft of any outreach and education materials, including those proposed to be developed for mass printing, and presentations, to the NYSERDA Project Manager no less than three (3) weeks prior to the publication/print date for approval. It is possible that some of the materials may lead to creation of new templates approved by NYSERDA's marketing unit. Any materials are subject to NYSERDA Project Manager approval prior to creation and distribution including the use of NYSERDA logos. Any materials developed after the approval of this deliverable may be eligible for reimbursement under Task 1.2 above, subject to the approval of the NYSERDA Project Manager.

#### **Deliverable:**

1.3 Public Outreach Strategy as outlined under Task 1.3 above.

### **Task 1.4: Final Report and Technology Transfer**

The Contractor, in conjunction with the rest of the Contractor Team, shall prepare a comprehensive Final Report, in a format approved by NYSERDA, including all required elements outlined in Exhibit E - NYSERDA Report Content Guide, and limited to no more than 25 pages plus attached final products, which describes the work performed and the results associated with the Tasks outlined in this Agreement.

To further NYSERDA's goal of transferring technology or knowledge amongst all NYS communities, the Contractor shall make all final project Deliverables available for public use and agree to work with NYSERDA to promote the project throughout its implementation through NYSERDA's outreach outlets. The Contractor shall also honor any reasonable request made by NYSERDA to provide any additional information necessary to create a press release or case study showcasing this project.

#### Minimum Final Report Content:

- Table of Contents;
- Brief overview of CEC Program;
- Project overview and description;
- Summary of Tasks completed;
- Narrative describing activities that took place;
- Summary of lessons learned;
- Table outlining Tasks that received NYSERDA funding, total cost of Tasks as implemented, and NYSERDA funding amounts;
- Appendices including:
  - Documentation outlined in Tasks 1.3 through [Insert last Task#] of this Statement of Work;
  - Names, contact information and roles for project participants; and
  - Performance Metrics – Include final PBMR as described in Exhibit F.

NYSERDA reserves the right to request additional analysis, clarification on certain Tasks, or other content for inclusion in the draft or Final Reports.

#### **Measurement & Verification (M&V):**

**{ONLY INCLUDE THIS SECTION IF APPLICABLE (e.g. capital projects, such as LED Street Lighting, construction projects, etc.)}**

The Contractor shall comply with reasonable requests made by NYSERDA to perform M&V activities on the [Project/Project Name] projects for a period of up to 10 years after completion. The costs of any M&V activities, aside from typical building operating costs and Contractor staff time incurred during the activities, shall be borne by NYSERDA. M&V activities initiated and covered by NYSERDA may include, but are not limited to, hiring a Professional Engineer to inspect or test equipment on the [Project/Project Name] project sites as well as costs of any [relevant examples e.g. any sub-metering equipment]. Costs borne by the Contractor for M&V activities may include, but are not limited to, staff time spent showing NYSERDA or its Contractor where relevant equipment is located or time spent gathering and drafting necessary documentation to demonstrate equipment performance.

#### **Deliverable:**

1.4 Final Report including the Final PBMR

#### **Task 2.0: Project Design\***

The Contractor shall submit a draft and Final Design Report that outlines all of the design elements for the Project. Examples of elements that this Design Report shall include, but are not limited to, the components outlined below (as applicable depending on project type). The Contractor shall include a detailed Task description in the PEP developed under Task 1.1.

- Existing conditions analysis, with maps, tables, graphs and other graphics, that documents current demographics, economic conditions, infrastructure, community facilities, land use, and zoning within the [insert municipality type (city, town, village, or county)]. The Contractor shall acquire all relevant Geographic Information System (GIS) data and produce a series of working maps to represent existing conditions, where possible;
- Engineering design report that includes architectural renderings, engineering design drawings, description of energy efficiency and renewable energy measures to be installed, building energy models of the base and proposed building, etc.

- Site plan showing the location of design components;
- Meeting minutes, presentation materials, and attendance lists from public meetings, Steering Committee meetings, and/or public hearings;
- Market study to identify potential uses of the project site including demographic and socio-economic trend data, future absorption rates by use category, interviews with potential developers, real estate brokers, etc.;
- Development alternatives that incorporate renewable and energy efficient infrastructure and equipment, evaluate a wide range of land uses, and illustrate the most suitable locations for buildings, structures, points of vehicular and pedestrian ingress and egress, parking areas, landscaping, walkways, and site drainage; and
- Feasibility study for a specific technologies or technologies.

**Deliverable:**

2.0 Draft and Final Design Report as outlined in Task 2.0 above.

\*GO/NO GO DECISION – THE CONTRACTOR SHALL NOT BE ALLOWED TO WORK ON ANY FURTHER TASKS UNDER THIS AGREEMENT WITHOUT WRITTEN PERMISSION FROM THE NYSERDA PROJECT MANAGER, WHICH SHALL BE ISSUED AT NYSERDA’S SOLE DISCRETION.

**Task 3.0: Project Implementation**

The Contactor shall submit a draft and Final Implementation Report that outlines all of the implementation elements for the Project. Examples of elements that this Implementation Report shall include, but are not limited to, the components outlined below (as applicable depending on project type). The Contractor shall include a detailed Task description in the PEP developed under Task 1.1.

- Site Inspection: The Contractor shall coordinate with the NYSERDA Project Manager to schedule a date for a site inspection upon the completion of construction of the Project. The Contractor shall conduct a site inspection, identifying each of the major components, and provide documentation including identification of any deficiencies or deviations from the Design Report and provide photographs and invoices of installed materials. The Contractor shall be required to correct any deficiencies identified by the Contractor and justify how any deviations from the approved Design Report still meets the original design intent;
- Documentation of all reimbursable costs, payments to Subcontractors including copies of equipment specification sheets, invoices for equipment purchased, and timesheets to support construction labor costs; and
- Draft and Final [insert type of document (i.e. Comprehensive Plan, Zoning Ordinance, Site Master Plan)] that incorporates clean energy and sustainability principles such as mixed land uses, compact building design and cluster development, walkable neighborhoods, preservation of open space, density that promotes alternative transportation methods, etc.

**Deliverable:**

3.0 Draft and Final Implementation Report as outlined in Task 3.0 above.

**Task 4.0: Project Verification**

The Contactor shall submit a draft and Final Verification Report that outlines all of the implementation elements for the Project. Examples of elements that this Verification Report shall include, but are not limited to, the components outlined below (as applicable depending on project type). The Contractor shall include a detailed Task description in the PEP developed under Task 1.1.

- Plan Adoption: Meeting minutes from the public hearing and a copy of the resolution documenting the formal adoption of the final Comprehensive Plan, Zoning Ordinance, and/or Site Master Plan by the [insert municipality type (city, town, village, or county)];
- Commissioning plan and report: The Contractor may use a commissioning provider of their choice, or NYSERDA can help identify a consultant for these services. This commissioning report shall include the following components:
  - Owner’s Project Requirements outlining performance requirements for commissioning;
  - An outline of systems commissioned, any deficiencies noted, and corrective actions taken;
  - Summary of commissioning activities performed and overall results of commissioning;
  - Copy of owner’s project requirements outlining performance requirements for commissioning;
  - Copies of individual commissioning reports for each system commissioned;
  - Commissioning form (Exhibit G) outlining systems that were commissioned, any deficiencies noted, and corrective actions taken; and
  - Operator training materials for training for site staff in the operation and maintenance of systems and equipment installed.

**Deliverable:**

4.0 Draft and Final Verification Report as outlined in Task 4.0 above.

**Milestone Payment Schedule**

The Project milestones and schedule of payments is shown below. The budget table below represents the budgets as estimated at the start of the Project Period as defined in Item 4 on page 1 of this Agreement. The Contractor, as part of a quarterly reporting package, may request a change to the NYSERDA share of the budget per Task. If a budget Task reallocation request is made, the Contractor must ensure that the NYSERDA share as a percent of total project cost remains the same or decreases. The NYSERDA Project Manager is authorized to transfer up to 10% of the total NYSERDA share between Tasks without requiring a contract modification. The NYSERDA Project Manager must provide a written approval or rejection of the request. Any reallocation of NYSERDA funding among budget items that cumulatively exceeds 10% of total NYSERDA funding, or any change in total NYSERDA funding, or any change in total NYSERDA funding as a percentage of total project costs, shall require a contract modification. Reasonable modifications to the due dates for each milestone may be allowed without formal Contract modification, but are subject to the written approval of the NYSERDA Project Manager.

The Contractor shall submit invoices for payment of a completed milestone once the associated Deliverables are approved by the NYSERDA Project Manager as outlined in the Deliverable Review Process above. Invoices shall be submitted in a template provided by NYSERDA and as outlined in Article IV of the Agreement. NYSERDA funding, when combined with the Contractor’s cost-share, shall not exceed 100% of the cost of any milestone. NYSERDA is not responsible for any costs that are greater than the NYSERDA contribution not-to-exceed amount for each milestone. NYSERDA shall pay the Contractor 25% of the total NYSERDA funding for Task 1.2 through Task 4 at the completion and NYSERDA approval of Task 1.1 in addition to the payment for Task 1.1 as outlined in the budget table below in order for the Contractor to begin work on the remaining Tasks for the Project. The remaining 75% will be held by NYSERDA until the completion of each remaining Task. If the Contractor fails to complete Task 1.2 through Task4, the 25% funds disbursed for each uncompleted Task, shall be subject to recapture as outlined in Section 2.03 under Exhibit B.

The Contractor shall outline all cost-share amounts in invoices submitted to NYSERDA and shall provide the following documentation to support the NYSERDA contribution and cost share amount for each invoice:

- Capital Costs: Invoice supporting total capital costs incurred.
- Labor costs (in-kind or subcontracted): Breakout of the staff that worked on this Task and the number of hours, multiplied times the hourly rate to get the total amount.
- Document Cash Contributions from non-NYS Source: with a signed letter of commitment from the contributing entity (i.e. Federal grant award). On the milestone payment requests, the Contractor shall note the amount of money provided by the contributing entity that is being contributed to that Task.

Milestone #	Deliverable Description	Due Date	NYSERDA Contribution			Contractor Cost Share	Total Cost
			Base Payment (25%)	Retained Until Milestone Completion (75%)	Total Not to Exceed		
<b>1.0</b>	<b>Contract Management</b>						
1.1	Draft PBMR	Q3 2017	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.2A	Contract Management and Quarterly Progress Report #1	Q4 2017	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.2B	Contract Management and Quarterly Progress Report #2	Q1 2018	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.2C	Contract Management and Quarterly Progress Report #3	Q2 2018	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.2D	Contract Management and Quarterly Progress Report #4	Q3 2018	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.2E	Quarterly Progress Report #5	Q4 2018	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.2F	Quarterly Progress Report #6	Q1 2019	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.3	Public Outreach Strategy	Q4 2017	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.4	Final Report with Final PBMR	Q2 2019	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	<b>Total Task 1</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>2</b>	<b>Project Design</b>						
2.0	Draft and Final Design Report	Q2 2018	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>3</b>	<b>Project Implementation</b>						

Milestone #	Deliverable Description	Due Date	NYSERDA Contribution			Contractor Cost Share	Total Cost
			Base Payment (25%)	Retained Until Milestone Completion (75%)	Total Not to Exceed		
3.0	Draft and Final Implementation Report	Q4 2018	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	<b>Total Task 3</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>4</b>							
	<b>Project Verification</b>						
4.0	Draft and Final Verification Report	Q1 2019	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	<b>Total Task 4</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
	<b>Total Program Budget</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
	<b>Total Up-Front Payment (25%)</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

**EXHIBIT E SAMPLE AGREEMENT**

**New York State Energy Research and Development Authority  
("NYSERDA")**

**AGREEMENT**

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Total Amount of Award:
6. Project Period: **[Optional for defined-scope R&D projects]**
7. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement; and
- Exhibit E, 2016 Report Content Guide.

