

Making Transportation Smart and Sustainable Program Opportunity Notice (PON) No. 3345 \$3,000,000 Available

NYSERDA reserves the right to extend and/or add funding to the Solicitation should other program funding sources become available.

PROPOSALS DUE: November 29th, 2016 by 5:00 pm Eastern Time*

In partnership with the New York State Department of Transportation (NYSDOT), the New York State Energy Research and Development Authority (NYSERDA) seeks proposals that have the potential to reduce the greenhouse gas (GHG) emissions and the associated energy consumption of the existing multi-modal transportation system in New York State. Project Focus Areas will be limited to: 1) Smart Mobility Solutions, 2) Smart Infrastructure and Systems Planning, and 3) Smart Freight and Urban Delivery Systems. Total available funding is \$3,000,000. All, some, or none, of the available funding may be awarded. In funding this solicitation, the sponsors seek to promote an integrated, multi-faceted, energy-efficient, and sustainable transportation system through the identification of innovative strategies, policies, emerging technologies and partnerships, and through useful demonstrations that validate underutilized commercial products in New York State.

Proposal Submission: Electronic submission is preferable. NYSERDA will also accept proposals by mail or hand-delivery. If submitting electronically, proposers must submit the proposal in either PDF or MS Word format with a completed and signed Proposal Checklist and Disclosure of Prior Findings of Non-Responsibility, in PDF format. Proposal PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility, rather than scanning. For ease of identification, all electronic files must be named using the proposer's entity name in the title of the document. Proposals may be submitted electronically by following the link for electronic submissions found on this PON's webpage, which is located in the "Current Opportunities" section of NYSERDA's website (<https://www.nyserderda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities>)

Instructions for submitting electronically are located in Attachment G to this PON. If mailing or hand-delivering, proposers must submit two (2) paper copies of their proposal with a completed and signed Proposal Checklist, along with a CD or DVD containing both a PDF and a MS Word digital copy of the proposal, following the above guidelines. Mailed or hand-delivered proposals must be clearly labeled and submitted to:

**Venice Forbes, PON 3345
New York State Energy Research and Development Authority
17 Columbia Circle, Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, contact Joseph Tario, (518) 862-1090 ext. 3215 (Joseph.Tario@nyserderda.ny.gov). If you have contractual questions concerning this solicitation, contact Nancy Marucci, (518) 862-1090 ext. 3335 (Nancy.Marucci@nyserderda.ny.gov).

No communication intended to influence this procurement is permitted except by contacting Joseph Tario (Designated Contact) at (518) 862-1090, ext. 3215 (Joseph.Tario@nyserderda.ny.gov). Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offeror, and (2) may result in the proposer not being awarded a contract.

*Late proposals will be returned. Incomplete proposals may be subject to disqualification. It is the bidder's responsibility to ensure that all pages have been included in the proposal. Faxed or e-mailed proposals will not be accepted. Proposals will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's web site at <http://www.nyserderda.ny.gov/>

I. INTRODUCTION

New York State seeks to provide safe, efficient, balanced and environmentally sound transportation. Effective and efficient transportation supports economic and community development. Cities and communities throughout New York are pursuing solutions that will provide a comprehensive response to improve transportation mobility, systems, and networks. New York's transportation system can be improved through a range of options that move toward dynamic, connected, and integrated mobility platforms. This Program Opportunity Notice (PON) seeks innovative transportation solutions that enhance transportation efficiency, resiliency, reliability, safety and energy efficiency; increase economic competitiveness and quality of life; and support community revitalization and environmental sustainability.

Smart cities and communities are adopting a connected "system-of-systems" approach that interfaces with transportation infrastructure, networks, and related services. Smart transportation solutions are scalable, use connected information and use digital technologies to improve mobility, reliability, safety, and security. Smart solutions use real-time operational data to enhance strategic decision-making; take advantage of collaborative service models focused on shared outcomes across organizational boundaries; and maximize energy efficiency through smart grid technologies and modal alternatives.¹

Three categories of projects or Focus Areas will be considered for funding. These are described in the following sections, but all three Focus Areas share the following common features:

- *Integrated Technologies and Communications.* Optimize the use of and access to broadband internet, sensor networks, Internet of Things (IoT), information and communications technology (ICT), intelligent transportation systems (ITS), and other technologies. This PON encourages use of digital innovations and platforms that enable intelligent, dynamic, and integrated communications between transportation organizations, networks, modes, and users.
- *Intermodal Connections.* Emphasize increased and more efficient use of multimodal choices and better management through systems engineering, operational improvements, and other planning strategies with the goal of enhancing network efficiencies, safety, resiliency, and redundancy.
- *Environmental Sustainability.* Reduce the energy impacts of transportation, reduce GHG emissions, balance planning for growth, protect and preserve limited natural resources, and support energy efficiency, resiliency, economic productivity, and livability.
- *Cooperative Governance.* Support integration of open data, digital technologies, and transparency resulting in improved outcomes aligned with strategic priorities, built on collaboration.
- *Applied Planning and Research.* Lead to the development and deployment of practical solutions that address New York's transportation needs, meet traveler expectations and desires, and enhance the reliability, efficiency, resiliency and safety of New York's transportation system.

Proposals should clearly indicate how these features will be incorporated or addressed in the proposed project delivery.

Within each Focus Area, there are five Funding Categories which vary with the type of project proposed (e.g. conference, paper study, field demonstration, etc.) The Funding Categories are further described later in this document, but each individual proposal must select a single Focus Area and a single Funding Category.

¹ Some of the elements that make transportation smart and sustainable are explored in the findings, conclusions, and recommendations of the report entitled *The Smart/Connected City and Its Implications for Connected Transportation*, Federal Highway Administration, 2014. http://ntl.bts.gov/lib/54000/54200/54204/smart_connected_city_FINAL_111314.pdf

II. PROGRAM REQUIREMENTS

Focus Area 1: Smart Mobility Solutions.

Transportation innovations are rapidly changing the way travelers and commuters move. This is seen by the growing implementation and use of shared use mobility and peer-to-peer networks – integrated operations that provide a variety of dynamic, connected, options enhanced with information and communications technology (ICT). Often, though, these innovations are not optimized to provide travelers with convenient, practical, affordable, and sustainable door-to-door transportation.

Smart mobility solutions optimize travel by using applications and offering services that process real-time conditions, provide accurate, instantaneous information about desired destination points, and how best to reach them. They provide multifaceted, readily accessible, efficient, easy to understand, and safe travel options. These solutions apply open multi-agency, multimodal data to support alternatives to driving alone, provide personalized travel information on modal and routing options and improve the travel experience. Smart mobility solutions bring together various sectors and sub-system components, working together to provide relevant, responsive information and choice of services.²

The objectives of this focus area are to engage in planning, applied research, exploration and deployment of solutions that improve the efficiencies of transportation systems, projects, processes, and products. Successful projects should support a redistribution of travel demand across various modes, routes, and time; alter the way travelers use transportation systems and services by equipping them with more and better information; and/or seek to achieve a balance that optimizes transportation services and demand for travelers who use them.

Activities in this area may include, but are not limited to, initiation and/or application of:

- Mobility services, products, designs, and solutions that are redefining how travelers commute and move about.
- Technologies that build or enhance efficiencies, relevancy, simplicity of alternative modes of transportation.
- Modal designs that enhance greater use of public transportation, bicycling, and walking.
- Business models, partnerships, and collaborative alliances that support next generation transportation options and system operations that enhance mobility; reduce congestion; and improve safety and resiliency, environmental sustainability and community livability.
- Innovative platforms and decision-support systems that facilitate optimized multi-modal travel responses before, during and after disruptive events including those caused by storms and extreme weather.

² These ideas are examined in Shared Mobility and the Transformation of Public Transit, American Public Transportation Association, 2016. <http://www.apta.com/resources/reportsandpublications/Documents/APTA-Shared-Mobility.pdf>

II. PROGRAM REQUIREMENTS, continued

Focus Area 2: Smart Infrastructure and Systems Planning.

Smart infrastructure and systems planning enhance and improve existing transportation systems, networks, and operations. Projects in this focus area should support operational coordination and optimization, which could include multiple transportation networks and connections. The primary focus is on optimizing traffic operations, expanding integrated modal options and intelligent infrastructure and processes. Smart infrastructure and systems projects should leverage frequently collected and rapidly disseminated, multi-source data procured from connected travelers, various alternative transportation modes, and infrastructure.

The objective of this focus area is to engage in planning, applied research, decision support system development, systems operation and engineering, concept development and deployment, outreach and training, partnerships, and community involvement. Concepts, strategies, and solutions should demonstrate how they are dynamic and integrated, build capacity and more efficiently use existing capacity in day-to-day operations, or improve flexibility and capacity in responding to disruptive events including storms and extreme weather.

Activities in this area may include, but are not limited to, initiation and/or application of:

- Active transportation demand management (ATDM), intelligent transportation systems (ITS), information and communications technology (ICT), and integrated corridor management (ICM) strategies that improve multi-modal network convenience, efficiency, and safety.
- Predictive analytics relative to highway, public transportation, and freight related systems and infrastructure that improve operations, management, efficiencies, functionalities, decision support, and collaboration.
- Connected and/or autonomous systems, infrastructure, vehicles, and technologies that leverage the capabilities of government, non-governmental organizations (NGOs), and the private sector to create integrated, multimodal system environments.

Focus Area 3: Smart Freight and Urban Delivery Systems.

Developing efficient freight transportation and related urban delivery systems are important for business and New York's economy. However, numerous challenges exist ranging from chronic congestion and unpredictable travel conditions, aging infrastructure regulated by multiple agencies, demanding delivery windows, rapidly changing technologies, varying rules, regulations, and policies between jurisdictions, and fragmented management. This is further exacerbated by a constrained funding environment making it difficult to develop projects aligned with future needs.

ICT, IoT, and ITS tools and technologies, methods, and processes can improve business operations and functions in ways that improve overall freight system efficiencies and logistics management. They can provide increased levels of reliability, connectivity, and capacity by increasing the potential for using open data; greatly enhanced predictive capabilities and digital networks; and real-time, dynamic decision-making that improves reliability, efficiency, and security in a complex transportation sector. These new capabilities offer the potential to dramatically improve freight system operations, logistics, and supply chain management.

The objective of this focus area is to engage in planning, applied research, and development of innovative technology-based approaches that reduce or eliminate barriers to the more widespread adoption of innovative tools and technologies in freight and goods movement operations, make better use of freight networks, reduce freight ton miles traveled, and reduce freight sector energy use and emissions without sacrificing reliability and freight performance, operations, or objectives.

