

## Installation Agreement for Solar Photovoltaic System

This Installation Agreement for Solar Photovoltaic Systems (this “Agreement”) is made and entered into on August 9, 2018 (the “Effective Date”), by and between **The Town of Irondequoit**, a municipal corporation with a primary location of 1280 Titus Avenue, Rochester, New York 14617 (“Owner” or “Customer”), and **Sustainable Energy Development, Inc. d.b.a. GreenSpark Solar**, a New York corporation with an address of 318 Timothy Lane, Ontario, New York 14519 (“Contractor”).

Whereas, Owner owns properties at 1300 Titus Avenue Rochester, New York 14617 (the “Public Safety Building”) and 2629 East Ridge Road Rochester, New York 14622 (the “DPW Facility,” and together with the Public Safety Building, the “Properties”) and desires to have Contractor install a Solar photovoltaic (PV) system on the Properties (the “Solar PV Systems”);

Whereas, Owner has entered into Contract 122237 with the New York State Energy Research and Development Authority (“NYSERDA”) for the Solar PV Systems (the “NYSERDA Contract”);

Whereas, Contractor represents and warrants that it will comply with the NYSERDA Contract and all federal, state and local laws in the performance of this Agreement; and

Whereas, Contractor will install (2) Solar PV Systems as specified in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein the Parties hereto, intending to be legally bound hereby, agree as follows:

- 1) The installation of the Solar PV Systems by Contractor will include:
  - a. Preparation of all deliverables, submittals, and requests required under and in accordance with the NYSERDA Contract, including but not limited to the Design Metrics Submittal, the 50% Implementation Submittal, the Project Completion Submission, and requests as those terms are used in the NYSERDA Contract.
  - b. Completing an energy level walk through analysis at the Properties
  - c. Obtaining all required permits
  - d. Supplying all materials, tools, labor, equipment, training, and support to install the Solar PV Systems for Owner’s interconnection to the utility grid and commission for use under the NY-Sun Commercial/Industrial Program.

(collectively, the “Work”). By executing this Agreement, both parties consent to its terms and acknowledge that Contractor is working as an independent agent and is not to be construed as an employee of the Owner or eligible for the benefits thereof.

2) Equipment to be Installed. The specific equipment to be installed as part of the Solar PV Systems for Owner’s Buildings are listed in Exhibit A attached to this Agreement.

3) Cost. The cost to complete the Work and install the Solar PV Systems shall be Two

Hundred Fifty Thousand and Thirty-Seven Dollars (\$250,037.00) (the “Cost”).

- a) Contractor shall submit invoices to Owner in a template provided or otherwise approved by NYSERDA. Owner shall make payments based on the schedule attached as Exhibit B to this Agreement.
  - b) Change Orders. Contractor will work with Owner on any changes to the Cost that may arise through the design or installation phase of this project. Change orders requests must be within reason and cannot be unreasonably withheld by Owner. All change orders will require their own payment schedule to be agreed upon in writing between Owner and Contractor prior to the commencement of such work. Owner shall not be liable for any costs incurred by Contractor above the Cost unless agreed to in writing pursuant to this section.
  - c) Financing, Loan Guarantee, Design, Permitting and Interconnection. Contractor will work with Owner to successfully complete tasks and secure approvals necessary for the Solar PV Systems to commence construction. If at any point the Owner is unable or unwilling to proceed as proposed due to: (1) financial or technical constraints; or (2) NYSERDA’s denial or revocation of permission required under the NYSERDA Contract, Owner may decide to terminate the contract at that time. Contractor will only bill for work performed and will reimburse Owner for any remaining funds.
  - d) Utility Upgrades. Cost does not include any fees associated with upgrading the utility system for installation of the Solar PV Systems, if they arise Contractor will make Owner aware of these costs as soon as possible.
  - e) Site Clearing, Grading and Preparation. Owner will clear, grade and prepare the site for the installation of the Solar PV Systems per the Contractor’s specifications and in line with Contractor’s schedule. Any costs associated with the site not being appropriately prepared will be the responsibility of the Owner.
  - f) Payment Rebate. During the term of this agreement Contractor may be made aware of a potential utility upgrade cost that is untenable to Owner. Contractor will inform owner of utility upgrade costs as soon as they are known. Prior to executing the interconnection agreement with the utility, Owner may decide to terminate the contract at that time. Contractor will only bill for work performed and will reimburse Owner for any remaining funds.
- 4) Commencement Date/Completion Date for Work. The Work will commence immediately upon execution of this agreement. Contractor agrees that the Commercial Operation Readiness Date (as defined below) will occur by December 31, 2018 for the Public Safety Building and September 15, 2019 for the DPW Facility.
- 5) Commercial Operation Readiness Date. The Commercial Operation Readiness Date is the date, which shall be specified by Contractor to Owner, when the Work for each Solar PV System