8. ACCEPTANCE. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNLESS EXECUTED BELOW BY NYSERDA.

**[CONTRACTOR]**

**NEW YORK STATE ENERGY  
RESEARCH AND  
DEVELOPMENT AUTHORITY**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Jeffrey J. Pitkin  
Treasurer

Title \_\_\_\_\_

STATE OF            )  
                          ) SS.:  
COUNTY OF        )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the document.

\_\_\_\_\_  
Notary Public

## EXHIBIT B

### GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

#### Article I

##### Definitions

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined below shall have, for all purposes of this Agreement, the respective meanings set forth below, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined.

(a) General Definitions:

Agreement: This Agreement shall consist of Page One and the Exhibits noted thereon, all of which are made a part hereof as if set forth here in full.

Budget: The Budget set forth at Exhibit A hereto.

Cash-based Expenses: Those obligations of Contractor that shall be settled in cash.

Contract Administrator: NYSERDA's Director of Contract Management, Cheryl M. Glanton, or such other person who may be designated, in writing, by NYSERDA.

Contract Information: Recorded information regardless of form or characteristic first produced in the performance of this Agreement, that is specified to be compiled under this Agreement, specified to be delivered under this Agreement, or that is actually delivered in connection with this Agreement, and including the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable.

Proprietary Information: Recorded information regardless of form or characteristic, produced or developed outside the scope of this Agreement and without NYSERDA financial support, provided that such information is not generally known or available from other sources without obligation concerning their confidentiality; has not been made available by the owner to others without obligation concerning its confidentiality; and is not already available to NYSERDA without obligation concerning its confidentiality. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable, be considered Proprietary Information.

Person: An individual, a corporation, an association or partnership, an organization, a business or a government or political subdivision thereof, or any governmental agency or instrumentality.

Responsible: Responsible or Responsibility means the financial ability, legal capacity, integrity and past performance of Contractor and as such terms have been interpreted relative to public procurements. See NYS Finance Law § 163(1)(c).

Statement of Work: The Statement of Work attached hereto as Exhibit A.

Subcontract: An agreement for the performance of Work by a Subcontractor, including any purchase order for the procurement of permanent equipment or expendable supplies in connection with the Work.

Subcontractor: A person who performs Work directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor) but not including any employees of the Contractor or the Subcontractors.

Work: The Work described in the Exhibit A (including the procurement of equipment and supplies in connection therewith) and the performance of all other requirements imposed upon the Contractor under this Agreement.

***[If Sections 8.02 and 8.03 of this Sample Agreement are applicable, the following Definitions shall be included:]***

(b) Payments to NYSERDA Definitions:

Practical Application: To manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system, under conditions indicating that the benefits of the invention are available to the public on reasonable terms.

Product: [PRODUCT OR TECHNOLOGY DEFINITION], and including any improvements, enhancements or modifications thereto.

New York State Product: The Product will be considered a New York State Product if Contractor demonstrates that either: (1) in excess of 50% of the value or value added to such Product was added within the geographical boundaries of the State of New York; "value added" means any separable component of the Product, contributed by the Contractor or paid for by the Contractor to others, for parts, components, and services, and all manufacturing costs, including but not limited to labor, labor overhead, materials, and G&A, but excluding profit; or (2) in excess of 75% of the nonmanufacturing selling and administrative costs, allocated on a per unit basis for the Product, derive from within the geographic boundaries of New York State; such costs include those associated with the selling of the Product, shipping, administrative salaries, executive salaries, administrative office expenses, sales commissions, advertising, marketing, and research and development, but excluding: (a) any separable component of the Product paid for by the Contractor to others for parts, components, and services, and (b) and any other manufacturing or product costs. Qualification as a New York State Product shall be

determined using generally accepted accounting principles and shall be capable of being proven by an audit conducted in accordance with generally accepted auditing standards.

License/Franchise: A grant of authority by Contractor to another person to make, use, or sell the Product.

Licensing Revenue: Gross revenue of any kind or character derived by Contractor from a Licensing or Franchising of the Product.

Sale: A sale or lease of the Product by the Contractor or any parent, subsidiary, affiliate or assignee thereof.

Sales Revenue: Gross revenue, excluding returns and allowances such as sales tax, freight, and insurance, if applicable, derived from Sales.

## Article II

### Performance of Work

Section 2.01. Manner of Performance. Subject to the provisions of Article XII hereof, the Contractor shall perform all of the Work described in the Statement of Work, or cause such Work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Contractor shall perform the Work in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described in the Statement of Work. The Contractor shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the Work in accordance with this Agreement.

Section 2.02. Project Personnel. It is understood and agreed that the Project Director identified at Item 3, Page One of this Agreement shall be responsible for the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

Section 2.03. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

*[OR, if specific equipment has been identified by the Project Manager for NYSERDA to retain title in, then use the following:]*

Section 2.03. Title to Equipment. Title shall vest in NYSERDA to all of the following equipment purchased hereunder:

- 1)
- 2)
- 3)
- 4)

Upon the request of NYSERDA, the Contractor shall execute, acknowledge, deliver and perform, or cause to be executed, acknowledged, delivered or performed, all such bills of sale, assignments, conveyances or other documents or acts as NYSERDA may reasonably request in order to assure the better vesting in and confirming to NYSERDA, its successor and assigns, of title to and possession of such equipment. If, after six (6) months following the later of (a) Contractor's completion of these obligations, (b) completion of the Work, or (3) the termination of this Agreement, NYSERDA has not removed any such equipment, it will be deemed abandoned and become the property of the Contractor. Any such removal of equipment by NYSERDA shall be at NYSERDA's expense.

### Article III

#### Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit A, Statement of Work.

### Article IV

#### Payment

Section 4.01. Payment Terms. **[If cost-share is applicable, insert -** It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the Work to be performed.] In consideration for this Agreement and as NYSERDA's full payment for the costs of the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor amounts not to exceed the maximum amount set forth in Item 5, Page One of this Agreement for the cost elements identified in the Budget to be funded with NYSERDA funds, subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D. NYSERDA's payments shall be on a reimbursement basis, and shall be paid only to the extent that Cash-based Expenses are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, and the following:

***[CASE I: Cost Reimbursable]***

(a) Staff Charges: To the extent Cash-based Expenses are incurred by the Contractor, Contractor shall be reimbursed for amounts paid to its employees for the services performed by its employees under the terms of this Agreement at the lesser of the employee's wage rate as shown in the Budget or the actual wages paid to the employee and applicable at the time the Work is performed.

(b) Direct Charges: To the extent Cash-based Expenses are incurred by the Contractor, the Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel and other costs directly associated with the performance of the Agreement) to the extent required in the performance of the Work and to the extent such costs are anticipated in the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs shall not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate in effect at the time the expense was incurred.

(c) Indirect Costs: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs, all at the fixed rate as shown in the Budget. Contractor hereby warrants and guarantees, in accordance with Section 9.01(k) hereto, that its rates for the foregoing indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles.

***[For consultant services contracts, where appropriate, insert:]***

(d) Profit: The Contractor shall be paid a profit at a fixed rate as shown in the Budget applied to costs incurred in the performance of the Statement of Work. The percentage for profit shall be applied to all items in the Budget with the exception of travel costs.

***[CASE II: Billing Rates]***

(a) Billing Rates: The Contractor shall be reimbursed for the services performed by its employees under the terms of this Agreement at the lesser of employee's billing rate set forth in the Budget or the employee's billing rate applicable at the time the Work is performed. Such billing rates shall be inclusive of actual Cash-based Expenses in the form of wages paid the employee, fringe benefits, overhead, general and administrative (G&A), and other indirect costs. Contractor hereby warrants and guarantees that the billing rates charged herein are Contractor's customary billing rates for performance of work of the type described in the Statement of Work attached hereto.

(b) Direct Charges: To the extent Cash-based Expenses are incurred by the Contractor, the Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel and other costs directly associated with the performance of the Agreement) to the extent required in the performance of the Work and to the extent such costs are anticipated in the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs should generally not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate in effect at the time the expense was incurred.

#### Section 4.02. Progress Payments.

(a) Invoicing: The Contractor may submit invoices for progress payments no more than once each month and no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to [invoices@nyserda.ny.gov](mailto:invoices@nyserda.ny.gov). Such invoices shall make reference to the Agreement number shown at Item 1 on page 1 of this Agreement. Invoices shall be inclusive of the total project costs incurred, delineated into NYSERDA's Funding share and the Cost-Share and Other Co-funding share, if applicable, and they shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall be itemized and provide reasonable documentation for the above to provide evidence of costs incurred. If a wage rate or billing rate is used, Contractor must certify on its invoice that such rate represents the lesser of: (i) the actual rate at the time the Work was performed, and (ii) the rate listed for each such employee listed in the Budget. NYSERDA may adjust amounts payable to correlate the proportion of NYSERDA's funding share paid to the proportion of the Work completed.

(b) Retainage: In accordance with and subject to the provisions of Exhibit D, NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, 90% of NYSERDA's share of the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement or the Budget.

#### *[Case III – Fixed Fee/Milestone]*

Section 4.01. Payment Terms.**[If cost-share is applicable, insert - It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the Work to be performed.]**In consideration for this Agreement and as NYSERDA's full payment for the costs of the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor amounts not to exceed the maximum amount set forth in Item 5, Page One of this Agreement. Subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D,

payment will be made according to the Milestone Billing Events set forth in Exhibit A, Statement of Work.

#### Section 4.02. Payments

(a) Invoicing: Subject to any applicable provisions set forth in Exhibit A, Statement of Work, at the completion of each Milestone Event so identified, the Contractor may submit invoices, including documentation reasonably sufficient to demonstrate completion, requesting payment by NYSERDA of the amounts corresponding to the amounts indicated in Exhibit A, Statement of Work, including evidence of the Contractor's cost share, if applicable. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to [invoices@nyserda.ny.gov](mailto:invoices@nyserda.ny.gov). Such invoices shall make reference to the Agreement number shown at Item 1 on page 1 of this Agreement. In accordance with and subject to the provisions of Exhibit D, NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an invoice, the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement.

Section 4.03. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six (6) months following Acceptance of Work pursuant to Section 6.02 hereof. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments/milestone payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Section 4.06 hereof.

Section 4.04. Release by the Contractor. The acceptance by the Contractor of final payment shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

Section 4.05. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Agreement, including without limitation, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, Contractor's performance under this Agreement.