II. PROGRAM REQUIREMENTS, continued

Activities in this area may include, but are not limited to, initiation and/or application of:

- Innovative and transformative technology or corridor management solutions that result in enhanced integration and interoperability of traffic management systems and freight operations, in day-to-day operations and/or in response and preparation for disruptive events.
- Innovative technologies and systems leading to improvements in freight vehicle operations and logistics; load and vehicle tracking; cost-benefit analyses; route and distribution facility optimization; and collaborative distribution through use of open source information and services, on-board equipment, or integrated wireless communications infrastructure.
- Standardization of communication protocols, equipment, and technologies demonstrating how feasibility, security, and cost savings can be optimally achieved.
- Innovative business models, partnerships, and functions that facilitate optimized, unimpeded integration and flow of information and goods within supply chains and beyond corporate boundaries.

Funding Categories. Five categories will be considered for funding, at the below enumerated funding levels. Further information follows this initial listing and all proposals MUST select one of the following:

1. Education and Technology Transfer (\$30,000 max). Outreach activities to advance the education and awareness of the general public, policy makers, stakeholders, students, metropolitan planning organizations (MPOs) and others on the issues, consequences, objectives and resources, associated with reductions in transportation GHGs/energy consumption.
2. Research, Policy, and Feasibility Studies (\$150,000 max). Applied research to develop and evaluate new strategies and policies for New York State that have the potential to achieve reductions in transportation GHGs/energy consumption, and to improve energy efficiency.
3. Demonstrations of Underutilized Strategies and Policies (\$200,000 max). Demonstrations that have not been previously deployed in New York State to any significant extent which have the potential to reduce transportation GHGs/energy consumption and that require only minor amounts of equipment and/or materials purchased for implementation (< 30% of the total project budget).
4. Integration of Existing Mobility Strategies through Collaborative Partnerships (\$300,000 max). Partnerships on a larger scale in which numerous and diverse public and private entities team up and pool resources to work together to reduce transportation GHGs/energy consumption.
5. Demonstrations of Underutilized Commercial Technologies (\$500,000 max). Demonstrations of technologies that have not been previously deployed in New York State to any significant extent which have the potential to reduce transportation GHGs/energy consumption and that require significant amounts of equipment and/or materials purchased for the proposed implementation (> 30% of the total project budget).

Category 1 seeks to fund technology transfer/outreach activities and materials, including workshops, webinars, publications, guidebooks, and brochures. Outreach activities may focus on implementing new strategies or technologies, as well as seek to modify the behavior of New York State residents. The funded activity should produce a project-specific deliverable to promote impact and replication beyond the timeframe of the project. (e.g. webcast, curriculum materials, etc.).

Category 2 is designed to fund specific research, plans, and studies, which may include feasibility assessments, engineering studies, policy research and related analysis necessary to establish the energy, environmental, and additional benefits of a relevant policy, strategy, product or technology. Examples of additional benefits include financial impacts, as well as potential impacts in the areas of operations, maintenance, safety, reliability, mobility, and security.

II. PROGRAM REQUIREMENTS, continued

Applied research is defined as the systematic inquiry to solve practical problems resulting in practical applications, whereas, basic research is defined as the systematic study toward gaining greater knowledge or understanding, but without focus on specific practical applications, end results or products.

Category 3 seeks to demonstrate underutilized strategies, plans, and policies that have been proven to be effective elsewhere, nationally or internationally. The intent, however, is to replicate fundamental changes in system operations, which can be readily implemented without major equipment expenditures. For this category, proposed purchases of materials and equipment are limited to 30% of the total project budget.

Examples of qualifying Category 3 demonstration proposals might include: a) demonstration of tailor-made ICMS or system of systems approaches to corridor management that facilitate the organization, integration, and communication of innovative, multimodal system concepts, products, and services; b) generation of an ICMS capability maturity framework of planning, operational, institutional, and technical deployments that produce optimal economies-of-scale and achieve full integration of system synergies that fully meet traveler needs; c) expanded access to and re-purposing of underutilized facilities for consolidated freight services; and d) emerging innovations in transportation research, standards, and practices related to pedestrian and bike-related infrastructure that ensure the safety and greater accommodation of pedestrians and bicyclists.

Category 4 seeks to support and implement larger Collaborative Partnerships that integrate and leverage across modes, strategies, agencies, and sectors. Innovations and opportunities are rapidly evolving and encompassing numerous aspects of commuting and traveling, urban goods movement and supply chain management, telecommunications, use of wireless technologies, e-business and social media, real estate and land use patterns, and design (products, services, technologies, and community). The quality of the Collaborative Partnership is as important as the transportation issue being addressed and proposers should establish diverse, innovative collaborations exploring social and business opportunities, as well as the emerging strategies and technologies being deployed.

Examples of Collaborative Partnerships are a) shared economy alliances and peer-to-peer transportation networks that bundle transportation modal options with related services such as smart parking solutions, insurance, toll charging, and multichannel single payment networks; b) optimal use of digital innovation, online information, and social media platforms that encourage open market insights and public and business collaboration; and c) utilizing the business community as strategic partners to assist in delivering and showcasing a dynamic 'solutions landscape' of innovative measures, creative problem solving initiatives, and cross-cutting solutions with respect to overcoming barriers and challenges to creating a fully integrated, multimodal transportation systems environment.

Category 5 is similar to Category 3, but differs in the amount of materials and equipment required to be procured for the demonstration. Category 5 is designed to fund the limited demonstration of existing underutilized commercial technologies that have been successfully deployed in other states or countries (e.g., adaptive traffic signal control systems and connected vehicle technologies), but have not been previously deployed in New York State to any significant extent. The intent is not to research the existing technology per se, but to quantify and validate potential benefits and identify specific barriers to adoption for New York. In contrast to Category 3, it is recognized that significant procurement of material and equipment may be necessary (>30% of the total project budget).

Category 3 and **Category 5** proposers will be required to establish that their proposed strategy or technology is truly underutilized in New York State. Proposers should conduct a review of available literature, news articles, and internet sites and published studies to present a convincing case for the value in a New York State demonstration.

II. PROGRAM REQUIREMENTS, continued

Category 5 proposers will also be required to establish that the transportation technology is fully commercial and that no significant product development is required. Transportation technologies requiring additional product development should be proposed to NYSERDA's Advanced Transportation Innovations solicitation, which is issued annually and specifically targets transportation product development.

A commercial technology is defined to be a product, such as an item, material, component, subsystem, or system, applicable to transportation and sold or traded in reasonable quantities on the open market within the course of normal business operations at prices based on established catalog or market prices with industry-standard deliveries, terms, and warranties.

Project Scope. To be selected for funding, proposals must:

- Offer readily quantifiable reductions in GHG emissions and transportation energy use in New York State with a clearly identified process for verifying these benefits.
- Demonstrate a viable path to market acceptance resulting in additional technology adoption and replication beyond a single demonstration.
- Emphasize the ultimate deployment of technical solutions rather than perform basic research.
- Document accessibility, sustainability, mobility, reliability, environmental, economic, safety and/or security benefits in New York State.
- Be consistent with metropolitan transportation plans in New York State and with transportation related regulations at the federal or state level.
- Provide the minimum required amount of cost-sharing by the proposer or third parties in the form of cash or in-kind labor, materials, equipment, facilities, and other resources, subject to reasonable and verifiable valuation. Co-funding may be from the proposer or other private or government sources. New York State funds cannot be used to reimburse or replace normal expenses of other government organizations.

Due to the objectives of PON 3345, teaming arrangements are encouraged and may be necessary to achieve project success. Proposal teams may include commercial firms, industry associations, research organizations, universities, government agencies, end-users, and other stakeholders.

Letters of Commitment. If you are relying on any other organization to provide services, equipment or cost share, include a letter from that organization describing its planned participation. Where appropriate, proposed field demonstrations should include Letters of Commitment from the host site or vehicle fleet owner. Absence of Letters of Commitment will be interpreted as the proposer not having support from the identified parties.

Letters of Support. In addition to Letters of Commitment, also include Letters of Support from other organizations and entities that are not on the Project Team, but that are critical to the success of the project. Letters of Support are highly valued by the sponsors and by the evaluation committee. The proposer should give strong consideration as to who the project will impact and seek Letters of Support where appropriate. However, due to their active sponsorship of this collaborative solicitation, Letters of Support should not be solicited from NYSDOT or NYSERDA personnel.

Other Considerations. In addition, note that:

- A proposal may be considered **non-responsive** if it fails to comply with the requirements above, the Proposal Requirements of Section III, or the General Conditions of Section VI.
- Prior to an award being made, potential awardees may be required to demonstrate: access to financial and staffing resources sufficient to perform the proposed work; technical experience and adequate facilities (or the ability to access them); a good performance record; and the ability to qualify for an award under applicable laws and regulations.

III. PROPOSAL REQUIREMENTS

The proposer's goal should be to concisely present the information needed to fully address the evaluation criteria (see Section V). Proposals that grossly exceed the word limits or fail to follow the format guidelines may be rejected as non-responsive. If you believe proprietary information must be submitted to provide an adequate proposal, you must comply with the Section V instructions for submitting proprietary material.

Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective proposal may reduce, rather than increase, a proposal's standing per the evaluation criteria. Each page of the proposal should state the name of the proposer, the PON number, and the page number. The proposal must be in the following format, with items in the sequence shown.

Proposal Sections. Sections of your proposal should be formatted and assembled as follows:

1. Proposal Checklist. Complete the specific Proposal Checklist attached as part of this PON (Attachment A), and include it as the front cover of the proposal (if mailing or hand delivering, the Proposal Checklist must be included as the front cover of the original and each copy of the proposal). Note the following:

- Indicate whether you accept the standard terms and conditions as contained in the attached Sample Agreement. If you do not accept the standard terms and conditions, provide alternate terms with justification based on the risk and benefit to NY State. NYSERDA reserves the right to consider only exceptions to terms that are specifically included with the proposal. Any negotiation of terms will be at NYSERDA's sole discretion.
- Do not leave any blanks. If a specific question is not applicable, indicate N/A.
- Be sure the individual signing the Proposal Checklist is authorized to commit the proposer's organization to the proposal as submitted.

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

In compliance with §139-j and §139-k of the State Finance Law (see Section V, General Conditions below for additional information), additional forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form. Failure to include a signed copy of the Proposal Checklist referenced in this solicitation may disqualify your proposal.

3. Executive Summary (two pages maximum). Indicate the Focus Area and the Funding Category to which your proposal is being submitted. Briefly summarize the team members, the related problem or opportunity, the proposed solution and its innovative characteristics, and the potential for energy/GHG reductions in NY State. Use the following outline: a) Team Members; b) Background; c) Objective and Scope of Proposed Project; and d) Project Benefits.

4. Background and Proposed Approach (two to three pages). Provide a narrative of the transportation sector being impacted, how it currently operates and what opportunities exist for improvement. Explain fully how the transportation energy and GHGs will be reduced and how the efficiency of the existing NY State transportation system will be enhanced. If applicable, discuss your solution's relevance to any metropolitan transportation plan or transportation-related regulation.