is physically complete and has successfully completed all performance tests and satisfies the interconnection requirements of the local electric utility.

6) Installation of Equipment.

- a) Contractor shall perform the Work: (1) in an efficient and expeditious manner in accordance with all the terms and provisions of this Agreement; (2) in accordance with current professional standards; (3) with the diligence and skill expected for the performance of work of the type described in this Agreement.
- b) Contractor shall use its best efforts to care for the equipment and materials delivered for the Solar PV Systems. Any equipment or materials damaged by the Contractor or suffer warranty damage during installation due to the fault of the Contractor shall, at Contractor's option, be either be repaired or replaced to original operational condition at no cost to Owner.
- c) Contractor will install the Solar PV Systems according to the manufacturer's specifications.
- d) Upon the Commercial Operation Readiness Date for each Solar PV System, Owner shall be responsible for the all equipment associated with the Solar PV System.

7) Maintenance and Repairs. After the Commercial Operation Readiness Date for each Solar PV System, Owner shall at its expense keep each Solar PV System in good working order and condition and make all necessary adjustments, repairs and replacements thereto. Owner shall not use or permit the Solar PV Systems to be used for any purpose for which, in the opinion of manufacturer, the Solar PV Systems is not designed or reasonably suitable. Without limiting the generality of the foregoing, Owner may, at its own expense, enter into and maintain in force a contract with the manufacturer or other qualified service organization covering at least prime maintenance of each item of Solar PV Systems.

8) Insurance/ Risk of Loss.

- a) Contractor shall maintain the following insurance during the installation of each Solar PV System:

- 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
- Workers Compensation, Employers Liability, and Disability Benefits insurance in limits required by law.

- b) Upon the Commercial Operation Readiness Date for each Solar PV System, title to the completed Solar PV System and the risk of loss for that Solar PV System shall transfer to the Owner. As a result, Owner may obtain and maintain from the Commercial Operation

Readiness Date, at its own expense, property damage and liability insurance and insurance against loss or damage to the Solar PV System including, without limitation, loss by fire (including so-called extended coverage) theft and such other risks of loss as are customarily insured against the type of equipment described herein by any businesses in which Owner is engaged. Contractor and Owner agree to execute any and all documents necessary to effectuate the transfer of title for each Solar PV System.

9) Default and Termination.

- a) Contractor's Default. In the event there is a breach by Contractor with respect to any of the provisions of this Agreement or its obligations under it, Owner shall give Contractor written notice of such breach. After receipt of such written notice, Contractor shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided Contractor shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Contractor commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Owner may not maintain any action or effect any remedies for default against Contractor unless and until Contractor has failed to cure the breach within the time periods provided in this paragraph.
- b) Owner's Default. In the event there is a breach by Owner with respect to any of the provisions of this Agreement or its obligations under it, Contractor shall give Owner written notice of such breach. After receipt of such written notice, Owner shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided Owner shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Owner commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Contractor may not maintain any action or effect any remedies for default against Owner unless and until Owner has failed to cure the breach within the time periods provided in this paragraph.
- c) Remedies. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party; provided, however, the non-defaulting Party shall use reasonable efforts to mitigate its damages in connection with a default by the defaulting Party.