Section 4.06. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor shall be the amount appearing at Item 5 of page one of this Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.07. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

## Article V

### Assignments, Subcontracts and Performance

Section 5.01. General Restrictions. Except as specifically provided otherwise in this Article, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA.

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling less than \$50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor

with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. If this Agreement includes a provision requiring Contractor to make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any subcontract(s) specified in the Statement of Work as requiring NYSERDA approval, including any replacements thereof.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its rights thereunder. The Contractor shall take no action, and shall take all reasonable steps to prevent its Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of NYSERDA's Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

## Article VI

### Schedule; Acceptance of Work

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in the Statement of Work. The draft and final versions of all deliverables shall be submitted by the dates specified in the Exhibit A Schedule. It is understood and agreed that the delivery of the draft and final versions of such deliverables by the Contractor shall occur in a timely manner and in accordance with the requirements of the Exhibit A Schedule.

Section 6.02. Acceptance of Work. The completion of the Work shall be subject to acceptance by NYSERDA in writing of all deliverables as defined in Exhibit A, Statement of Work.

## Article VII

## Force Majeure

Section 7.01. Force Majeure. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, strikes, or the delay or failure to perform by any Subcontractor by reason of any cause or circumstance beyond the reasonable control of such Subcontractor.

## Article VIII

### Rights in Information; Confidentiality

#### **CASE I: For implementation-type contracts:**

##### Section 8.01. Rights in Contract and Proprietary Information.

(a) All Contract Information shall be the property of NYSERDA. The Contractor shall not use Contract Information for any purpose other than to implement its obligations under this Agreement.

(b) All Proprietary Information shall be the property of Contractor.

(c) The use, public performance, reproduction, distribution, or modification of any materials used by Contractor in the performance of this Agreement does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy. The Contractor shall be responsible for obtaining and paying for any necessary licenses to use any third-party content.

(d) The Contractor agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon or instructions given by NYSERDA, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. Contractor agrees not to disclose any such information without the consent of NYSERDA.

#### **CASE II: Advertising and Marketing contracts:**

Section 8.01. Rights in Materials.

(a) All Contract Information shall be the property of NYSERDA. The Contractor shall not use Contract Information for any purpose other than to implement its obligations under this Agreement. Title to any and all now known or hereafter known tangible and intangible intellectual property rights in such materials, including but not limited to copyrights, trademarks, and service marks, is with and shall remain with NYSERDA. For purposes of this Article, the term “materials” shall include everything produced pursuant to this Agreement for the purpose of marketing NYSERDA’s programs, including, but not limited to, all images, text, sounds, and music contained in any media whatsoever.

(b) The Contractor may not take any action, including signing any agreement, that has the effect of restricting or limiting in any way NYSERDA’s absolute ownership and use of the materials unless it receives prior written approval from NYSERDA.

Section 8.02. Representations.

(a) All materials have been or will be created solely by the Contractor’s full-time employees during the course of their employment, or independent contractors who assigned or will assign all right, title, and interest worldwide to the Contractor.

(b) The use, public performance, reproduction, distribution, or modification of the materials does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy.

Section 8.03. Licenses. The Contractor shall be responsible for obtaining and paying for any necessary licenses to use any third-party content contained in the materials.

Section 8.04. Assignment of Rights. The Contractor hereby irrevocably assigns, conveys and otherwise transfers to NYSERDA, and its respective successors and assigns, all rights, title and interests worldwide in and to the materials and all copyrights, trade secrets, patents, trademarks, service marks and other intellectual property rights and all contract and licensing rights, and all claims and causes of action of any kind with respect to any of the foregoing, whether now known or hereafter to become known. In the event the Contractor has any rights in and to the materials that cannot be assigned to NYSERDA, the Contractor hereby unconditionally and irrevocably waives the enforcement of all such rights, and all claims and causes of action of any kind with respect to any of the foregoing against NYSERDA, its distributors and customers, whether now known or hereafter to become known and agrees, at the request and expense of NYSERDA and its respective successors and assigns, to consent to and join in any action to enforce such rights and to procure a waiver of such rights from the holders of such rights. In the event the Contractor has any rights in and to the materials that cannot be assigned to NYSERDA and cannot be waived, the Contractor hereby grants to NYSERDA, and its respective successors and assigns, an exclusive, worldwide, royalty-

free, perpetual license to reproduce, distribute, modify, publicly perform and publicly display, with the right to sublicense through multiple tiers of sublicensees and assign such rights in and to the materials including, without limitation, the right to use in any way whatsoever the materials and the Contractor retains no rights to use the materials and agrees not to challenge the validity of the copyright ownership by NYSERDA in the materials. In the event that any development of any materials under this Agreement is to be performed by a subcontractor, the Contractor agrees to include the provisions contained in this section in any such subcontract.

Section 8.05. Restriction on Use. The Contractor agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon or instructions given by NYSERDA, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. Contractor agrees not to disclose any such information without the consent of NYSERDA.

**CASE III: R&D-type contracts:**

Section 8.01. Rights in Contract and Proprietary Information; Confidentiality.

(a) NYSERDA shall have the right to use, duplicate, or disclose Contract Information, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) The Contractor shall have the right to use Contract Information for its private purposes, subject to the provisions of this Agreement.

(c) NYSERDA shall have no rights to any Proprietary Information.

(d) No information shall be treated by NYSERDA as confidential unless such information is clearly so marked by Contractor at the time it is disclosed to NYSERDA; see Exhibit C regarding NYSERDA's obligations under the Freedom of Information Law. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, be considered confidential or Proprietary Information.

(e) The Contractor agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon or instructions given by NYSERDA, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information as that term is defined in Section 92 of the New York State Public

Officers Law. Contractor agrees not to disclose any such information without the consent of NYSERDA.

*[If recoupment applies, include the following Sections 8.02 & 8.03:]*

Section 8.02. Rights in the Product.

(a) The Contractor shall have the right to make, use and sell the Product.

(b) Should NYSERDA, or any political subdivision or instrumentality of the State of New York (each, a “New York Purchaser”) desire to purchase the Product from Contractor or any parent, subsidiary, affiliate, assignee, licensee or franchisee thereof (“Seller”), Seller shall grant such New York Purchaser terms, including price, that are at least as favorable as the terms granted by Seller to any buyer of the Product within the previous year. During the period of performance of the agreement between New York Purchaser and Seller, if Seller enters into an agreement with any other party that includes terms more favorable than those granted to the New York Purchaser, then the terms granted by Seller to such New York Purchaser shall automatically be deemed to be modified to provide the New York Purchaser with those more favorable terms as of the date such more favorable terms were offered to the other party. Contractor shall notify the New York Purchaser promptly of the existence of such more favorable terms and the New York Purchaser shall have the right to receive the more favorable terms immediately. If requested in writing by the New York Purchaser, Contractor shall amend the agreement with such New York Purchaser to contain the more favorable terms and conditions. Contractor shall include these terms in any distribution, licensing or franchising agreement concerning the Product.

The sale price for any Sale made to NYSERDA pursuant to this Section shall be discounted by the applicable amount due to NYSERDA by Contractor pursuant to Section 8.03(a) or (b) hereof. The amount of this discount shall be credited towards the aggregate amount due by Contractor to NYSERDA pursuant to Section 8.03(c) hereof.

(c) Should a patent application be filed related to the Product, Contractor shall forward to NYSERDA’s Project Manager a copy of the United States Patent and Trademark Office filing receipt bearing the patent application number. The Contractor or any assignee acting on behalf of the Contractor shall include, within the specification of any patent application and any patent or certificate issuing thereon related to the Product the following statement: “This invention was made with the support of the New York State Energy Research and Development Authority (NYSERDA) under Agreement Number [Item 1 from Page One] and NYSERDA may have rights in this invention.”

(d) Contractor shall notify NYSERDA within three (3) months after a patent is issued related to the Product, and shall provide the patent title, issuance number and a generalized description of the claims set forth therein. Contractor shall diligently exercise best efforts to bring the Product to the point of Practical Application. Should Contractor fail to bring the Product to the point of Practical Application within three (3)

years after the issuance date for any patent related to the Product Contractor shall provide to NYSERDA a reasonably detailed description of its efforts in commercializing the Product through sales of licensing or other avenues and a reasonably detailed description of why such efforts failed.

(e) The Contractor shall include the foregoing clauses, suitably modified to identify the parties, in all subcontracts which involve the performance of Work under this Agreement. The Subcontractor shall retain all rights provided for the Contractor, and the Contractor shall retain all rights provided for NYSERDA, as set forth above.

(f) The Contractor shall enforce Sections 8.02 and 8.03 hereof against all current or former employees to the extent necessary to protect NYSERDA's rights herein.

Section 8.03. Calculation of Payments to NYSERDA.

(a) New York State Product: Upon a Sale of a New York State Product, or at such time as Licensing Revenue become due to the Contractor with respect to a New York State Product, Contractor agrees to pay to NYSERDA: (i) one and one half percent (1.5%) of the Sales Revenue, or (ii) ten percent (10%) of all License Revenue accruing to the Contractor.

(b) Non - New York State Product: Upon a Sale of a Product that does not qualify as a New York State Product, or at such time as Licensing Revenue become due to the Contractor with respect to a Product that does not qualify as a New York State Product, Contractor shall pay to NYSERDA: (i) five percent (5%) of the Sales Revenue, or (ii) thirty percent (30%) of all Licensing Revenues accruing to the Contractor.

(c) Duration of Payments to NYSERDA: The Contractor's obligation to make payments to NYSERDA shall extend (i) from the date the Contractor first receives Sales Revenue or Licensing Revenue and continue for a period of fifteen (15) years thereafter; or (ii) until the amount paid by Contractor to NYSERDA attributable to actual Sales Revenue or Licensing Revenue from a New York State Product is equal to one times the amount of funds actually paid by NYSERDA to the Contractor under this Agreement; or (iii) until the amount paid by Contractor to NYSERDA, whether or not derived from any Sales Revenue or Licensing Revenue, is equal to three times the amount of funds actually paid by NYSERDA to the Contractor under this Agreement; whichever occurs first.

(d) Contractor may buy out its obligation to make payments to NYSERDA as described in this Agreement by paying to NYSERDA: (a) if such payment is made within five (5) years of the last payment by NYSERDA to Contractor under this Agreement, an amount equal to two (2) times the amount of funds actually paid by NYSERDA to the Contractor under this Agreement, such buyout amount to be reduced by the amount(s) already paid to NYSERDA by Contractor pursuant to this Section, or (b) if such payment is not made within five (5) years of the last payment received by Contractor under this Agreement, an amount equal to three (3) times the amount of funds actually paid by

NYSERDA to the Contractor under this Agreement, such buyout amount to be reduced by the amount(s) already paid to NYSERDA by Contractor pursuant to this Section.

(e) Due Date of Payments. Such payments shall be payable in annual installments and shall be paid by the first day of March in the calendar year immediately following the year during which the Contractor receives revenues as described above (the "Due Date"). Any payment not received by the applicable Due Date shall be deemed delinquent. A delinquent payment shall be made with interest with such interest computed commencing with the Due Date of such payment. The annual interest rate payable shall be the "Prime Rate" existing as of the Due Date of such payment plus five (5) percentage points. Such interest shall be compounded on a monthly basis.