For Category 3 funding, proposers must include a proposal section documenting the NY State underutilization of their strategy. This should include the results of literature reviews and internet scans as previously discussed and contrast New York to other areas where utilization occurs. For Category 5 funding, proposers must include a proposal section documenting the commercial availability and NY State underutilization of their technology. This should include previous sales and deployments, and include client references and contact information.

5. Proposed Statement of Work and Schedule (three to four pages). The Statement of Work (SOW) is the primary contractual document that outlines work activities and specifies deliverables. It delineates each step required to accomplish the project objectives. Therefore, each action needs to

III. PROPOSAL REQUIREMENTS, continued

be identified, indicating who will perform it, how it will be performed and its intended result. At the end of each task description, specific task deliverable(s) must be listed. Be sure to identify the task deliverable, as this will be a measure of your performance.

Be clear and specific: concentrate on “how” and not “why”. Use “active voice” sentence structure to make clear who is responsible for specific actions. Use the following phrase to start the description of every task and subtask (“The Contractor shall....”). The SOW structure should include:

Task 0: Project Management.

Subcontracts. The Contractor shall enter into the following agreements. Describe all required subcontracts, even if the subcontractor is yet to be defined.

Meetings. The Contractor shall hold a Kick-Off Meeting, Interim Review Meetings (as warranted), and a Wrap-Up Meeting at the end of the project.

Progress Reports. NYSERDA and NYSDOT will expect to receive written monthly or quarterly progress reports, as part of the project management task. These activities should be considered when developing your cost proposal. Such reports shall describe any difficulties encountered during the reporting period and shall include a statement of the Project Director setting forth the cost of the work during the reporting period.

Data Collection and Benefit Reporting. For Category 1 and 2 Outreach/Study Projects, NYSERDA will require two brief annual updates on the effectiveness of the information dissemination (e.g. conference presentations, workshops, publications, citations, etc.). A simple, web-based PDF form will be provided for electronic filing (Attachment F).

For Category 3, 4, and 5 Implementation/Demonstration Projects, the proposal should include a detailed plan to collect data and provide reporting to validate the claimed transportation benefits. Depending on the project, this may require periodic data collection and reporting activities, conducted by the proposer or subcontracted to an unbiased third party. This is an important aspect of a properly-crafted project and it will benefit the proposer and NY State if done properly.

For Category 3, 4, and 5 Implementation/Demonstration Projects, NYSERDA will also require five brief annual updates on the effectiveness and additional replication of the Strategy/Technology. A simple, web-based PDF form will be provided for electronic filing (Attachment F2).

Additionally, NYSERDA may retain an independent third party to evaluate the results of funded projects in selected areas of interest. Upon such a request from NYSERDA, the Contractor shall make available project files and data for evaluation for a period of time not to exceed 5 years.

Report. The Final Report is a significant project deliverable and should detail all of the work performed and task deliverables, but exclude proprietary information. The comprehensive Final Report shall cover all aspects of the project and shall merge together, and build further on, the previously generated monthly progress and benefit reports. Although not onerous, NYSERDA, NYSDOT and FHWA each have elements of required report formats, which need to be satisfied and which will be provided to successful proposers at the start of the project.

In the Final Report, the Contractor shall quantify the magnitude of the potential GHG and energy reductions under various scenarios. Annual estimates for the next five years shall be developed assuming realistic adoption in NY State. If appropriate, larger regional or national impacts shall be estimated assuming reasonable replication. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented.

A payment based on the Final Report will be reserved until project completion. If awarded, NYSERDA may choose to negotiate the amount of such payment.

III. PROPOSAL REQUIREMENTS, continued

Task 1, 2, 3, etc. Project-specific Work Scope Tasks. Add as many tasks and subtasks as necessary to cover all actions needed to achieve the goals and objectives of the project. Each task should include a concise narrative description of the work that will be performed and how the work will be performed and specific deliverables to be provided. Typical tasks may include, but are not limited to, requirements definition, preliminary design, field testing, final design, and demonstration.

Schedule. Present a work schedule with a starting point and duration for each task and subtask. Presentation of the schedule in a table or bar chart is preferred starting with “Month 1,” “Month 2,” etc. along the top horizontally with tasks and subtasks running vertically down the left hand side. Although other timeframes will be considered, typical project schedules run nine to eighteen months.

6. Proposer Qualifications (two to three pages). Provide an overview of the relevant qualifications of the proposer, other team members and major subcontractors. Note that subcontracts of \$50,000 or more are subject to competitive bid procedures except where the proposal identifies a specific subcontractor as an integral participant in the proposed work (see Att. E: Sample Agreement). Resumes, facility qualifications, and data sheets do not belong in the body of the proposal, but should be included in the appendix. Key individuals identified in the proposal need to be available to commit to the project in the time frame proposed and subsequent personnel substitutions will require NY State approval. Additionally, discuss any NYSDOT and/or NYSERDA contracts awarded to the proposer in the past five years and identify the associated NY State project managers.

To the extent that proposed Category 5 activities include the use of any existing intellectual property (IP) assets, the proposer must describe the IP and provide details identifying any granted patents or pending applications related to the IP. If the proposer does not own the relevant IP, but is a licensee of the IP, then the proposal must specifically identify and describe any relevant license agreements. Proposers are encouraged to provide copies of relevant IP license agreement(s) and/or letter(s) of support from licensors as attachments to the proposal. To the extent any of the above represents non-public information, please refer to the “Proprietary Information” section in Article V below.

7. Project Benefits (one to two pages). Discuss how the proposed project will reduce GHG emissions and transportation energy in NY State and estimate the potential improvement. Quantify any additional project benefits to the extent possible: mobility and reliability benefits (e.g., congestion reduction, reduced travel variability, etc.), environmental benefits (e.g., emissions, minimizing hazardous materials, etc.), economic benefits (e.g., jobs created or retained, reduced life-cycle costs, etc.), safety and security benefits (e.g., reduction in deaths, injuries and real property losses, etc.), and other benefits (e.g., cost of compliance with regulations, enhanced quality of life, etc.). Describe the methodology that will be used to collect the necessary data and quantify the project benefits.

8. Path to Market Acceptance (one page). Provide evidence that relevant stakeholders are interested in the technology being investigated. Explain how they would benefit from the technology being widely introduced in New York State and why they would be likely to favor that adoption over alternatives. Describe the barriers standing in the way of broad acceptance of the technology being studied and explain how the project will educate stakeholders about ways to avoid or break down these barriers. Characterize a plausible path to broader adoption of the technology, including a description of the resources and stakeholders that must be engaged to accomplish this.

9. Budget. A Contract Pricing Proposal Form (CPPF), with associated instructions, is provided as Attachment D to this PON. Each proposal must include a completed CPPF and also a cost-sharing table (see example below) identifying the allocation of funding by task. NY State funds cannot pay for efforts that have already been undertaken or be used to reimburse or replace normal expenses of other government organizations. All proposals must provide additional funding as cost share and this shall be an important evaluation criteria. Cost share cannot include expenses that have already been incurred. The net cost to NY State is one of the evaluation criteria and will be closely considered.

III. PROPOSAL REQUIREMENTS, continued

Category 2 proposals seeking more than \$100,000 of NYS funds and Category 5 proposals seeking more than \$350,000 of NYS funds are required to provide a minimum of 35% of the total project cost as cost share. All other proposals must provide a minimum of 25% of the total project cost as cost share. For example, proposals seeking \$75,000 of NYS funds are required to provide a minimum of \$25,000 in cost share, which is 25% of the total project cost of \$100,000.

Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor, indirect labor, or other general overhead may be considered "in-kind" contributions. For example, labor may be provided at discount rates, while products for commercial demonstration may be provided at a significant discount or "at cost" to the project. It is the responsibility of the proposer to adequately document the level of cost share being provided from all sources. If funded, the proposer will also need to provide cost share documentation with each invoice submitted. Show the cost sharing plan in the following format within your proposal.

PROPOSAL COST SHARING TABLE (expand as needed)						
Proposed Funding By Task (Cash and In-Kind)					Project Total	
Funding Source	Task 0 (\$)	Task 1 (\$)	Task 2 (\$)	...	Cash (\$)	In-Kind (\$)
NY State						
Proposer						
Co-Funder (identify)						
Co-Funder (identify)						
Task Total (\$)						

Indirect Costs. Attach supporting documentation to support indirect cost (overhead) rate(s) included in your proposal. Describe the basis for the rates proposed (i.e., based on prior period actual results; based on projections; based on federal government or other independently approved rates). If the rate(s) is approved by an independent organization, such as the federal government, provide a copy of such approval. If the rate(s) is based on estimated costs or prior period actual results, include calculations to support proposed rate(s). Calculations should provide enough information for NYSERDA to evaluate and confirm that the rate(s) are consistent with generally accepted accounting principles for indirect costs. NYSERDA reserves the right to audit any indirect rate presented in the proposal and to make adjustment, if warranted. Requests for financial statements or other financial information may be made if deemed necessary.

10. Annual Metrics Reports. If awarded, the proposer will be required to submit to NYSERDA's Project Manager on an annual basis, a prepared analysis and summary of metrics addressing the anticipated energy, environmental and economic benefits that are realized by the project. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented. Reporting shall commence the first calendar year after the contract is executed. Reports shall be submitted by January 31 for the previous calendar year's activities. Please see Attachments F, and F1: Sample Metrics Reporting Guides for the initial metrics that you will be expected to provide and the reporting duration.

It will be the responsibility of the awarded proposers to use the most current version of the metrics reporting guides, which are housed on the NYSERDA website. The guides may change as NYSERDA's needs evolve over time. Additionally, awardees are expected to cooperate with NYSERDA evaluation as needed during and after completion of the project, these activities will ensure that the NYSERDA transportation projects are both effective and responsive to the needs of the market. NYSERDA may decline to contract with awardees that are delinquent with respect to metrics reporting for any previous or active NYSERDA agreement.

11. Appendices. Include any resumes, company qualifications, or ancillary information which is deemed necessary to support your proposal. Also include Letters of Commitment and Letters of Support.

IV. PROPOSAL EVALUATION

Proposals will be reviewed by a Scoring Committee and will be scored and ranked according to the following criteria, **listed in order of importance**. After the proposals are reviewed, NYSERDA will issue a letter to each proposer indicating whether the proposal has been selected for contract negotiations. The proposer will be required to submit – and reach agreement on – a detailed Statement of Work, budget, and schedule, and may also be asked to address specific questions or recommendations of the Scoring Committee before contract award.