(f) Annual Reports. The Contractor shall provide to NYSERDA a written Annual Report detailing the status of development and utilization of the Product. The Annual Report shall provide detail as to all Sales, identifying each buyer or lessee, the number of items sold or leased, the Sales Revenue and/or Licensing Revenue, and calculating the resultant amount earned by, and paid or due to NYSERDA in accordance with paragraph (a) hereof. If the amount due to NYSERDA is calculated in whole or in part in accordance with paragraph (a) hereof, the Annual Report shall include documentation or substantiating information reasonably sufficient to establish that that such Product qualifies as a New York State Product. The Annual Report shall be furnished to NYSERDA not later than February 1 following the calendar year covered by the Report. The Contractor's obligation to provide Annual Reports shall commence on February 1 of the calendar year following either the Contractor's receipt of Final Payment pursuant to Section 4.03 hereto, at such time as Licensing Revenues become due to the Contractor or upon the first Sale, whichever event occurs first. In the event that, for a period of five consecutive years, the Annual Reports indicate that no Sales are made and no payment is due to NYSERDA, the Contractor may cease submittal of annual reports. If, however, Sales are made in subsequent years, or Licensing Revenues become due to the Contractor, the Contractor's obligation to submit Annual Reports shall resume.

(g) Maintenance and Audit of Records. Until such time as the Contractor's payment obligations to NYSERDA pursuant to this Section 8.03 have been met, the Contractor shall keep, maintain, and preserve at its principal office, full and detailed books, accounts, and records in connection with Sales, including any licenses or franchises granted, and the Contractor shall provide to NYSERDA, on a reasonable basis, access to all books and records related thereto.

(h) Licensing or Franchise Agreements. The Contractor shall not enter into any agreement with any party with respect to the licensing or franchising of the Product or rights in the Product that contains provisions inconsistent with the Contractor's obligation as set forth in this Article VIII. The Contractor shall provide copies of any licensing or franchise agreements to NYSERDA immediately upon execution.

(i) Modification of Payment Terms. Should Contractor provide to NYSERDA a copy of a proposed licensing or franchise agreement under subsection (g), NYSERDA agrees to negotiate, upon Contractor's execution of such licensing or franchise agreement, a modification of the Licensing Revenue terms in subsections (a)(i) and (b)(i) such that the amount of payment due to NYSERDA by Contractor will approximate the amount that would have been due upon a Sale of the Product.

## Article IX

### Warranties and Guarantees

Section 9.01. Warranties and Guarantees. The Contractor warrants and guarantees that:

(a) all information provided and all representations made by Contractor as a part of the Proposal Checklist or application, if any, submitted to NYSERDA in order to obtain this Agreement were, to the best of Contractor's knowledge, complete, true and accurate when provided or made;

(b) as of the Effective Date, it is financially and technically qualified to perform the Work, and is qualified to do business and is in good standing in all jurisdictions necessary for Contractor to perform its obligations under this Agreement;

(c) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(d) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted scientific standards and engineering practices;

(e) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and engineering practices;

(f) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(g) to the best of Contractor's knowledge, there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or NYSERDA's rights hereunder;

(h) it has no actual knowledge that any information or document or statement furnished by the Contractor in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the Work;

(i) all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate;

(j) Contractor is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement;<sup>1</sup> and

(k) its rates for the indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles.

(j) Contractor shall at all times during the Agreement term remain Responsible, and Contractor agrees, if requested by NYSERDA, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

## Article X

### Indemnification

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to Contractor's or its Subcontractors' performance of this Agreement. The obligations of the Contractor under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

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<sup>1</sup><http://www.nyserda.ny.gov/About/Board-Governance.aspx>

## Article XI

### Insurance

*[Under NYSERDA'S risk management program, projects are defined according to the following categories: Category A (low risk; no insurance required); Category B (medium risk; "standard" insurance requirements); and Category C (high risk; insurance to be negotiated on a case-by-case basis). The following language represents NYSERDA'S "standard" insurance requirements.]*

Section 11.01. Maintenance of Insurance; Policy Provisions. The Contractor, at no additional direct cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

- (a) except policies in evidence of insurance required under Section 11.02(b), name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

Section 11.02. Types of Insurance. The types and amounts of insurance required to be maintained under this Article are as follows:

- (a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and
- (b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

**[For contracts containing recoupment, insert:]** (c) Upon commencement of marketing of the Product, product liability insurance for bodily injury liability, including death and property damage liability arising out of the use of the Product with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury,

sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster. Product liability insurance naming the NYSERDA and State of New York as additional insureds required under this Agreement shall remain in effect for as long as the payment obligation pursuant to Section 8.03 of this Agreement is in effect.

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof. **[For contracts containing recoupment, insert:** Upon commencement of marketing of the Product, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Section 11.02 (c) hereof and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA.] In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

## Article XII

### Stop Work Order; Termination; Non-Responsibility

#### Section 12.01. Stop Work Order.

(a) NYSERDA may at any time, by written Order to the Contractor, require the Contractor to stop all or any part of the Work called for by this Agreement for a period of up to ninety (90) days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an Order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of work stoppage consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or

- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

(b) If a Stop Work Order issued under this Section is cancelled or the period of the Order or any extension thereof expires, the Contractor shall resume Work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

- (i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Agreement, and
- (ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

(c) If a Stop Work Order is not cancelled and the Work covered by such Order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

(d) Notwithstanding the provisions of this Section 12.01, the maximum amount payable by NYSERDA to the Contractor pursuant to this Section 12.01 shall not be increased or deemed to be increased except by specific written amendment hereto.

#### Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon ten (10) days prior written notice to the Contractor. In such event, payment shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor). Articles VIII, IX, and X shall survive any termination of this Agreement, and Article XVI shall survive until the payment obligations pursuant to Article VIII have been met.

(b) NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Contractor in accordance with State Finance Law

Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (b) will be effective upon Notice.

(c) Nothing in this Article shall preclude the Contractor from continuing to carry out the Work called for by the Agreement after receipt of a Stop Work Order or termination notice at its own election, provided that, if the Contractor so elects: (i) any such continuing Work after receipt of the Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Agreement, and (ii) NYSERDA shall have no liability to the Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

#### 12.03 Suspension or Termination for Non-Responsibility.

(a) Suspension. NYSERDA, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the Responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as NYSERDA issues a written notice authorizing a resumption of performance under the Contract.

(b) Termination. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate NYSERDA officials or staff, this Agreement may be terminated by NYSERDA at the Contractor's expense where the Contractor is determined by NYSERDA to be non-Responsible. In such event, NYSERDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

### Article XIII

#### Independent Contractor

Section 13.01. Independent Contractor. (a) The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants, including the Project Director, shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, vicarious liability, professional liability coverage or indemnification, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Contractor to perform the Work shall be Contractor's employee(s)

or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

(b) Contractor expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Contractor and/or Contractor's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Contractor expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon contractor's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

## Article XIV

### Compliance with Certain Laws

Section 14.01. Laws of the State of New York. The Contractor shall comply with all of the requirements set forth in Exhibit C hereto.

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

Section 14.03. Other Legal Requirements. The references to particular laws of the State of New York in this Article, in Exhibit C and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

## Article XV

### Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

- (i) via certified or registered United States mail, return receipt requested;
- (ii) by facsimile transmission;
- (iii) by personal delivery;
- (iv) by expedited delivery service; or
- (v) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

**NYSERDA**

Name: Cheryl M. Glanton

Title: Director of Contract Management

Address: 17 Columbia Circle, Albany, New York 12203

Facsimile Number: (518) 862-1091

E-Mail Address: [Cheryl.Glanton@nyserda.ny.gov](mailto:Cheryl.Glanton@nyserda.ny.gov)

Personal Delivery: Reception desk at the above address

**[Contractor Name]**

Name:

Title:

Address:

Facsimile Number:

E-Mail Address:

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Section 15.02. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

Section 15.03. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

## Article XVI

### Publicity

#### Section 16.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Director of Communications to prepare any press release and to plan for any news conference concerning the Work. In addition the Contractor shall notify NYSERDA's Director of Communications regarding any media interview in which the Work is referred to or discussed.

(b) It is recognized that during the course of the Work under this Agreement, the Contractor or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall credit NYSERDA's funding participation in the Project, and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, the Contractor shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with the Contractor's policies.

(c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

***[If Section 8.03 applies, the following Article XVII is required:]***

## Article XVII

### Business Reorganizations

Section 17.01. Business Reorganizations. In the event the Contractor proposes to consolidate or merge into or with another corporation or entity, or to sell or dispose of all or a majority of the assets of the Contractor, or to otherwise undertake a reorganization which alters or changes the rights of NYSERDA as provided in this Agreement, before any such action shall be taken, the Contractor shall either:

(a) buy out its obligation to make payments to NYSERDA as described in Section 8.03 of this Agreement; or

(b) assign or otherwise transfer to a new entity the Contractor's obligations under this Agreement, including, but not limited to, the obligation to make payments to NYSERDA as described in Section 8.03 of this Agreement. Such assignment or transfer shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the assignment or transfer shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days after the lapse of the original review period.

## EXHIBIT C

REVISED 5/12

### STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

The parties to the Agreement agree to be bound by the following clauses which are hereby made a part of the Agreement:

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a

manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

5. SET-OFF RIGHTS. NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial

enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA’s Regulations, Part 501  
<http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

**7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** As a condition to NYSERDA’s obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by Contractor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

**8. CONFLICTING TERMS.** In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit C, the terms of this Exhibit C shall control.

**9. GOVERNING LAW.** This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

10. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA's written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

13. PERMITS. It is the responsibility of the Contractor to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.

15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises,

including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5884  
<http://www.esd.ny.gov>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractors certify that whenever the total amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

16. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

18. PROCUREMENT LOBBYING. To the extent this Agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, NYSERDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Contractors that have entered into agreements in an amount exceeding \$100,000 for the purchase of goods and services:

- a) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of [section 165-a of the State Finance Law](#) (See [www.ogs.ny.gov/about/regs/ida.asp](http://www.ogs.ny.gov/about/regs/ida.asp)).

## EXHIBIT D

### NYSERDA PROMPT PAYMENT POLICY STATEMENT

**504.1. Purpose and Applicability.** (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.<sup>2</sup>

(b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

**504.2. Definitions.** Capitalized terms not otherwise defined in this Exhibit shall have the same meaning as set forth earlier in this Agreement. In addition to said terms, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.

(b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B of this Agreement.

(d) "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(e) "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any

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<sup>2</sup> This is only a summary; the full text of Part 504 can be accessed at: <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(g)(1) "Receipt of an Invoice" means:

(i) if the Payment is one for which an invoice is required, the later of:

(a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

(ii) if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

(h) "Set-off" means the reduction by NYSERDA of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to NYSERDA.

**504.3. Prompt Payment Schedule.** Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYSERDA of an amount properly due and owing under this Agreement shall be no later than thirty (30) calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

**504.4. Payment Procedures.**

(a) Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Contractor to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; or
- (3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.

(d) If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

**504.5. Exceptions and Extension of Payment Due Date.** NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice

to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(d) If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSERDA.

**504.6. Interest Eligibility and Computation.** If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

**504.7. Sources of Funds to Pay Interest.** Any interest payable by NYSERDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.

**504.8. Incorporation of Prompt Payment Policy Statement into Contracts.** The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

**504.9. Notice of Objection.** Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to

conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

**504.10. Judicial Review.** Any determination made by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

**504.11. Court Action or Other Legal Processes.**

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Contractor pursuant to this Exhibit shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by NYSERDA after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

# 2016 Report Content Guide

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Revised 12/10/2015

(Replaces the 2015 NYSERDA Report Content Guide)

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## Purpose

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This document explains how to prepare and submit a report to the New York State Energy Research and Development Authority (NYSERDA). It includes details on the elements of the report, specifications for formatting and accessibility, and information on electronic submission. Please follow these instructions unless your NYSERDA contract specifies otherwise.

NYSERDA will publish the finished report deliverable online and/or in print unless the NYSERDA Project Manager approves special circumstances. Please direct questions about technical content and submission deadlines to your NYSERDA Project Manager. For questions related to formatting and electronic submission of the report, contact Diane Welch in NYSERDA Marketing at 518-862-1090, ext. 3276 or [dlw@nyserda.ny.gov](mailto:dlw@nyserda.ny.gov).

## Required Elements

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Section 6 includes a checklist of the required elements. This section contains details about the items that are required in all reports (unless noted as optional). Items should appear and be paginated in the following sequence:

- Title page (no page number):
  - Include title of report, draft or final, prepared for NYSERDA, NYSERDA Project Manager (name and title), prepared by name of organization, individuals and affiliation, report number (NYSERDA will provide during editing), contract number and date report submitted.
- Notice (small Roman numerals for page numbers i.e., ii):
  - Option 1—When NYSERDA is the project’s sole sponsor, this notice must be used:

### Notice

This report was prepared by [Insert Preparer's Name] in the course of performing work contracted for and sponsored by the New York State Energy Research and Development Authority (hereafter “NYSERDA”). The opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York, and reference to any specific product, service, process, or method does not constitute an implied or expressed recommendation or endorsement of it. Further, NYSERDA, the State of New York, and the contractor make no warranties or representations, expressed or implied, as to the fitness for particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or accuracy of any processes, methods, or other information contained, described, disclosed, or referred to in this report. NYSERDA, the State of New York, and the contractor make no representation that the use of any product, apparatus, process, method, or other information will not infringe privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of information contained, described, disclosed, or referred to in this report.

NYSERDA makes every effort to provide accurate information about copyright owners and related matters in the reports we publish. Contractors are responsible for determining and satisfying copyright or other use restrictions regarding the content of reports that they write, in

compliance with NYSERDA's policies and federal law. If you are the copyright owner and believe a NYSERDA report has not properly attributed your work to you or has used it without permission, please email [print@nyserda.ny.gov](mailto:print@nyserda.ny.gov).

- Option 2—When there are project co-sponsors in addition to NYSERDA, use the following notice instead:

#### Notice

This report was prepared by [Insert Preparer's Name] in the course of performing work contracted for and sponsored by the New York State Energy Research and Development Authority and the [Insert Co-Sponsor's Name] (hereafter the "Sponsors"). The opinions expressed in this report do not necessarily reflect those of the Sponsors or the State of New York, and reference to any specific product, service, process, or method does not constitute an implied or expressed recommendation or endorsement of it. Further, the Sponsors, the State of New York, and the contractor make no warranties or representations, expressed or implied, as to the fitness for particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or accuracy of any processes, methods, or other information contained, described, disclosed, or referred to in this report. The Sponsors, the State of New York, and the contractor make no representation that the use of any product, apparatus, process, method, or other information will not infringe privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of information contained, described, disclosed, or referred to in this report.

NYSERDA makes every effort to provide accurate information about copyright owners and related matters in the reports we publish. Contractors are responsible for determining and satisfying copyright or other use restrictions regarding the content of the reports that they write, in compliance with NYSERDA's policies and federal law. If you are the copyright owner and believe a NYSERDA report has not properly attributed your work to you or has used it without permission, please email [print@nyserda.ny.gov](mailto:print@nyserda.ny.gov).

- Abstract and Keywords (optional; small Roman numerals for page numbers):
  - The Abstract is a brief, approximately 200-word description of project objectives, investigative methods used, and research conclusions or applications. This information will be used when NYSERDA registers the report with the New York State Library and the Library of Congress. A list of keywords that describe the project and identify the major research concept should be submitted with the report. Four to six precise descriptors are generally sufficient and will be used for indexing, registering and distributing the report.
- Acknowledgments (optional; small Roman numerals for page numbers):
  - If included, the Acknowledgments page precedes the Table of Contents and is generally no longer than two paragraphs in length.
- Table of Contents (small Roman numerals for page numbers):
  - The Table of Contents should list front matter material (except the Table of Contents) and titles and section numbers for heading levels one through four. Additional levels should not be used in the report. If the heading styles are applied in Word, the list can be automatically generated.

- List of Figures (small Roman numerals for page numbers).
  - If the report contains three or more figures, they should be listed using the style of the Table of Contents. (If the figure titles in text have the caption function applied in Word, the list can be automatically generated.)
- List of Tables (small Roman numerals for page numbers).
  - If the report contains three or more tables, they should be listed using the style of the Table of Contents. (If the figure titles in text have the caption function applied in Word, the list can be automatically generated.)
- Acronyms and Abbreviations List (small Roman numerals for page numbers):
  - All acronyms and abbreviations should be spelled out and followed by the acronym or abbreviation in parentheses on first use.
  - First reference to NYSERDA in text should be “the New York State Energy Research and Development Authority (NYSERDA).” Subsequent references should read simply “NYSERDA.”
  - When referring to New York State, use “New York State” on first use and abbreviate “the State” for subsequent uses.
  - Use a one- or two-column layout for the list, but do not use a table.
- Executive Summary or Summary (optional; ES-1 or S-1 etc. for page numbers of Executive Summary and Summary, respectively):
  - An Executive Summary is two pages in length maximum. A Summary is a shorter version of the report and varies in length but less than 10 percent of the main report is a good guideline.
- Main Text (sequentially numbered pages i.e., 1, 2, 3 etc. preferred, but chapter-page numbering is acceptable).
- Figures and tables with sequential numbering (Figure 1, Figure 2, etc. preferred but sequential chapter-number are acceptable), callouts in text (i.e., Figure 1 shows...) and Alternative Text to comply with ADA Accessibility are required. Refer to ADA guidelines for the best way to represent data with reference to colors. Preferences for tables are listed in this document.
  - Figures and tables at the back of the document are preferred for documents that NYSERDA will be formatting; figures and tables placed in-line with text near callout is acceptable. Do not use wrap text.
- References Cited and Bibliography information (as needed; continue sequential page numbering):
  - References Cited vs. Bibliography: References Cited has specific references called out in text to document sources of specific information, and a bibliography is a list of sources used to compile a document but does not have callouts for specific facts in the text.
  - Endnote style for reference citations is preferred but footnotes are acceptable.
  - Format of reference callout in text for footnote or endnote is the author-date callout in text (i.e., Wood and Stone 2010).
  - Full reference citations listed alphabetically by the last name of the first author.
  - Citation format is based on Chapter 15 (Documentation II: Author-Date References) of The Chicago Manual of Style (16th edition).

- Use the following format to refer to reports published by NYSERDA:  
New York State Energy Research and Development Authority (NYSERDA). Year of publication. “Title of Report,” NYSERDA Report Number xx-yy. Prepared by organization, company or individual names and city/state location (optional).  
nysesda.ny.gov/publications
- Appendices (optional; A-1 etc for Appendix A, B-1 etc for Appendix B page numbering):
  - In NYSERDA reports, Appendices should be called appendices and not Attachments. Attachments are used to append a document to an appendix. (Attachments may have different definitions in emails and legal documents.)
- Alternative text that describes figures and tables to meet Accessibility requirements. (A separate Word file is fine—see Section 2.2 for more details).

## Copyright for Intellectual Property

All material borrowed or adapted from other sources should be properly identified (i.e., document, source, date, and page). The contractor must obtain and submit to NYSERDA the copyright owner’s written permission to use any illustrations, photographs, tables, figures, or substantial amounts of text from any other publication.

For each figure and table, the contractor must also provide a source line that gives the original source and any language stating permission to reprint that should be published with each respective table or figure.

## Proprietary or Confidential Information

Propriety or confidential information must be clearly labeled in the report submission as “proprietary” or “confidential.” To the extent possible, the information should be contained within one section or appendix that can be easily removed prior to publishing. Consult your NYSERDA Project Manager with any questions.

## Americans with Disabilities Act (ADA) Accessibility Compliance

As a State Authority, NYSERDA is obligated to ensure that all documents published on NYSERDA’s website are accessible, pursuant to Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220 August 7, 1998).

To meet the needs of persons with visual or mobility disabilities, reports must be in a format that allows for conversion of written words of an electronic document into speech, thus allowing the person with a disability to hear the text. The formatting of these documents is critical to the success of the conversion from text to speech. Screen reading software will read the document as one long series of paragraphs with no differentiation for new topics unless properly formatted with Heading Styles. (Imagine reading a textbook with no difference in text from one paragraph to the next.)

Reports submitted to NYSERDA must meet the following requirements:

- Use numbered headings in the document up to Level 4 (i.e., 1.1.1.1).
- Pick one of the formatting options outlined in Section 3 of this document.

- Provide short titles for all tables, images, and figures.
- Provide Alternative Text (also known as alt-text) that describes the visual elements of each image and figure—and does not just repeat the title or caption. Include alt text for any tables that are inserted as images.
  - Write out links in documents that will be printed. Write the sentence so that the URL is not at the end and followed by a period. See the last bulleted item for an example (“Visit...”).
  - Avoid linking to “click here” or including extremely long URLs. For web-only documents, use contextual links, such as linking NYSERDA’s website to “NYSERDA” instead of putting a long URL in text.
  - Visit [nyserderda.ny.gov/Doing-Business-with-NYSERDA](https://nyserderda.ny.gov/Doing-Business-with-NYSERDA) for more information about how to make a document accessible.

## Formatting

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Contractors have two options for the format of a submitted document:

### Option 1—NYSERDA does the formatting

- Contractor emails to NYSEDA Project Manager a Word file of all report components with all text in Times New Roman 10 pt font.
- File should include outline level numbering with each section head (1 is Level 1 Heading, 1.1 is Level 2 Heading, 1.1.1 is Level 3 Heading, 1.1.1.1 is Level 4 Heading), not to exceed Level 4.
- Each figure and table should have a call-out in the main text (i.e., Figure 1 shows... or According to Figure 1,... or (Figure 1) at the end of a sentence).
- Figures and tables along with their titles and sources (and captions if necessary) should be grouped together at the back of the file or supplied in a separate file. Contractor can request inline or back-of-report placement of figures.
- NYSEDA will format the document according to the 2016 NYSEDA Marketing’s Template for Reports.