Requirements. A negative response to any one of the questions below may eliminate the proposal from further consideration. Does the proposal:

- Show the potential to reduce GHG emissions and transportation energy use in NY State?
- Adequately document the commercial availability and/or underutilization of the technology and/or strategy to be demonstrated?
- Provide the minimum required amount of cost share by the proposer or third parties?
- Provide additional mobility and reliability, environmental, economic, safety and security benefits in NY State?
- Provide Letters of Commitment/Support from all co-funders and key stakeholders?

Proposal Evaluation Criteria.

- **Proposed Solution/Scope.** How significant is the issue or opportunity for NY State? Is it likely to be adopted and result in NYS benefits? If a demonstration, is the technology/strategy truly commercial and underutilized in NY State? Is the proposed work plan technically feasible, innovative, and superior to potential alternatives? Has the proposer demonstrated that the technology being studied is something that stakeholders are interested in implementing and does the proposer identify a path to market acceptance and economic viability? Is there a path for it to be replicable beyond a single demonstration?
- **Project Benefits.** How significant is the statewide potential for NYS transportation energy and GHG reductions? Are the expected benefits likely to be realized, given other constraints or barriers? Are there additional significant mobility, reliability, environmental, economic, safety, and security benefits? If adopted, will there be economic benefits in NY State in the form of subsequent manufacturing or technical service activity? Are the processes for estimation of benefits in preparation of the project, during project implementation, and post project implementation clearly explained and do they reference defensible sources or reliable measurement methods?
- **Proposer(s).** To what degree does the team have relevant and necessary technical and business background and experience? If a Collaborative Partnership, is it truly diverse and potentially effective? Does the team include NY State businesses, thereby providing economic benefits in the form of NYS jobs? Does the proposal contain Letters of Commitment/Support from all essential participants, co-funders, and related businesses and other organizations?
- **Project Outcome and Cost.** Is the overall project cost justified based on the expected benefits? Relative to the project cost, how significant are the potential benefits? Has the minimum cost share requirement (25% or 35%) been met? How appropriate are the proposer's cost share contributions (sources and amounts) with respect to their potential to benefit from the work and the financial status of the proposing organization and project team? Is the pricing and hourly rates in line with the rest of the market?
- **Other Considerations.** Proposals will be reviewed to determine if they fit well within the elected Focus Area and that they have been submitted to the proper Funding Category. Proposals should emphasize the ultimate deployment of technical solutions rather than perform basic research.

IV. PROPOSAL EVALUATION, continued

Program Policy Evaluation Factors. NYSERDA may consider the following program policy factors in making award selection decisions:

- Whether the proposed project will advance the goals of the State Energy Plan and the Clean Energy Fund, which include improving resilience and reducing GHG emissions.
- The degree to which the proposed project directly addresses NYSERDA's mission and strategic goals.
- The degree to which there is diversity of technologies, approaches, methods and institutions that would be complementary to and support a diversity of geographic locations and of technical approaches and methods that, in conjunction with the existing portfolio of projects funded by NYSERDA, best achieve the overall goals and objectives of NYSERDA.
- The degree to which there is industry involvement and demonstrated ability to accelerate the adoption of energy or related technologies.
- Whether the proposed project will accelerate transformational technology advances in areas that industry by itself is not likely to undertake because of technical and financial uncertainty.
- The degree to which there are technical, market, organizational and/or environmental risks associated with the projects that outweigh the potential benefits.
- The degree to which the proposed project, including proposed cost shares, optimizes the use of available funding to achieve programmatic objectives.
- The degree to which the applicant has the resources (human and financial) to be able to complete the project.

The award selection process contains multiple phases including an initial eligibility review, ranking by a Scoring Committee of subject matter experts, considerations such as program policy factors and the amount of funds available to make the selection decisions.

V. 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" (emphasis added). 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 except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501. <http://www.nysERDA.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx> However, NYSERDA cannot guarantee the confidentiality of any information submitted.

V. GENERAL CONDITIONS, continued

Omnibus Procurement Act of 1992. It is the policy of New York State to maximize opportunities for the participation of NY 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

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, which is available at: 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). The Department has developed guidance for contractors which is available at: <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

Contract Award. NYSERDA anticipates making multiple awards under this solicitation. It 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 may at its discretion elect to extend and/or add funds to any project funded through this solicitation. 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 (see Attachment A: Proposal Checklist). Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA expects to notify proposers in approximately ten weeks from the proposal due date, whether your proposal has been selected to receive an award. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

V. GENERAL CONDITIONS, continued

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. NYSERDA reserves the right to disqualify proposers based upon the results of a background check into publicly available information and the presence of a material possibility of any reputational or legal risk in making of the award.

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 NY State Department of Labor.

VI. ATTACHMENTS

- Attachment A - Proposal Checklist
- Attachment B - Disclosure of Prior Findings of Non-Responsibility Form
- Attachment C - Statement of Work
- Attachment D - Contract Pricing Proposal Form and Instructions
- Attachment D1 - Contract Pricing Proposal Form and Instructions (Excel)
- Attachment E - Sample Agreement
- Attachment F - Information Dissemination Metrics Reporting Guides
- Attachment F1 - Demonstration Metrics Reporting Guide
- Attachment G - Instructions for Electronic Proposal Submission



**ATTACHMENT A - PON 3345
PROPOSAL CHECKLIST (MANDATORY)**

Proposal Title		Due Date	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
<input type="checkbox"/> By checking this box I certify that the TIN number submitted is not a social security number. If your tax id number is your social security number please leave information blank and contact NYSERDA.		Federal Tax Identification Number:	
Address	City	State or Province	Zip
Secondary Contact		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip
THE PRIME CONTRACTOR MUST <u>SIGN THIS FORM BELOW</u> and ANSWER THE FOLLOWING QUESTIONS:			
Do you accept all Terms & Conditions in the Sample Agreement? (If no, explain on separate page) (NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.)			___ 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 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
ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?			
Executive Summary _____	_____	Indictment/Conviction of Felony _____(if applicable)	
Background and Proposed Approach _____	_____	NYSERDA Contracts Awarded _____(if applicable)	
Proposed Statement of Work and Schedule _____	_____	Prior and/or Competing Proposals _____(if applicable)	
Proposer Qualifications _____	_____	Exceptions to Terms & Conditions _____(if applicable)	
Project Benefits _____	_____	Completed and Signed Contract Pricing Proposal Form(s) _____.	
Budget _____	_____	Disclosure of Prior Findings of Non-responsibility Form _____.	
Evidence of Prior Commercialization (if applicable) _____	_____		
Cost Sharing Table _____	_____		
Commitment and Support Letters _____	_____		
AUTHORIZED SIGNATURE & CERTIFICATION			
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.

Attachment B

**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:		
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?		Yes
		No
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law?		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?		Yes
		No
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility:		
Government Agency or Authority:		
Date of Finding of Non-responsibility:		



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?		Yes
		No

If you answered yes, please provide details:

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

Signature: _____

Date: _____

Print Name: _____

Title: _____

EXHIBIT A: STATEMENT OF WORK

Project Title

NYSERDA Solicitation No. 3345

BACKGROUND/OBJECTIVES

(PROVIDE A BRIEF DESCRIPTION OF THE PROJECT. THIS SHOULD BE NO MORE THAN A TWO PARAGRAPH DESCRIPTION THAT PROVIDES A BACKGROUND OF THE PROBLEM, AS WELL AS HOW THE CONTRACTOR INTENDS TO SOLVE THE PROBLEM. KEEP IN MIND THAT THE CONTRACT SHOULD "STAND ON ITS OWN", I.E. ANYONE SHOULD BE ABLE TO PICK IT UP AND FIGURE OUT WHAT IS GOING ON.)

DEFINITIONS

SOW: Statement of Work

(Define any acronyms or uncommon words/phrases/technical terms to be used in the SOW)

The Contractor is defined as:

Company Name
PI Name
Street Address, City, State Zip code
Phone/Fax
E-mail

Subcontractor(s) is/are defined as:

Subcontractor name
Street Address, City, State Zip code
Phone/Fax
E-mail

The Project Site(s) is/are defined as:

Site Name
Street Address, City, State Zip code

TASK 0 - PROJECT MANAGEMENT AND PROGRESS REPORTING

Responsibility

Regardless of subcontracting arrangements, the Contractor shall be responsible for the timely completion of all the tasks in the SOW per the Project Schedule included herein. The Contractor shall provide all project management activities necessary for the performance of this SOW, as per the attached *schedule and budget*, which shall include the following activities:

- Coordinate the work of the Contractor's employees and those of subcontractors and equipment vendors that are undertaking tasks described in this SOW;
- Ensure control over the Project Budget and adherence to the Project Schedule; and
- Provide all project reporting to NYSERDA as specified in this SOW.

Subcontract(s)

The Contractor shall enter into an agreement with (*name subcontractor*) to perform work in the area of (*include subcontractor area of responsibility*).

(Repeat identification of additional subcontractor agreements as needed under this contract.)

At NYSERDA's request, the Contractor shall submit a copy of the above agreement(s) to NYSERDA's Project Manager.

Progress Reporting

The Contractor shall submit **periodic** progress reports, no less frequently than quarterly, to NYSERDA's Project Manager no later than the 15th of the month following each reporting period. The Progress Reports shall include information on the following subjects in the order indicated, with appropriate explanation and discussion:

- a. Name of contractor
- b. Title of the project.
- c. Agreement number.
- d. Reporting period.
- e. Project progress including a summary of progress, findings, data, analyses, results and field-test results from all tasks carried out in the covered period.
- f. Planned work for the next reporting period.
- g. Identification of problems.
- h. Planned or proposed solutions to identify problems described in (g) above.
- i. Ability to meet schedule, reasons for slippage in schedule.
- j. Schedule - percentage completed and projected percentage of completion of performance by calendar quarter - may be presented as a bar chart or milestone chart.
- k. Budget- analysis of actual costs incurred in relation to the budget.

Project Kick-off Meeting

The Contractor shall hold a project kick-off meeting within thirty days from the contract execution date. The Contractor shall coordinate with NYSERDA's Project Manager to arrange the meeting at a mutually convenient time and place. The Contractor is encouraged to invite representatives of subcontractors and equipment vendors. The purpose of this meeting shall be to finalize the strategies for accomplishing the objectives of this work. In a timely manner, the Contractor shall submit to NYSERDA's Project Manager a brief report summarizing the issues discussed and decisions made, if any, during this meeting.

Project Completion Meeting

The Contractor shall conduct a project completion meeting, it shall occur within time period covering 15 days prior to and 15 days following the submission of the draft Final Report. The Contractor shall coordinate with NYSERDA's Project Manager to arrange the meeting at a mutually convenient time and place.

Annual Metrics Reports

On an annual basis, the Contractor shall submit, to NYSERDA's Project Manager, a prepared analysis and summary of metrics addressing the anticipated energy, environmental and economic benefits that are realized by the project. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented. Reporting shall commence the first calendar year after the contract was executed. Reports shall be submitted by January 31st for the previous calendar year's activities (i.e. reporting period). The Contractor shall provide metrics in accordance with the attached Metrics Reporting Guide.

Task 0 Deliverables:

- (1) Written periodic Progress Reports.
- (2) Brief report summarizing the Kick-off Meeting and Minutes.
- (3) Brief report summarizing the Completion Meeting and Minutes.
- (4) Annual Metrics Reports.

Task 1-Title

Identify Task and Expected Deliverable for said task. The tasks should:

- *Be worded using action phrases, and should always start with "The Contractor shall..."*
- *Tasks should be worded so it is clear what the Contractor is required to do.*
- *If the Contractor is working with a subcontractor, it should say which one, specifically (unless there is only one, or all of them, in which case 'Subcontractor' or Subcontractor's, respectively, is acceptable.)*
- *Avoid using phrases like 'etc,' or 'including, but not limited to;' these phrase are ambiguous and hard to enforce.*
- *Tasks should be linear, so later tasks build on earlier tasks, and earlier tasks inform work being completed later on, as much as possible.*
- *When referring to previous tasks, it should be worded as "...the work/report/system/method approved in Task X."*

Task 1 Deliverable- This should be directly tied to the work completed in the Task. Most, if not all Tasks, should have a deliverable, except in special circumstances.

- *Deliverables should be a tangible item: a report, a presentation, pictures, purchase orders or bills of lading.*
- *Deliverables should not be something not asked for the in the Task, and work completed in the Task should be reported on in the deliverable.*

Task 1 Schedule- Every Task should have a timeframe from the Effective Date that the work is expected to be completed in. This can be divided up task by task or included as a separate attachment.

(Repeat Identification of task and deliverable as often as needed under this contract.)

Task X - Final Report

Upon completion of the contract period, the Contractor shall prepare a non-proprietary/non-confidential Final Report covering all aspects of the work performed under this Agreement; the report shall include information on the following subjects:

- Discussions of the observations and findings and recommendations, if any, from all tasks, and avenues for further improvements, as appropriate;
- Discussions of the project results and lessons learned regarding configuration, capabilities, and benefits of the project; and
- Environmental, and economic benefits, and implementation scenarios associated with such.

All material borrowed or adapted from other sources shall 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 shall also include a reference to the original source and any language stating permission to reprint that should be published with each respective table or figure.

Federal and New York State law requires that all NYSERDA documents appearing on NYSERDA's website be made accessible. Therefore, authors are required to provide Alt Text for all images in documents published by NYSERDA, in accordance with Section 508 of the Americans with Disabilities Act. Visit NYSERDA's Resources page (nyserda.ny.gov/about/resources) provides a more detailed explanation of NYSERDA's responsibilities to ensure accessibility.

Draft Version and Final Version of Final Report: A draft version of the Final Report shall be submitted to NYSERDA's Project Manager no later than the date specified in the Milestone Schedule of the NYSERDA Agreement for this task. NYSERDA will comment on the draft version within 30 working days after receipt of such draft. Within 30 working days after receipt of NYSERDA's comments, the Contractor shall prepare a final version of the report reflecting therein careful consideration of NYSERDA's comments to the satisfaction of NYSERDA, and submit two (2) bound, color hard copies and one (1) electronic copy of the final version of the Final Report.

Task X Deliverables:

- (1) A draft version of the Final Report.
- (2) A final version of the Final Report.

To be included on Demonstration Contracts under Task 0:

Host Site Agreement

The Contractor shall prepare and execute a site agreement with the Host Site prior to beginning the Work. The site agreement shall include terms for installing and monitoring the (insert technology to be demonstrated) at the Host Site and shall clearly specify the commitment and responsibilities of all parties. The site agreement shall include terms to allow, upon reasonable advance notice, NYSERDA's Project Manager and his/her invited guests to visit the Host Site to inspect the (insert technology to be demonstrated) and to witness operations. Invited guests may include other NYSERDA personnel, New York State agency representatives, and other stakeholders. The site agreement terms shall also specify, at a minimum: (1) cost share contributions; (2) description and duration of the monitoring; (3) descriptions of any modifications required to the Host Site for monitoring the (insert technology to be demonstrated); (4) access to the demonstration site for installing, inspecting, and servicing the (insert technology to be demonstrated) by the Contractor and its agents; (5) insurance; (6) equipment title transfer or equipment removal; (7) indemnification (including a provision by which the site owner disclaims any liability against NYSERDA for any damages or losses occurring by virtue of the (insert technology to be demonstrated) being installed or operated at the site); (8) site restoration; and (9) publicity (including but not limited to posting of project success information on NYSERDA's website). The site agreement shall be executed with an entity having the authority to commit the Host Site. A copy of the executed site agreement shall be furnished to NYSERDA for NYSERDA's records.

For projects that will incorporate a Go/No-Go requirement, some suggested language:

Go/No-Go Evaluation: The Contractor shall not proceed with the remaining tasks until the *(provide the deficiency to be addressed i.e. technical data, market study, test plan, economic study, etc)* has been approved by *(name the appropriate project participant(s), customer(s), stakeholder(s), NYSERDA)*. The Contractor must document *(name the project participants, customer, stakeholder)* acceptance of the *(name the solution to the deficiency)* and present such documentation to the NYSERDA Project Manager for approval. NYSERDA reserves the option to not proceed beyond this point and terminate the project if NYSERDA's Project Manager determines that the *(name the solution to the deficiency)* is not acceptable to *(name the appropriate project participant(s), customer(s), stakeholder(s), NYSERDA)*. If the decision is made to terminate the project, the Contractor shall provide a Final Report, documenting the project results and lessons learned during Task (*###'s*).

If the decision is made to continue with the project, the Contractor shall proceed to Task (*next task #*).

New York State Energy Research and Development Authority Contract Pricing Proposal Form			Solicitation No. 3345	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:					
not allowed					
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:					

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

Not allowed under this solicitation.

Attachment E

**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. 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;
- Exhibit E, 2016 Report Content Guide;
- Exhibit F, NYSDOT/NYSERDA Research Partnership Agreement.

7. 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 A, Statement of Work, including Budget and Schedule

4
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.

Major Equipment: An article of non-expendable, tangible personal property, which stands alone, is complete in itself, and does not lose its identity having a useful life of more than one year and an acquisition cost that equals or exceeds \$5,000.

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.

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. Purchases of Major Equipment exceeding \$50,000 (in the aggregate) shall be subject to the review and approval of the New York State Department of Transportation (NYSDOT). Title shall vest in NYSDOT to all Major Equipment purchased hereunder.

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 or NYSDOT may reasonably request in order to assure the better vesting in and confirming to NYSDOT, its successor and assigns, of title to and possession of such equipment.

Title shall vest in the Contractor to any equipment purchased under this Agreement that does not qualify as Major Equipment and has not been identified by the Project Manager for NYSDOT to retain title in.

[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. 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:

(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.

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. 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.

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 Purchase Orders

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

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.

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;¹ 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.

(l) 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, NYSDOT, 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.

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

Article XI

Insurance

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, NYSDOT, 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.

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. 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.

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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. State Requirements: The Contractor shall ensure that funds appropriated for the purposes set forth in the Agreement are expended in accordance with State requirements governing as outlined in Exhibit F, NYSDOT/NYSERDA Research Partnership Agreement.

Section 14.04. 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
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.

Section 15.04. Conflicting Terms. This Agreement is subject to Exhibit F, NYSDOT/NYSERDA Research Partnership Agreement, attached hereto and made a part hereof. In the event of a conflict between the terms of this Exhibit B and Exhibit F, Exhibit F shall prevail.

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Article XVI

Publicity

Section 16.01. Publicity.

(a) Publicity, which includes, but is not limited to: news conferences, news releases, public announcements, advertising, brochures, reports, discussions or presentations at conferences or meetings; and/or any document or forum that includes any reference to New York State, NYSDOT, or NYSERDA, may not be released without the prior written approval of NYSDOT and NYSERDA.

(b) Any such Publicity or publication, presentation, or announcement shall:

(i) Acknowledge the support of NYSDOT, NYSERDA, and, if funded with Federal funds, the applicable Federal funding agency; and

(ii) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations, or policy of the State, NYSDOT, NYSERDA, or if funded with Federal funds, the applicable Federal funding agency.

Notwithstanding the above, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Agreement (but are not deliverable under the Agreement), provided that the Contractor first submits such manuscripts to NYSDOT and NYSERDA forty-five (45) calendar days prior to submission for consideration to a publisher in order for NYSDOT and NYSERDA to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as NYSDOT and NYSEDA deem appropriate. All derivative publications shall follow the same acknowledgements and disclaimers as described in this Section 16.01. Publicity hereof.

Furthermore, a legal notice in the nature of a disclaimer to be provided shall be affixed to any official product of work or any portion thereof distributed as a result of any project identified in an authorized project for which New York State, NYSDOT, NYSERDA, or the FHWA are providing funding. This is applicable to the release of information regarding scientific or technical developments made or conceived in the course of or under this Agreement.

Article XVII

Executory Clause

Section 17.01. Executory Clause. The Contractor hereby acknowledges that this Agreement utilizes funds obtained from the NYS Department of Transportation ("NYSDOT"). In accordance with Section 41 of the State Finance Law, NYSDOT's

liability to NYSERDA to provide funds for this Agreement is limited to funds appropriated and available. Contractor further acknowledges and agrees that NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds appropriated and available for this Agreement.

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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. By entering into this Contract, Contractor certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to the New York State Iran Divestment Act of 2012: list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of the contract will be required to certify that it is not on the Prohibited Entities List before NYSDOT may approve a request for Assignment of Contract.

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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.²

(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

² 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>

documentation, as NYSERDA may reasonably require, including but not limited to any 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.

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Exhibit E

New York State Energy Research and Development Authority (NYSERDA)

2015 Report Content Guide

Revised 01/02/2015

(Replaces the NYSERDA Report Content Guide 2014)

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Note that NYSERDA will apply the NYSERDA logo during publication. The logo will only appear on the cover and not on the inside pages of reports.

Purpose

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. 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.

Required Elements

Section 6 includes a brief 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 and affiliation, report number, 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.

- 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.

- 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 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.
- 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 (pages sequentially numbered i.e., 1, 2, 3 etc. preferred, but chapter-page 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.
- 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 (added by NYSERDA). 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.

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, figure and table—and does not just repeat the title or caption.
 - 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 nyserdera.ny.gov/resources/ for more information about how to make a document accessible.

Formatting

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

Option 1—NYSERDA does the formatting

- Contractor emails to NYSERDA 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 Level 1 Heading, 1.1 Level 2 Heading, 1.1.1 Level 3 Heading, 1.1.1.1 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 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.
- NYSERDA will format the document according to the 2015 NYSERDA Marketing’s Template for Technical Reports.