### Option 2—Contractor does the formatting

- Visit [nyserderda.ny.gov/Doing-Business-with-NYSERDA](https://nyserderda.ny.gov/Doing-Business-with-NYSERDA) to download:
  - Report template (2016 NYSEDA Marketing’s Template for Reports).
  - Details about report formatting (2016 NYSEDA Report Formatting Guide).
- Apply each of the Word Styles in the template to the elements of the document as appropriate, such as apply Heading 1 to all first-level headings, Body Text to all body text and References to reference materials. Place figures and captions after each respective call-out OR in order at the back of the report.

## Submitting a Report to NYSERDA

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No print drafts of the report are required. An electronic Word version of the draft report should be emailed to the NYSERDA Project Manager. Contact the Project Manager regarding how to transfer large files. The contractor is responsible for satisfactorily addressing comments from NYSERDA and other stakeholders. When making corrections, the contractor must ensure that technical content is not compromised. After editorial corrections have been made, the contractor must email to the Project Manager a Word version of the final report. NYSERDA will consider high-resolution image submissions for report covers.

## Contacts

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- The NYSERDA Project Manager should be the contractor's primary point of contact.
- For additional questions, contact Diane Welch in NYSERDA Marketing at [dlw@nyserda.ny.gov](mailto:dlw@nyserda.ny.gov) or 518-862-1090 ext. 3276.
- Contractors can also email [print@nyserda.ny.gov](mailto:print@nyserda.ny.gov) or call 518-862-1090 and ask for Marketing.

## Required Elements Checklist

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The following elements should be included in reports, unless noted as optional, along with the style of page numbers is listed in parentheses:

- Title page (no page number).
- Notice (small Roman numeral page numbers, i.e., ii).
- Abstract
- Keywords (optional; small Roman numerals).
- Acknowledgments (optional; small Roman numerals).
- Table of Contents (small Roman numerals).
- List of Figures (small Roman numerals).
- List of Tables (small Roman numerals).
- Acronyms and Abbreviations List (small Roman numerals).
- Executive Summary or Summary (optional; ES-1 or S-1 etc).
- Main Text (pages sequentially numbered i.e., 1, 2, 3 etc.).
- Figures and tables with sequential numbering (Figure 1, Figure 2, etc.), callouts in text (i.e., Figure 1 shows...), and Alt Text for ADA Accessibility.
  - Figures and tables at the back of the document are preferred for documents that NYSERDA will be formatting; figures and tables placed in-line with text after first callout are acceptable. Do not wrap text.
- References Cited and Bibliography information.
- Appendices (optional; page numbering is A-1 etc. for Appendix A, B-1 etc. for Appendix B).
- Copyright information for intellectual property (i.e., images, figures, tables or large pieces of text that have been previously published)—include written permission from the copyright holder at the end of the document and use appropriate language in the captions of the images, figures and tables such as “Reprinted with permission from [publisher's name].”

- Alternative text that describes each image and figure (include Alt text for tables that are included as images) —and does not just repeat the title or caption. (See Section 2.3 for more information.) The text should be listed at the end of the document or provided in a separate file.

# **Attachment F**

## **(Exhibit F in Contract Agreement)**

### **Project Benefits Metrics Report**

#### **Overview**

This guide is designed to help customers of NYSERDA's Clean Energy Communities (CEC) Program develop the standardized Project Benefits Metrics Report (PBMR) that must be submitted as in draft form in Task 1.1 and in final form as part of the Final Report. NYSERDA expects all CEC investment to create near-term benefits, and have the potential to create significant long-term environmental, community, and economic development benefits. All CEC customers are required to develop a PBMR with quantified benefits estimated and a description of methods of analysis and submit it in Task 1.1 in the format described in this guide. Customers will have a chance to update the PBMR and refine the estimates during project development and submit a final PBMR with the Final Report. A PBMR template is available in *Attachment A: Project Benefits Metrics Report Template*.

#### **Definitions**

##### **CEC Program Performance Metrics**

These are a preliminary set of metrics that NYSERDA has identified to track (or predict) the benefits of its entire portfolio of CEC projects. The metrics are shown at the end of this guide in

*Attachment B: CEC Program Performance Metrics*. There are two types of Program Performance Metrics:

Required Performance Metrics (RPMs): These are metrics NYSERDA anticipates using to demonstrate CEC Program value by rolling them up across all projects. The RPMs may be used in other NYSERDA programs. All CEC customers must therefore estimate potential project benefits for all of these metrics. *It is not required, however, that projects positively impact all of these metrics.* The RPMs are as follows:

- GHG savings/year (MTCDE)
- Conventional Energy Savings (MMBTU / Year), defined as a change in use of conventional grid electricity and fossil fuels.
- Conventional Energy Cost Savings / Year (\$)
- Number of Permanent Jobs Created
- NYSERDA CEC Investment (\$)
- Investment by Others (\$)

Sector Common Metrics (SCMs): All other non-required CEC Performance Metrics shown in Attachment B are considered to be SCMs. NYSERDA would like to record these wherever possible, but understands they are applicable only to select projects. To assist NYSERDA, customers are strongly encouraged to review metrics in Attachment B and include them in their PBMRs where applicable. For example, land use and transportation-related projects and plans would be strongly encouraged to attempt to estimate VMT Reduction as a metric.

## Sustainability Indicators

Sustainability indicators describe community performance and are used by planners to set and to track progress towards goals. These are two types:

Common Planning Indicators (CPIs): This is a set of community indicators related to energy and transportation demand that NYSERDA would like to have baselines for, to the extent possible, for all communities receiving planning funding. Generally, these indicators will rely on data available via the census or from similar online sources. The indicators may be reviewed by NYSERDA at intervals in the future to evaluate community performance. CPIs may use performance indicators and standards used within LEED® for Neighborhood Development (LEED- ND) or other systems and standards commonly used to quantify the benefits of sustainable planning practices.

Regional Sustainability Plan Indicators (RSPIs): Sustainability indicators describe community performance and are used by planners to set and to track progress towards goals. Under Phase I of the Cleaner, Greener Communities (CGC) Program, the CGC Program developed a comprehensive list of potential performance indicators to support the Regional Sustainability Plans. All customers will be required to demonstrate their project's ability to positively influence indicators in its applicable Regional Sustainability Plan as discussed in Section 4 of the PBMR.

## Instructions for Creating a PBMR

The PBMR format is flexible and designed to let customers customize it for their needs. Each PBMR should contain the four sections discussed below, although not all sections will require content. Once complete, the applicant should submit a preliminary PBMR in Task 1.1 and the Final PBMR in the Final Report. PBMRs should be kept concise and limited to no more than fifteen pages, excluding data and attachments.

### Standard Format of the PBMR

#### Section 1. Benefits Overview

Provide a brief description of the components of the project that will result in the benefits discussed in the statement.

#### Section 2. Expected Annual Benefits by Close of CEC Project Period

This section describes the cumulative and/or effective annual rate of benefits customers expect to achieve by close of CEC funding. For example, if a project installs equipment in its last month, the annual savings rate would be the effective rate expected from that point forward. This section is only required for projects with tangible infrastructure or technology components, and/or for programs that expect to engage markets or communities during the CEC funding period. Other customers should list "N/A" under this heading in their PBMR and move to Section 3.

#### *Section 2 Instructions*

Customers should review

Attachment B: CEC Program Performance **Metrics** and prepare a table as shown below that includes all RPMs and any optional SCMs relevant to the project. For example, smart growth and transportation-related projects are strongly encouraged to include the SCM “VMT Reduction” in the table. In addition, customers are encouraged to include in the table any other custom metrics that they feel will convey the benefits of the proposed project as shown above.

Section 2: CEC Benefits by Point of Project Close			
Type	Metric	Direct	Indirect
RPM	Permanent Jobs Created (FTE)		
RPM	NYSERDA CEC Investment (\$)		N/A
RPM	Investment by Others (matching and leveraged)		
RPM	Conventional Energy Savings (MMBTU/year)		
RPM	Natural Gas Savings (therms/year)		
RPM	Grid Electricity Savings (KWh/year)		
RPM	Gasoline Savings (gallons / year)		
RPM	Diesel Savings (gallons / year)		
RPM	Fuel Oil Savings (gallons / year)		
RPM	Conventional Energy Cost Savings (\$ / year)		
RPM	GHG Savings (MTCDE / year)		
SCM	(Optional) SCM Metric 1 (From Attachment B)		
SCM	(Optional) SCM Metric 2, and so on... (From Attachment B)		
Custom	List all other metrics in separate rows		

Only RPMs for energy types that will be impacted by the project need be included.

Customers should quantify and report benefits in the table. Below it they should concisely *summarize* methods, baseline assumptions, use of external tools, references to studies and protocol, etc. Each metric, and associated methods, should be listed separately.

For GHG savings from grid electricity use, customers are required to use NYSERDA’s state average GHG emission factor of 625 lbs. CO<sub>2</sub>e/MWh. Refer to *Attachment D: Calculating GHG Emissions* for emissions factors from all fuels needed to convert energy savings to GHG emission savings.

*Direct vs. Indirect Benefits*

CEC projects can create benefits in operations and in the wider community around them. Therefore, in Section 2 customers should do their best to list benefits separately as “direct” and “indirect” in the table above. In general, “direct” benefits are those achieved by the components specifically attributed to CEC funding, while “indirect” benefits include all others such as:

- Benefits achieved by the project as a whole, including non-CEC portions.
- Benefits achieved by others because of the project, such as savings by residents moving to a community redevelopment that now have lower energy bills and transportation needs.
- Benefits achieved by residents and businesses participating in a CEC-supported market or service.

- Benefits achieved by energy and/or land use policies or programs that cause shifts in consumption patterns in communities.
- Any other benefits an applicant can reasonably argue are indirectly caused by the proposed project.

Customers are encouraged to think holistically about how their projects may directly and indirectly impact their communities. Because indirect benefits have the potential to be larger than direct benefits, NYSERDA will evaluate the *reasonableness* of the estimates rather than the magnitude of estimates. If an applicant has questions, they may contact the CEC team prior to submission of the PBMR.

### Section 3. Potential for Future and/or Long-Term Transformational Benefits

This section is an opportunity for customers to demonstrate how projects will manifest and grow benefits in the future. NYSERDA is particularly interested in understanding how CEC investments have the potential to foster long-term and wide-spread market transformation toward sustainability.

This section is required for all projects. For projects that do not anticipate benefits growing beyond the funded project period, they should list the total annual benefits calculated in Section 2 as they apply to future years as ongoing benefits.

#### Section 3 Instructions

Customers should review *Attachment B: CEC Program Performance Metrics* and prepare a table as shown below that includes all required metrics (RPMs) and any optional metrics (SCMs) that they believe relevant to the project. For example, smart growth and transportation-related projects are strongly encouraged to include the SCM “VMT Reduction.” In addition, customers are encouraged to include in the table any other custom metrics that they feel will convey the benefits of the proposed project. The Section 3 table should have three columns labeled “at 5 years,” “at 15 years,” and “at 30 years” representing annual estimates of potential near, mid, and long-term benefits.