Option 2—Contractor does the formatting

- Visit nyserdera.ny.gov/resources/ to download:
 - Report template (2015 NYSERDA Marketing’s Template for Reports).
 - Details about report formatting (NYSERDA Report Formatting Guide 2015).
- 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

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 co-sponsors. 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.

Contacts

- 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 or 518-862-1090 ext. 3276.
- Contractors can also email print@nyserda.ny.gov or call 518-862-1090 and ask for Marketing.

Required Elements Checklist

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 and 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.
- 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 figure, table, and image —and does not just repeat the title or caption. (See Section 2.2 for more information.) The text should be listed at the end of the document or provided in a separate file.

EXHIBIT F
NYSDOT/NYSERDA RESEARCH
PARTNERSHIP AGREEMENT

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F. A. NO.: _____

P.I.N.: _____

COMPTROLLER'S CONTRACT NO. C031105

PROJECT: NYSDOT/NYSERDA RESEARCH PARTNERSHIP AGREEMENT

This Agreement made this ____ day of _____, 2013 pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the **New York State Department of Transportation ("NYSDOT")**, with offices at 50 Wolf Road, in the County of Albany, State of New York 12232, and the **New York State Energy Research and Development Authority ("NYSERDA", or "Consultant")**, a New York public benefit corporation having its principal office at 17 Columbia Circle, Albany, New York 12203-6399, collectively known as the "**Parties**".

WHEREAS, on October 30, 2012, **NYSDOT** received approval from the NYS Office of the State Comptroller to enter into a single-source justified Agreement with **NYSERDA**; and

WHEREAS, the **Parties** have collaborated on seven jointly-funded transportation research and demonstration solicitations (Program Opportunity Notices (PONs) 1028, 1173, 1239, 1554, 2078, 2314, and 2618) over the past seven state fiscal years (2006/2007, 2007/2008, 2008/2009, 2009/2010, 2010/2011, 2011/2012, and 2012/2013); and

WHEREAS, the **Parties** desire to issue a joint PON annually over the next five state fiscal years (2013/2014, 2014/2015, 2015/2016, 2016/2017 and 2017/2018); and

WHEREAS, **NYSDOT** desires to participate in the joint PONs and share a portion of the cost, not-to-exceed \$2,000,000 per year over the next five state fiscal years; and

WHEREAS, **NYSERDA** desires to participate in the joint PONs and share a portion of the cost, which share shall not be less than 50% of the **NYSDOT** share annually.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements hereinafter set forth, the **Parties** do hereby agree as follows:

1. **PERFORMANCE OF SERVICES.** **NYSERDA AND NYSDOT** shall jointly develop and **NYSERDA** shall issue an annual transportation research and demonstration solicitation (PONs, which contain multiple Projects, some for **NYSDOT**'s benefit and some for **NYSERDA**'s benefit) and **NYSERDA**, working closely with **NYSDOT** staff, shall perform the tasks listed in Schedule A, Scope of Services to progress **NYSDOT**-funded Projects approved under each PON, which is annexed hereto and made a part hereof.

Based on PON proposals received, the Work shall be performed via approved Projects by the Consultant's Contractors, who have been competitively selected and awarded a research and demonstration contract ("Contract") in accordance with **NYSERDA** guidelines under future PONs under this Agreement and shall be under the administration of **NYSERDA**.

NYSDOT will have the option of providing a Co-Project Manager to assist in the project management of the **NYSDOT**-funded Project Work performed under the Contracts awarded under future PONs under this Agreement.

For PON projects receiving **NYSDOT** funding, **NYSDOT** shall issue project-specific Task Assignments (**NYSDOT**-funded Projects) to **NYSERDA** quantifying the Work to be completed and funding to be provided.

2. **COST OF PON CO-FUNDING.** **NYSDOT'S** portion of the total cost of the five PONs under this Agreement is estimated not-to-exceed \$2,000,000 per year, said amount to be paid per Section 3 of this Agreement.

3. **PAYMENT.** Funds paid under this Agreement by **NYSDOT** to **NYSERDA** may be used only for Work performed under Projects developed under future PONs under this Agreement.

3.1 **NYSERDA** shall pay for the Work performed under Contracts awarded under future PONs issued pursuant to this Agreement and **NYSDOT** shall reimburse **NYSERDA** quarterly for approved payments made on **NYSDOT'S** behalf.

3.2 **NYSDOT** shall pay its portion of the total cost of PON Co-funding under Section 2 of this Agreement, which includes the amounts set forth in Sections 3.5 and 3.6, in quarterly installments to **NYSERDA** within 30 days of the receipt from **NYSERDA** of an invoice for Work performed under this Agreement for approved **NYSDOT**-funded Projects.

3.3 **NYSERDA** acknowledges that it will not receive payment on any invoices unless **NYSERDA** complies with the State Comptroller's electronic payment deposit procedures. (See www.osc.state.ny.us/epay/index.htm or call 518-474-4032). Payment for invoices will only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner of Transportation.

3.4 The **maximum aggregate amount payable** (MAP) by **NYSDOT** to **NYSERDA** hereunder for the performance and completion of the Work is **\$10,000,000** unless increased by a Supplemental Agreement. It is understood and agreed that the **NYSDOT** is under no obligation to make a minimum number of Projects and will only reimburse **NYSERDA** for approved costs incurred in the performance of authorized and approved Projects. All funding is subject to the continued availability and authorization of federal, state and third party funds for this purpose. **NYSDOT** makes no guarantee that all or any of the identified funds will be spent.

3.5 Subject to the MAP as provided in Section 3.4 above, and to the extent such costs are allowable under Federal Highway Administration's State Planning and Research (SPR) grant funds made available to **NYSDOT** for this Agreement, **NYSDOT** shall reimburse **NYSERDA** for the actual proportionate share of assessment cost levied against and paid by **NYSERDA** to the State of New York under NY Public Authorities Law, §2975: "Recovery of state governmental costs from public authorities and public benefit corporations" for the Work provided under this Agreement. For the first annual term of this Agreement covering State fiscal year 2013/2014, the proportionate share of assessment costs is established as two percent (2.0%) of approved invoices paid by **NYSERDA** for **NYSDOT**-funded Projects. The public authority recovery fee percentage may be adjusted annually per NYS Division of the Budget's direction, but shall be capped at no higher than five percent (5%).

3.6 Subject to the above MAP under Section 3.4, and excepting the proportionate share of assessment costs in consideration of this Agreement and as full compensation for any and all other direct and indirect

costs, charges or expenses incurred by **NYSERDA for the life of this Agreement**, including, but not limited to labor, fringe benefits, direct non-salary costs and their indirect costs, and associated with the administration and operation of future PON activities, in any one twelve month period commencing with the term of this Agreement set forth in Article 6, **NYSDOT** shall reimburse **NYSERDA** as follows: a fixed five and three-quarters percent (5.75%) of approved invoices paid by **NYSERDA** for **NYSDOT**-funded Projects to cover any and all such other direct and indirect costs, charges, or expenses, including but not limited to labor, fringe benefits, direct non-salary costs and indirect costs. **NYSERDA** shall annually provide **NYSDOT** with a description and accounting of its services provided to **NYSDOT** via the fixed 5.75% administrative fee.

4. CONTRACT TERMS FOR PON CONTRACTORS

NYSERDA shall require the following terms in its contracts with the selected PON Contractors, or its subconsultant(s)/subcontractor(s) performing the Work under approved **NYSDOT**-funded Projects from the various research and demonstration PONs and **NYSERDA** shall ensure compliance therewith as follows:

4.1 INTERCHANGE OF DATA. All technical data in regard to services provided under this Agreement by the Contractor whether existing in the offices of the Contractor or existing in the offices of the STATE shall be made available to the **NYSDOT** and **NYSERDA** without expense to such other party.

4.2 DISPOSITION OF DATA. At the time of completion of Work, the Contractor and **NYSERDA** shall make available to **NYSDOT** all documents and data pertaining to the work or to services provided by the Contractor which materials at all times shall be the property of the **NYSERDA** and **NYSDOT** jointly. It is agreed that the Contractor may maintain copies of all documents and data. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the Contractor shall make available to the **NYSDOT** and **NYSERDA** the aforementioned data and material.

4.3 DISCLAIMER. A legal Notice and Disclaimer (below) shall be required by **NYSERDA** and affixed by the Contractor to any official product of Work or any portion thereof distributed as a result of any project identified in an authorized Contract for which **NYSDOT** is providing funding under this Agreement. In addition to acknowledging **NYSERDA** and **NYSDOT** as the cosponsor of the effort, the notice shall state that the published or otherwise produced material represents the position of the author(s) and not necessarily that of the **NYSDOT**, **NYSERDA** and the **STATE**; that the product or report does not constitute a standard, specification, or regulation and that the **NYSDOT**, **NYSERDA** and the **STATE** assumes no liability for contents or use thereof. All interim products will be considered "DRAFT" documents.

NOTICE

This report was prepared by _____ in the course of performing work contracted for and sponsored by the New York State Energy Research and Development Authority and the New York State Department of Transportation (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 and the State of New York 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 Consultant 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.

DISCLAIMER

This report was funded in part through grant(s) from the Federal Highway Administration, United States Department of Transportation, under the State Planning and Research Program, Section 505 of Title 23, U.S. Code. The contents of this report do not necessarily reflect the official views or policy of the United States Department of Transportation, the Federal Highway Administration or the New York State Department of Transportation. This report does not constitute a standard, specification, regulation, product endorsement, or an endorsement of manufacturers.

4.4 PUBLICITY (Applies to Contracts solely funded by NYSDOT).

Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures, reports; discussions or presentations at conferences or meeting; and/or the inclusion of State and/or NYSDOT materials, the State's name, NYSDOT's name, or other references to the State, or **NYSDOT** in any document or forum. Publicity regarding this project may not be released without prior written approval from **NYSDOT**.

Any publications, presentations or announcements of conferences, meeting or trainings which are funded in whole or in part through any activity supported under this AGREEMENT may not be published, presented or announced without the prior approval of the NYSDOT. Any such publication, presentation, or announcement shall:

- Acknowledge the support of **NYSDOT** and, if funded with Federal funds, the applicable Federal funding agency; and
- State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Consultant and do not necessarily represent the opinions, interpretations, or policy of the State, or **NYSDOT**, or if funded with Federal funds, the applicable Federal funding agency.

Notwithstanding the above, the Consultant may submit for publication, scholarly or academic publications that derive from activity under the Project (but are not deliverable under the Agreement), provided that the Consultant first submits such manuscripts to **NYSDOT** forty-five (45) calendar days prior to submission for consideration to a publisher in order for NYSDOT to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as NYSDOT deems appropriate. All derivative publications shall follow the same acknowledgements and disclaimers as described in this Section 4.4 (Publicity) hereof.

Furthermore, per Section 4.3, Disclaimer, above, a legal notice in the nature of a disclaimer shall be affixed to any official product of work or any portion thereof distributed as a result of any project identified in an authorized task order assignment for which the STATE/NYSDOT and the FHWA are providing funding. This is applicable to the release of information regarding scientific or technical developments made or conceived in the course of or under this Agreement.

4.5 TITLE TO EQUIPMENT (Applies to Contracts solely funded by NYSDOT).

Major Equipment is an article of non-expendable, tangible personal property which stands alone is complete in itself, and does not lose its identity having a useful life of more than one year and an acquisition cost that equals or exceeds \$5,000. The purchases of equipment are primarily intended to support research under each

PON. Purchases of Major Equipment exceeding \$50,000 (in the aggregate) for a particular Contract shall be subject to review and approval of **NYSDOT**.

Title shall vest in the **STATE** to all Major Equipment purchased in the performance of authorized, **NYSDOT**-funded PON Projects under a contract with **NYSERDA** and is paid by **NYSDOT** hereunder. Upon the request of **NYSDOT**, the Consultant shall, where necessary, 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 the **STATE** may reasonably request in order to assure the better vesting in and confirming to the **STATE**, its successor and assigns, of title to and possession of such equipment.

DISPOSITION OF MAJOR EQUIPMENT UPON COMPLETION OF A PROJECT. As directed in the Task Assignment: 1. The **STATE** may elect to take title to Major Equipment purchased under PON Contracts and **NYSDOT** will be responsible for all charges required for the delivery and set up of these items at the **NYSDOT**'s designated destination. 2. **NYSDOT** may waive its title to Major Equipment and require the Consultant to transfer title to a responsible Third Party for beneficial re-use at no charge to **NYSDOT** or the Third Party if such is in the best interest of the **STATE**.

5. **ENTIRE AGREEMENT/CHANGES.** This Agreement may be amended or supplemented only by a written instrument signed by duly authorized representatives of both **Parties**. This Agreement shall be governed by and construed in accordance with the laws of New York State.
6. **TERM OF THE AGREEMENT.** The Term of this Agreement shall be five years (Active Term) commencing on **July 1, 2013** and ending on **June 30, 2018** for the co-funding of joint PONs, with two additional years (Maintenance Term) to complete Contracts awarded under PONs initiated during the first five years and with no new PONs to be issued or covered by this Agreement after the initial Active Term has expired.

NYSDOT shall have the sole option of extending this Agreement for an additional three year period extending the Active Term and prior to the Maintenance Term with no new PONs to be issued or covered by this Agreement after the three year term extension has expired. In the event **NYSDOT** elects to exercise its right to extend this Agreement, **NYSDOT** will provide a thirty (30) day advance notice of its intent to **NYSERDA**. Any extension to the term of this Agreement shall be subject to the agreement of the **Parties** hereto and the approval of the Office of the State Comptroller.

7. **DOCUMENTS FORMING THE AGREEMENT.** The Agreement documents shall be deemed to include:
 - This Agreement, including signature page and notary page;
 - SCHEDULE A (SCOPE OF SERVICES, including EXHIBITS);
 - SCHEDULE B (BUDGET);
 - The provisions required by law to be inserted in the AGREEMENT as set forth in APPENDIX A, APPENDIX A-1, APPENDIX B and APPENDIX C attached;
 - Exhibit A (Consultant Disclosure Form B); and
 - The State's Single-Source Justified NYS Contract Reporter Exemption Request for C031105 (dated September 14, 2012; added via reference) and OSC's approval (dated October 30, 2012; added via reference).
8. **ORDER OF PRECEDENCE.** In the event of any conflict, uncertainty or inconsistency in content, language or requirements within this Agreement, the meaning or interpretation of the Agreement shall be in accordance with following order of precedence:
 1. APPENDIX A;
 2. APPENDIX A-1, APPENDIX B and APPENDIX C;
 3. Terms and Conditions for C031107;
 4. SCHEDULE A;
 5. SCHEDULE B;
 6. EXHIBIT A; and

7. The State's Single-Source Justified NYS Contract Reporter Exemption Request for C031105.

9. **INSPECTION.** The duly authorized representatives of the **NYSDOT**, and on federally aided projects, representatives of the Federal Highway Administration, shall have the right at all times to inspect the work of **NYSERDA**.
10. **TERMINATION.** The **NYSDOT** AND **NYSERDA** shall each have the absolute right to terminate this Agreement, on sixty (60) days written notice, and such action shall in no event be deemed a breach of contract. In the event of termination, final payment shall be made based on the percentage of Work satisfactorily completed by **NYSERDA**, as determinate by the **NYSDOT**. All Contracts issued by **NYSERDA** under PONs issued pursuant to this Agreement must have a Right to Terminate For Convenience clause. In the event **NYSERDA** or **NYSDOT** terminates this Agreement as provided under this section, the terminating party shall be responsible for any reasonable additional cost incurred due to the exercise of such termination for convenience right.
11. **CODE OF ETHICS.** **NYSERDA** specifically agrees that this Agreement may be canceled or terminated if any work under this Agreement is in conflict with the provisions of Section 74 of the New York State Public Officer's Law, as amended, establishing a Code of Ethics for State officers and employees.

NYSERDA shall not engage, on a full or part-time or other basis any professional or technical personnel who are or have been at any time during the period of this Agreement in the employ of the Federal Highway Administration or the highway organizations of any public employer, except regularly retired employees, without the consent of the public employer of such person.

12. **TRANSFER OF AGREEMENT.** **NYSERDA** specifically agrees, as required by the State Finance Law Section 138, that they are prohibited by law from assigning, transferring, conveying, subletting or otherwise disposing of the Agreement or of their right, title or interest therein, or their power to execute such Agreement, to any other person, company or corporation, without the previous consent in writing of the **STATE**.

If this provision of the law be violated, the **STATE** shall revoke and annul the Agreement and the **STATE** shall be relieved from any and all liability and obligations thereunder to the person, company or corporation to whom **NYSERDA** shall assign, transfer, convey, sublet or otherwise dispose of the Agreement, and such transferee shall forfeit and lose all moneys therefore assigned under said Agreement.

13. **INSURANCE.** **NYSERDA** shall require the selected PON Contractor for NYSDOT-funded Projects to obtain insurance for the Work performed under this Agreement in of the type and amount of coverage as mutually agreed between **NYSDOT** and **NYSERDA**. In addition, **NYSERDA** shall also require such insurance obtained by the Contractor to name **NYSDOT** and the State of New York as additional Insured under such policies.
14. **INDEMNIFICATION.** **NYSERDA** shall require the selected PON Contractor for NYSDOT-funded Projects to indemnify **NYSERDA**, **NYSDOT** and the State of New York for the Work performed under this Agreement for cost, damages, and claims, upon such as mutually-agreed-upon between **NYSDOT** and **NYSERDA**.
15. **CERTIFICATION REQUIRED BY 49CFR, PART 29.** The signatory to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):
- A. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - B. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
 - C. Does not have a proposed debarment pending; and

D. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

E. EXCEPTIONS: - None.

16. **CERTIFICATION FOR FEDERAL-AID CONTRACTS.** The prospective participant certifies, by signing this Agreement to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

17. **NOTICES.**

- A. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
1. via certified or registered United States mail, return receipt requested;
 2. by facsimile transmission;
 3. by personal delivery;
 4. by expedited delivery service; or
 5. by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

New York State Department of Transportation:

Contact Person's Name: William A. Howe, Contract #C031105

Title: Director

Address: NYSDOT Contract Management Bur., 50 Wolf Road, 6th Fl., Albany, NY 12232

Telephone Number: 518-457-2600

Facsimile Number: 518-457-2874

E-Mail Address: bill.howe@dot.ny.gov

NYSERDA:

Contact Person's Name: Jeffrey J. Pitkin, Contract #C031105

Title: Treasurer and Internal Control Officer

Address: NYSERDA, 17 Columbia Circle, Albany, NY 12203-6399

Telephone Number: 518-862-1090
Facsimile Number: 518-862-1091
E-Mail Address: jjp@nyserdera.ny.gov

- 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.

18. **IRAN Divestment Act.** NYSERDA shall require the following term in its contracts with the CONSULTANT, or its subconsultant(s)/subcontractor(s) performing the Work under the various research and demonstration PONs, “the CONSULTANT or CONTRACTOR”); as follows:

By entering into this Contract, Contractor certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to the New York State Iran Divestment Act of 2012: list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of the contract will be required to certify that it is not on the Prohibited Entities List before NYS DOT may approve a request for Assignment of Contract.

During the term of the Contract, should NYS DOT receive information that a person (as defined in State Finance Law Section 165-a) is in violation of the above-referenced certifications, NYS DOT will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then NYS DOT shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

NYS DOT reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

21. **INCLUSION OF APPENDIX A.** NYSERDA shall comply with the Appendix A - Standard State Clauses for New York State Contracts as applicable to this Agreement; and NYSERDA shall include Appendix A in its contracts with selected PON Contractors or its subconsultant(s)/subcontractor(s) performing NYS DOT-funded Project Work under the various research and demonstration PONs.

22. **RESPONSIBILITY PROVISIONS.**

General Responsibility. The Consultant shall, at all times during the Agreement, remain responsible. The Consultant agrees, if requested by the Commissioner of NYS DOT or his or her designee, 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.

Suspension of Work (for Non-Responsibility). The Commissioner of NYS DOT (or his or her designee), in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement at any time when

he or she discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the Agreement.

Termination (for Non-Responsibility). Upon written notice to the Consultant, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the Agreement may be terminated by Commissioner of NYSDOT (or his or her designee) at the Consultant's expense where the Consultant is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

IN WITNESS WHEREOF, **this Contract #C031105** has been executed by the **STATE**, acting by and through the Commissioner of Transportation, and by **NYSERDA**, acting by its duly authorized representative, effective the day and year first written above. In addition to the acceptance of this Agreement, I also certify that original copies of this signature page shall be attached to all other exact copies of this Agreement.

RECOMMENDED BY:

FOR THE PEOPLE OF THE STATE OF NEW YORK:

By: _____

CONTRACT MANAGEMENT
DATE: _____

William A. Howe, Director, Contract Mgt. Bur.
DEPARTMENT OF TRANSPORTATION
DATE: _____

By: _____

Jeffrey J. Pitkin, Treasurer
NEW YORK STATE ENERGY RESEARCH &
DEVELOPMENT AUTHORITY
DATE: _____

----- NYSDOT/NYSERDA Research Partnership Agreement-----

APPROVALS

ATTORNEY GENERAL

THOMAS P. DiNAPOLI

STATE COMPTROLLER

By: _____

Date: _____

Acknowledgement for Contract #C031105

State of New York)

County of) ss.:

On the _____ day of _____ in the year 2013, before me the undersigned, 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 individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC

My Commission Expires: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. 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 a contract 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 contract 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 contract. If this is a building service contract 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 contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract 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 the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or 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 contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) 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 the seller or lessor 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. (2) The personal information is requested by the purchasing unit of the

agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

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

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. 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
 Albany, New York 12245
 Telephone: 518-292-5100
 Fax: 518-292-5884
 Email: opa@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
 633 Third Avenue
 New York, NY 10017
 Telephone: 212-803-2414
 Email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid 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.