Section 3: Future and Long Term Transformation Benefits (Annual)				
Type	Metric	at 5 years	at 15 Years	at 30 Years
RPM	Permanent Jobs Created (FTE)			
RPM	NYSERDA CEC Investment (\$)	N/A	N/A	N/A
RPM	Investment by Others (matching and leveraged)			
RPM	Conventional Energy Savings (MMBTU/year)			
RPM	Natural Gas (therms/year)			
RPM	Grid Electricity (KWh/year)			
RPM	Gasoline Savings (gallons / year)			
RPM	Diesel Savings (gallons / year)			
RPM	Fuel Oil Saving (gallons / year)			
RPM	Propane Savings (gallons / year)			
RPM	Conventional Energy Cost Savings (\$ / year)			
RPM	GHG Savings (MTCDE / Year)			
SCM	(Optional) SCM Metric 1 (From Attachment B)			

Only RPMs for energy types that will be impacted by the project need be included.

SCM	(Optional) SCM Metric 2, and so on... (From Attachment B)			
Custom	List all other metrics in separate rows			

Customers should attempt, to the best of their ability, to forecast and report quantifiable potential benefits in the table. NYSERDA understands these forecasts are highly uncertain and will not require customers to achieve these estimates. If a customer is unable to quantify a metric in the preliminary PBMR, they can state “TBD” in the table and provide an explanation of how this metric will be estimated for the PBMR. “TBD” may be noted for about 20% of the projects benefits.

Below the table in the PBMR, customers should include a concise *summary* of how they projected each metric, listing assumptions, methods, and data sources. For long-term benefits customers may use local modeling or cite research studies, literature, and other peer-reviewed rule of thumb sources and tools to estimate long-term benefits of policies. For metrics listed “TBD,” customers can describe qualitatively why and how they think the listed metrics will be positively impacted and on what timeframe, and how they will be quantified in the Final PBMR. Customers should list each metric separately.

For GHG savings from grid electricity use, customers are required to use the NYSERDA state average GHG emission factor of 625 lbs. CO<sub>2</sub>e/MWh. Refer to Attachment D for emissions factors from all fuels needed to energy savings to GHG emission savings.

*What are long-term transformation benefits and how should one estimate them?*

Long-term benefits are those that grow directly, or indirectly, from CEC projects. NYSERDA anticipates that its CEC investments will be poised to inspire, grow, and facilitate market transformation to sustainable practices and services. Some examples of transformational benefits include:

- A project may demonstrate growing benefits through its intent to scale up, or from its potential to be replicated.
- A specific transit investment or plan may create transformational benefits as it grows ridership and attracts investment to the region.
- Neighborhood redevelopment with LEED-ND principles may attract investment, jobs, and reduce energy use and GHG emissions among residents and businesses through compact development.
- A market transformation project for renewable energy will grow benefits as that market grows.
- Investment in public policy and planning can create significant long-term environmental, social, and economic benefits in communities.

There is no rule to make these forecasts, although customers are encouraged to look for tools, resources, and studies in their sectors to help them make estimates. Recognizing that estimates are speculative and may vary widely between customers for even similar projects, NYSERDA will favor quality and reasonableness of the assumptions over quantity. Examples of reasonableness include:

- A statement that a project will attract \$100 million in commercial investment and create 500 jobs within 10 years will be considered more reasonable if it is backed by a bona fide Market Analysis study as opposed to simple offhand assumptions.
- A statement that the benefits of a pilot project will grow through replication will be considered more reasonable if the project appears to have a strategic approach for fostering market transformation, as opposed to simply asserting that a good idea will replicate on its own.
- Forecasted benefits from programs, policy development, and planning activities will be considered more reasonable if they can cite literature, research, performance of peers, or other references that back assumptions of performance and growth.

#### **Section 4. Potential to Impact Regional and Local Sustainability Indicators**

This section must be developed by all customers. NYSERDA anticipates all CEC investments will positively support the long-term goals and indicators adopted in their region’s CGC Phase I Regional Sustainability Plan. Customers for comprehensive or sustainability planning must also include a set of Common Planning Indicators (CPIs) that NYSERDA may use to evaluate community performance over the long term once planning is complete.

Sustainability Indicators are different from CEC Program RPMs and SCMs in that they describe community and regional sustainability performance. Indicators are diverse and cover a vast array of sectors from community livability, land use and transportation, climate adaptation, economic development, and many other sectors. Customers can find resources on the [CGC website](#) including:

- Full Regional Sustainability Plans (RSPs)
- A convenient summary of RSPs and goals adopted by regions in excel format
- A Sustainability Indicators Guidance Document that includes a description of how indicators were calculated at a regional. This is an excellent resource to start identifying additional potential indicators.

#### *Section 4 Instructions*

All customers should create a table of indicators in the format shown on the next page and list at least two RSP Indicators to be positively influenced by the planning project. In addition, customers for comprehensive or sustainability planning should review *Attachment C: Common Planning Indicators* and include applicable CPIs so there are at least five total Indicators chosen for each project and listed in the Section 4 table. These indicators should be chosen to demonstrate the impact of CEC planning investment when reviewed independently in the future. These need not be limited to energy, GHG, and transportation indicators.

Customers should create a baseline value for all indicators in the table, drawing on data sources and methods in *Attachment C: Common Planning Indicators*, the Sustainability Indicators Guidance Document, or any other suitable source. Projects for community-scale plans are encouraged to draw indicators that are already known for the community. Customers may list the value as “TBD” if they cannot be developed by submission of the preliminary PBMR required in Task 1.1, but plan to provide

estimates with the Final PBMR. For the brief description of impact (one line only), customers can estimate an actual change, list a potential goal, or simply provide a description of how the indicator will likely change.

<b>Section 4: Potential to Impact Regional and local Common Planning Indicators(EXAMPLE)</b>			
<b>Indicator</b>	<b>Type (RSPI, CPI, Other)</b>	<b>Baseline (if known)</b>	<b>Brief one-line description of impact</b>
(e.g.) Residential Energy Use per Household	CPI	240 MMBtu/year	Decrease by 30% in 50% of Homes
(e.g.) Total Energy Use per Capita	CPI	181 MMBtu/year	Decrease by 10%, related to transportation
(e.g.) H+T Index	CPI		
(e.g.) Average Commute Time	CPI	20 minutes	Reduce to 18 minutes
(e.g.) GHG Emissions per Capita	RSPI	12.48	Reduce by 20%
(e.g.) Percent of Housing Occupied	RSPI	70%	Increase to 75%
etc., list all indicators			

Below the table, customers should include a concise description of the baseline calculation method, and the basis for each indicator’s one-line impact statement. This may include a rationale for the project’s linkage to an indicator, references to studies, additional qualitative description, application of tools, etc. Customers should list each indicator separately and try to limit description for each indicator to no more than 3-4 sentences.

*How to link sustainability indicators to individual projects*

Some specific projects may need to include the concept of a “project boundary” when reporting an impact on regional sustainability indicators. For example, the Housing and Transportation Index was a required common metric for the Phase I Regional Sustainability Plans. This index is the percent of household income spent on transportation plus housing. A specific urban redevelopment project will positively impact this indicator, but its singular impact may not manifest over a regional average. Therefore, the applicant could assume the “project boundary” to be the future population of the redevelopment and compare this group’s expected Housing and Transportation Index to the regional average as a means to show benefit.

# Attachment A: Project Benefits Metrics Report Template

## CFA #####, Project Benefits Metrics Report

[Project Title]

### Section 1. Benefits Overview

Provide a brief description of the components of the project that will result in the benefits discussed in the statement.

### Section 2. Expected Annual Benefits by Close of CEC Project Period

[List N/A under heading if section excluded]

Section 2: CEC Benefits by Point of Project Close			
Type	Metric	Direct	Indirect
RPM	Permanent Jobs Created (FTE)	[e.g., 25]	
RPM	NYSERDA CEC Investment (\$)	[e.g., 2,300,000]	N/A
RPM	Investment by Others (matching and leveraged)		
RPM	Conventional Energy Savings (MMBTU/year)		
RPM	Natural Gas Savings (therms/year)		
RPM	Grid Electricity Savings (KWh/year)		
RPM	Gasoline Savings (gallons / year)		
RPM	Diesel Savings (gallons / year)		
RPM	Fuel Oil Savings (gallons / year)		
RPM	Conventional Energy Cost Savings (\$ / year)		
RPM	GHG Savings (MTCDE / year)		
SCM	(Optional) SCM Metric 1 (From Attachment B)		
SCM	(Optional) SCM Metric 2, and so on... (From Attachment B)		
Cust om	List all other metrics in separate rows: See CGC Phase I Sustainability Plans for Examples		

Only RPMs for energy types that will be impacted by the project need be included.

Fill in an estimated value in all cells, or list "N/A". Use units in table.

Methods and Assumptions [entry for each row in table]

**Metric 1:** Concisely summarize methods, baseline assumptions, data sources, protocol, studies, ad hoc assumptions, etc., used to make the estimates. Referencing a known method or protocol can replace the need to provide a detailed description thereof. Describe basis of classifying benefits as direct, indirect, or both where applicable.

**Metric 2:** [methods discussion....]

**Metric 3:** [methods discussion....]

**Metric 4:** and so on...

### Section 3. Potential for Future and/or Long Term Transformational Benefits

Section 3: Future and Long Term Transformation Benefits(Annual)				
Type	Metric	at 5 years	at 15 Years	at 30 Years
RPM	Permanent Jobs Created (FTE)			
RPM	NYSERDA CEC Investment (\$)	N/A	N/A	N/A
RPM	Investment by Others (matching and leveraged)			
RPM	Conventional Energy Savings (MMBTU/year)	25,000	40,000	
RPM	Natural Gas (therms/year)			
RPM	Grid Electricity (KWh/year)			
RPM	Gasoline Savings (gallons / year)			
RPM	Diesel Savings (gallons / year)			
RPM	Fuel Oil Saving (gallons / year)			
RPM	Conventional Energy Cost Savings (\$ / year)			
RPM	GHG Savings (MTCDE / Year)			
SCM	(Optional) SCM Metric 1 (From Attachment B)			
SCM	(Optional) SCM Metric 2, and so on... (From Attachment B)			
Custom	List all other metrics in separate rows			

Only RPMs for energy types that will be impacted by the project need be included.

Fill in an estimated value in all cells, or list "N/A". Use units in table. Benefits need not be projected for all time periods.

Methods and Assumptions [entry for each row in table]

**Metric 1:** Describe custom methods, forecast assumptions, models, studies, growth rates, data sources, etc., used to make the estimates. For metrics listed as “TBD” in the Draft PBMR according to instructions, explain qualitatively the potential impact and on what timeframe impacts will be assessed.

**Metric 2:** and so on....

### Section 4. Projected Impact on Regional and Local Sustainability Indicators

Section 4: Potential to Impact Regional and Local Common Planning Indicators			
Indicator	Type (RSPI, CPI, Other)	Baseline (if known)	Brief one-line description of impact
(e.g.) Residential Energy Use per Household	CPI		
(e.g.) Total Energy Use per Capita	CPI		
(e.g.) H+T Index	CPI		
(e.g.) Average Commute Time	CPI		
(e.g.) GHG Emissions per Capita	RSPI		
(e.g.) Percent of Housing Occupied	RSPI		
etc., list all indicators			

Methods and Assumptions [entry for each row in table]

**Indicator 1:** include a concise *summary* of the basis of each indicator, references to studies, additional qualitative description, application of tools, explanation of impact, etc.