21. 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.

22. 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).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. 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, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

2. During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:
3.
 - (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
 - (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
 - (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
 - (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
 - (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
 - (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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APPENDIX B

REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally-aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its "Procedures for Locally Administered Federal-Aid Projects" (available through NYSDOT's web site at: www.dot.ny.gov/plafap). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: www.fhwa.dot.gov/programadmin/contracts/1273.htm).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION**. No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY**. In connection with the execution of this Agreement, the Municipality/Sponsor's contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
3. **DISADVANTAGED BUSINESS ENTERPRISES**. In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under [18 U.S.C. 1001](#) and/or the Program Fraud Civil Remedies Act of 1986 ([31 U.S.C. 3801](#) et seq.).

FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations". Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency³ the New York State Department of Transportation, the New York State Comptroller=s Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance ([CFDA](#)⁴), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.

Additional CFDA numbers for other transportation and non-transportation related programs are:

20.215	Highway Training and Education
20.219	Recreational Trails Program
20.XXX	Highway Planning and Construction - Highways for LIFE;
20.XXX	Surface Transportation Research and Development;
20.500	Federal Transit-Capital Investment Grants
20.505	Federal Transit-Metropolitan Planning Grants
20.507	Federal Transit-Formula Grants
20.509	Formula Grants for Other Than Urbanized Areas
20.600	State and Community Highway Safety
23.003	Appalachian Development Highway System
23.008	Appalachian Local Access Roads

PROMPT PAYMENT MECHANISMS

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

³ The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

⁴ www.cfda.gov/

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

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APPENDIX C

SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

1. GENERAL (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive Order 45, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

(b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of \$10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY The CONSULTANT, their sub-consultant and/or sub-contractor or any person acting on behalf of the CONSULTANT or sub-consultant and/or sub-contractor will accept as their operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, national origin, age, disability or marital status, and to promote the full realization of equal employment opportunity through a positive continuing program. "It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, or during consideration for employment, without regard to their race, religion, sex, or color, national origin, age, disability or marital status. Such non-discriminatory action shall include, but not be limited to: employment, job assignment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.

4. DISSEMINATION OF POLICY (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

- (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- (2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.
- (3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official.

(Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)

(b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

(1) Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.

5. RECRUITMENT (a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration. In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.

(c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. PERSONNEL ACTIONS Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age, disability or marital status. The following procedures shall be followed:

(a) The CONSULTANT will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The CONSULTANT will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory practices.

(c) The CONSULTANT will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONSULTANT will promptly take corrective action. If the review indicated that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation

indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

7. TRAINING AND PROMOTION (a) The CONSULTANT will assist in locating, qualifying and increasing the skills of minority group and women employees, and applicants for employment.

(b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.

(c) The CONSULTANT will advise employees and applicants for employment of available training programs and entrance requirements for each.

(d) The CONSULTANT will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. UNIONS If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT's compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:

(a) The CONSULTANT will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

(b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.

(c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

(d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.

9. AFFIRMATIVE ACTION IN SUBCONTRACTING (a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).

(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time or submittal of a formal proposal to the State's Contracts Bureau.

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.

(e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

10. RECORDS AND REPORTS (a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:

- (1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.
- (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
- (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- (5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

(c) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:

- (1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
- (2) cancellation, termination or suspensions of the agreement in whole or in part.

11. TRAINING SPECIAL PROVISIONS This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

The number of months of training to be provided under these special provisions is previously stated in this Agreement.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less than 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

Updated December 2012

EXHIBIT A

State Consultant Services Contractor's Annual Employment Report

FORM B

OSC Use Only: Reporting Code: Category Code:

State Consultant Services Contractor's Annual Employment Report Report Period: April 1, to March 31,

Contracting State Agency Name: Transportation Agency Code: 3900283 Contract Number: C031105 Contract Term: July 1, 2013 to June 30, 2018 Contractor Name: New York State Energy Research & Development Authority Contractor Address: 17 Columbia Circle, Albany, New York 12203-6399 Description of Services Being Provided: NYSDOT/NYSERDA Research Partnership Agreement

Scope of Contract (Choose one that best fits):

Analysis Evaluation Research Training
 Data Processing Computer Programming Other IT consulting
 Engineering Architect Services Surveying Environmental Services
 Health Services Mental Health Services
 Accounting Auditing Paralegal Legal Other Consulting

O*NET Employment Category Number and O*NET Job Title	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report: Preparer's Signature: _____ Title: _____ Phone #: _____ Date Prepared: / /
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Use additional pages if necessary) _____ of

Metrics Reporting Guide

Information Dissemination

On an annual basis, the Contractor shall submit, to NYSERDA's Project Manager, a prepared analysis and summary of metrics addressing the anticipated energy, environmental and economic benefits that are realized by the project. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented.

Reporting shall commence the first calendar year after the contract was executed. Reports shall be submitted by January 31st for the previous calendar years activities (i.e. reporting period). Reports shall continue to be submitted for **two** consecutive calendar years after the project is completed. The Contractor shall make every effort to quantify and document benefits and incorporate them into the Final Report and technology transfer activities as required in this agreement.

A form will be provided to you to submit the following metrics:

Information Dissemination

Name of Presentation or Event	<i>Names of the presentation or event where information was communicated about the product, company or research</i>
Organization that hosted the event	<i>Name of the organization that hosted the event</i>
Type of event	<i>The type of event where information was communicated about your company, product or research (e.g. conference, workshop, media event, etc.)</i>

Publications

Publication Date	<i>Date information is published (month & year)</i>
Publication Title	<i>Name of publication written as a result of research performed under contract with NYSERDA</i>
Publication Type	<i>Examples: Citation, Final/Technical Report, Newsletter, Trade Publication etc.</i>
Periodical Name	<i>Name of periodical the publication appeared in (if applicable)</i>
Policy Development	<i>State if this publication been cited in government policy development</i>
Names of Authors	<i>Author First & Last Names</i>

Metrics Reporting Guide

Product Demonstration

On an annual basis, the Contractor shall submit, to NYSERDA's Project Manager, a prepared analysis and summary of metrics addressing the anticipated energy, environmental and economic benefits that are realized by the project. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented.

Reporting shall commence the first calendar year after the contract was executed. Reports shall be submitted by January 31st for the previous calendar years activities (i.e. reporting period). Reports shall continue to be submitted for **five** consecutive calendar years after commissioning or acceptance of equipment. The Contractor shall make every effort to quantify and document benefits and incorporate them into the Final Report and technology transfer activities as required in this agreement.

A form will be provided to you to submit the following metrics:

Site Metrics

Installation Status	<i>Current status of system installation (e.g. Design, Installed & Commissioning, Operational, etc.)</i>
Expected Duration	<i>Number of years equipment is expected to be installed</i>
Replication of System	<i>Additional installations of a similar system as a result of the NYSERDA project</i>
Jobs	<i>Jobs created/retained as a result of a NYSERDA project</i>

Information Dissemination

Name of Presentation or Event	<i>Names of the presentation or event where information was communicated about the product, company or research</i>
Organization that hosted the event	<i>Name of the organization that hosted the event</i>
Type of event	<i>The type of event where information was communicated about your company, product or research (e.g. conference, workshop, media event, etc.)</i>

Publications

- Publication Date** *Date information is published (month & year)*
- Publication Title** *Name of publication written as a result of research performed under contract with NYSERDA*
- Publication Type** *Examples: Citation, Final/Technical Report, Newsletter, Trade Publication etc.*
- Periodical Name** *Name of periodical the publication appeared in (if applicable)*
- Policy Development** *State if this publication been cited in government policy development*
- Names of Authors** *Author First & Last Names*

Resources Saved

<input type="checkbox"/>	<i>Add Metric</i>		
<input type="checkbox"/>	General Resource Type	Specific Resource Type	Unit of Measurement
	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Basis of Calculations	<input type="text"/>	

Resources Used

<input type="checkbox"/>	<i>Add Metric</i>		
<input type="checkbox"/>	General Resource Type	Specific Resource Type	Unit of Measurement
	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Basis of Calculations	<input type="text"/>	

NYSERDA - INSTRUCTIONS FOR SUBMITTING ELECTRONIC PROPOSALS

Please read the following instructions before submitting a proposal.

1. Submit one proposal for each session.
2. Enter your e-mail address and click the “Validate Email” button.
3. You will receive an automatic email containing a link to validate your email address. Click the link to be taken back to the Funding Opportunity to begin the online submission process.
4. Upload as many files as needed, one at a time.
5. The electronic file names should include the proposing entity’s name in the title of the document. The character limit is **100** characters.
6. You may submit Word, Excel, Zip, or PDF files. Individual files should be less than **1GB** file size.
7. PDF files **must** be searchable and therefore should be converted directly from an electronic document to PDF, rather than scanned.
8. After clicking the “Upload File” button, a list of your files will appear on the web page. You can delete files from this list if needed.
9. After all necessary files have been uploaded; review the list of documents to ensure that your proposal is complete and accurate.
10. Click the “Submit Proposal button.”
11. You will then be brought to a confirmation page listing the files received. Please print and save the confirmation page.
12. An auto-generated confirmation e-mail will be sent to the e-mail address you entered. Please save this e-mail.
13. When choosing to submit files electronically, the award/non-award notification letter will be sent to the e-mail address of the **Primary Contact listed on the Proposal Checklist.**

Important Reminders:

1. **The electronic proposal system closes promptly at 5pm Eastern Time on the due date of the solicitation.** Files in process or attempted for submission after 5pm will be locked out of the system. Please allow at least 15-30 minutes to submit proposals.
2. E-mail or facsimile submittals will not be accepted.

If you make an error:

If after you click “Submit Proposals” you discover that the document(s) you submitted are incomplete or inaccurate follow these instructions:

1. Start the process over again and **resubmit the entire proposal.** You will receive another confirmation e-mail.
2. Immediately forward both confirmation e-mails (original and resubmission) to proposals@nyserda.ny.gov with the subject line of “**Resubmittal**” and the PON/RFP/RFQ number.
3. NYSERDA will accept the second submission as your proposal. The first submission will be disregarded.

If you need help:

If you need help with this electronic proposal submission process, please contact Venice Forbes at venice.forbes@nyserda.ny.gov or 518-862-1090 ext. 3507 and the Program contact listed in the solicitation.