**Indicator 2:** and so on...

## Attachment B: CEC Program Performance Metrics

This table includes a list of metrics that NYSERDA would like to roll up across all CEC projects to help demonstrate program impact.

**Required Performance Metrics (RPMs)** should be included in all benefit tables included in Section 2 and Section 3 Project Benefit Reports (PBMRs). For Energy, only RPMs for specific energy types affected need be included.

**Sector Common Metrics (SCMs)** are optional for Section 2 and Section 3 PBMR responses. NYSERDA encourages customers to include them if their projects will provide benefits to them.

Sector	Type	Metric	Unit
Environment	RPM	GHG Emissions Savings / year	MTCDE/year
Energy	RPM	Total Conventional Energy Savings	MMBTU
	(below)	Conventional Energy Savings (By Type)	(See below)
	RPM	Natural Gas Savings (or increase)	therms / year
	RPM	Grid Electricity Savings (or increase)	KWh / year
	RPM	Gasoline Savings (or increase)	gallons / year
	RPM	Diesel Savings (or increase)	gallons / year
	RPM	Fuel Oil Savings (or increase)	gallons / year
	RPM	Propane Savings (or increase)	gallons / year
	SCM	Biomass Fuel Created	MMBTU / year
	SCM	Renewable Electricity Created	MWh / year
	SCM	Installed Solar/Wind/Geothermal Capacity	MW
Transportation	SCM	Vehicle-Miles-Traveled (VMT) Reduced	miles / year
	SCM	Use of CNG	MMBTU / year
	SCM	Use of Ethanol	gallons / year
	SCM	Use of Biodiesel	MMBTU / year
	SCM	Use of Electricity in Vehicles	MWh / year
	SCM	Number of alternative vehicles on road	number
Waste Management	SCM	Organic MSW, sewage sludge, or other waste Composted or Digested	tons / year
	SCM	Landfill / WWTP Gas Captured	MMBTU / year
	SCM	Solid Waste Diverted	tons / year
Economic	RPM	Conventional Energy Cost Savings	\$
	RPM	Permanent Jobs Created	number
	RPM	NYSERDA CEC Investment (funding requested)	\$
	RPM	Investment by Others (matching and leveraged)	\$
	SCM	Operational / Lifecycle Cost Savings	\$ / year
	SCM	Revenue Generated by New or Increased Business	\$ / year

## Attachment C: Common Planning Indicators

All Comprehensive and Sustainability planning projects should include at least five Regional and Local Sustainability Indicators, including Common Planning Indicators (CPIs) from the list below. For areas or developments that are not communitywide, the Contractor should estimate the indicators for the population or area subset of the community.

Contractors should favor indicators based on high quality data that is readily available and easily updated in the future. For example, VMT per capita will be a good indicator if high quality community-scale VMT data is available from an MPO or local traffic count study. Conversely, VMT per capita as a local indicator is less valuable if it is derived from state average values scaled to the community. Similarly, for energy use, utility provided data of *actual* community energy use profiles are more valuable than, say, estimated community totals from state or regional averages.

In addition to the data sources listed below, please refer to the Sustainability Indicators Guidance Document for more detailed suggestions on methods and data sources.

Type	Indicator	Common Data Sources
CPI	Energy Consumption (MMBTU) / Capita	Utility Data Request, CEC Program, CEC Regional GHG Inventories, local energy plans
CPI	Household Energy Consumption (MMBTU) / Capita	Same
CPI	Installed Solar Capacity (MWh)	<a href="#">NY-Sun Initiative Tools</a>
CPI	Installed Local Renewable Capacity (MWh)	<a href="#">NY-Sun Initiative Tools</a> , others
CPI	Alternative Commute Mode Share (percent by walking, biking, transit, carpooling)	<a href="#">Census Journey to Work</a> , ACS, <a href="#">Census Transportation Data Products</a>
CPI	Average Commute Time (Minutes)	Same
CPI	Percent that live and work in the same community (percent)	same
CPI	Number of EV Charging Stations	Plugshare.com, <a href="#">Alternative Fuels Data Center</a> , others
CPI	Vehicle miles-traveled (VMT) per Capita	Metropolitan Planning Organizations
CPI	Housing Density (Households / Square mile)	Census and <a href="#">American Community Survey</a>
CPI	Housing and Transportation (H+T) Index	<a href="#">Center for Neighborhood Technologies</a>
CPI	Community average Walk Score	<a href="#">Walkscore.com</a>

## Attachment D: Calculating GHG Emissions

Customers can use the tables below to convert energy savings into GHG emissions. EPA’s Clean Energy Website provides Calculations and References for using these emission factors at <http://www.epa.gov/cleanenergy/energy-resources/refs.html>. However, remember that all Customers, regardless of their geographic location within New York State, are required to use NYSERDA’s State Average emission factor of 625 lbs. CO<sub>2</sub>e/MWh to convert any grid electricity usage or savings into GHG emissions. GHG savings should be reported in units of MTCDE, or “Metric Tons of Carbon Dioxide Equivalent,” or 1000kg CO<sub>2</sub>e. The factors listed in the last column in the chart below would need to be divided by 1000.

NYSERDA does not expect that customers be experts in GHG calculations, and will work with successful customers to refine and improve GHG benefit estimates where needed. Customers may contact the CEC team with questions, and may indicate in their PBMRs that they require assistance.

### Fuel (Scope 1) and Electricity (Scope 2) Emission Factors

Fuel Type	Heating Value	CO <sub>2</sub> Factor	CH <sub>4</sub> Factor	N <sub>2</sub> O Factor	CO <sub>2</sub> e
<b>Electricity Consumption (Scope 2)</b>		lb/MWh	lb/GWh	lb/GWh	kg/MWh
NYSERDA State Average		625	--	--	283.5
<b>Solid Fuels</b>	mmBtu / ton	kg / mmBtu	g / mmBtu	g / mmBtu	kg/mmBtu
Anthracite Coal	25.09	103.54	11	1.60	104.27
Bituminous Coal	24.93	93.40	11	1.60	94.13
Sub-bituminous Coal	17.25	97.02	11	1.60	97.75
Lignite Coal	14.21	96.36	11	1.60	97.09
Mixed (Commercial Sector)	21.39	95.26	11	1.60	95.99
Mixed (Electric Power Sector)	19.73	94.38	11	1.60	95.11
Mixed (Industrial Coking)	26.28	93.65	11	1.60	94.38
Mixed (Industrial Sector)	22.35	93.91	11	1.60	94.64
Coke	24.80	102.04	11	1.60	102.77
Municipal Solid Waste	9.95	90.70	32	4.20	92.67
Petroleum Coke (Solid)	30.00	102.41	32	4.20	104.38
Plastics	38.00	75.00	32	4.20	76.97
Tires	26.87	85.97	32	4.20	87.94
Agricultural Byproducts	8.25	118.17	32	4.20	120.14
Peat	8.00	111.84	32	4.20	113.81
Solid Byproducts	25.83	105.51	32	4.20	107.48
Wood and Wood Residuals	15.38	93.80	32	4.20	95.77
<b>Gaseous Fuels</b>	mmBtu / scf	kg CO <sub>2</sub> / mmBtu	g CH <sub>4</sub> / mmBtu	g N <sub>2</sub> O / mmBtu	kg / mmBtu
Natural Gas (per scf)	0.001028	53.02	1.000	0.100	53.072
Blast Furnace Gas	0.000092	274.32	0.022	0.100	274.351
Coke Oven Gas	0.000599	46.85	0.480	0.100	46.891
Fuel Gas	0.001388	59.00	0.022	0.100	59.031
Propane Gas	0.002516	61.46	0.022	0.100	61.491

Fuel Type	Heating Value	CO <sub>2</sub> Factor	CH <sub>4</sub> Factor	N <sub>2</sub> O Factor	CO <sub>2</sub> e
Biogas (Captured Methane)	0.000841	52.07	3.200	0.630	52.333
<b>Liquid Fuels</b>	mmBtu / gallon	kg CO <sub>2</sub> / mmBtu	g CH <sub>4</sub> / mmBtu	g N <sub>2</sub> O / mmBtu	kg / mmBtu
Asphalt and Road Oil	0.158	75.36	3.0	0.60	75.609
Aviation Gasoline	0.120	69.25	3.0	0.60	69.499
Butane	0.101	65.15	3.0	0.60	65.399
Butylene	0.103	67.73	3.0	0.60	67.979
Crude Oil	0.138	74.49	3.0	0.60	74.739
Distillate Fuel Oil No. 1	0.139	73.25	3.0	0.60	73.499
Distillate Fuel Oil No. 2	0.138	73.96	3.0	0.60	74.209
Distillate Fuel Oil No. 4	0.146	75.04	3.0	0.60	75.289
Ethane	0.069	62.64	3.0	0.60	62.889
Ethylene	0.100	67.43	3.0	0.60	67.679
Heavy Gas Oils	0.148	74.92	3.0	0.60	75.169
Isobutane	0.097	64.91	3.0	0.60	65.159
Isobutylene	0.103	67.74	3.0	0.60	67.989
Kerosene	0.135	75.20	3.0	0.60	75.449
Kerosene-type Jet Fuel	0.135	72.22	3.0	0.60	72.469
Liquefied Petroleum Gases (LPG)	0.092	62.98	3.0	0.60	63.229
Lubricants	0.144	74.27	3.0	0.60	74.519
Motor Gasoline	0.125	70.22	3.0	0.60	70.469
Naphtha (<401 deg F)	0.125	68.02	3.0	0.60	68.269
Natural Gasoline	0.110	66.83	3.0	0.60	67.079
Other Oil (>401 deg F)	0.139	76.22	3.0	0.60	76.469
Pentanes Plus	0.110	70.02	3.0	0.60	70.269
Petrochemical Feedstocks	0.129	70.97	3.0	0.60	71.219
Petroleum Coke	0.143	102.41	3.0	0.60	102.659
Propane	0.091	61.46	3.0	0.60	61.709
Propylene	0.091	65.95	3.0	0.60	66.199
Residual Fuel Oil No. 5	0.140	72.93	3.0	0.60	73.179
Residual Fuel Oil No. 6	0.150	75.10	3.0	0.60	75.349
Special Naphtha	0.125	72.34	3.0	0.60	72.589
Still Gas	0.143	66.72	3.0	0.60	66.969
Unfinished Oils	0.139	74.49	3.0	0.60	74.739
Used Oil	0.135	74.00	3.0	0.60	74.249
Biodiesel (100%)	0.128	73.84	1.1	0.11	73.897
Ethanol (100%)	0.084	68.44	1.1	0.11	.057
Rendered Animal Fat	0.125	71.06	1.1	0.11	71.117
Vegetable Oil	0.120	81.55	1.1	0.11	81.607

**Sources:** Solid, gaseous, liquid and biomass fuels: Federal Register (2009) EPA; 40 CFR Parts 86, 87, 89 et al; Mandatory Reporting of Greenhouse Gases; Final Rule, 30Oct09, 261 pp. Tables C-1 and C-2 at FR pp. 56409-56410. Revised emission factors for selected fuels: Federal Register (2010) EPA; 40 CFR Part 98.