10) Warranty. Except as otherwise specifically provided herein, there are no representations or warranties of any kind express or implied, with respect to the condition or performance of the Solar PV Systems, its merchantability or fitness for a particular purpose, or with respect to patent infringement or the like, other than the warranty provided by the manufacturer. Except to the extent such claim, loss or damage is due to Contractor's negligence or willful misconduct, Contractor shall have no liability to Owner for any claim, loss or damage of any kind or nature whatsoever,

nor shall there be any cost abatement arising out of or in connection with (i) the deficiency or inadequacy of the Solar PV Systems for any purpose that Contractor did not know or should have known; (ii) any deficiency or defect in the Solar PV Systems that Contractor did not know or should have known; (iii) the use or performance of the Solar PV Systems; or (iv) any interruption or loss of service or use of the Solar PV Systems; or (v) any loss of business or other consequential loss or damage whether or not resulting from any of the foregoing.

11) Governing Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of New York, without regard to its principles of choice of law.

12) Successors and Assigns. The Parties bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither party may assign or transfer any interest in this Agreement without the other party's prior written consent.

13) Compliance with Laws and NYSERDA Contract. Contractor represents and warrants that it will comply with all federal, state and local laws, rules, and regulations in the performance of this Agreement. Contractor further represents and warrants that it has read and is familiar with the NYSERDA Contract, which is attached hereto as Exhibit C and made a part hereof, and agrees to be bound by all terms therein governing the Work. To the extent this Agreement conflicts with the NYSERDA Contract, the NYSERDA Contract shall control. Owner and NYSERDA shall have a right to inspect Contractor's 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 for up to four (4) years after the Completion Date for Work for the DPW Facility.

14) Notices. All notices which are required or desired to be given hereunder shall be in writing addressed to the Owner and Contractor at the addresses listed above and shall be deemed given: (i) one business day after deposit with a nationally recognized overnight courier service marked for overnight delivery and with all fees prepaid, or (ii) two business days after deposit in the United States mail if sent registered or certified mail, return receipt requested. Owner and Contractor may each change the address for service of notice upon it by a notice in writing to the other party.

15) Entire Agreement. This Agreement and the exhibits attached hereto contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and commitments with respect thereto. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

16) Amendments. This Agreement may be modified or amended only by a written instrument signed by the Parties.

17) Severability. If any provision of this Agreement is found to be invalid, illegal or

unenforceable, the remaining provisions hereof shall remain in full force and effect.


18) 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 NYSERDA.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

OWNER:  
Town of Irondequoit

CONTRACTOR:  
Sustainable Energy Development, Inc.  
d.b.a. GreenSpark Solar

  
Printed Name: \_\_\_\_\_  
Title: *Supervisor*  
Date: *August 9, 2018*

By:   
Name: George McConochie  
Title: Chief Operating Officer  
Date: August, 8, 2018

**EXHIBIT A**

**List of Equipment for Solar PV Systems**

Solar PV System. Contractor will install a Solar PV System with a nominal DC capacity of 53.1kW on the Town of Irondequoit Public Safety Building.

a. Itemized Breakdown

<b><i>Component Type</i></b>	<b><i>Component Name</i></b>	<b><i>Number</i></b>	<b><i>Notes</i></b>
Modules	Hanwha QCELLS 300W	177	
Inverters	Solar Edge	3	
Racking	IronRidge - Pitched Roof	1	
Balance of System		1	

b. Or Equivalent. Contractor will use components listed in the chart above or a suitable equivalent. No major components (modules, inverters) will change manufacturer without the consent of Owner.

Solar PV System. Contractor will install a Solar PV System with a nominal DC capacity of 56.4kW on the Town of Irondequoit DPW Facility.

c. Itemized Breakdown

<b><i>Component Type</i></b>	<b><i>Component Name</i></b>	<b><i>Number</i></b>	<b><i>Notes</i></b>
Modules	Hanwha QCELLS 300W	188	
Inverters	Solar Edge	3	
Racking	IronRidge - Pitched Roof	1	
Balance of System		1	

d. Or Equivalent. Contractor will use components listed in the chart above or a suitable equivalent. No major components (modules, inverters) will change manufacturer without the consent of Owner.



**EXHIBIT B**

**Payment Schedule**

1. Payments from Owner to Contractor

- a. Owner Shall Pay Contractor according to the schedule listed below for the installation at the Public Safety Building.

Contract Execution	Effective Date	10% of Total Contract Value	\$12,169.00
Equipment Order	On Or About August 1 <sup>st</sup> 2018	40% of Total Contract Value	\$48,676.00
Construction Complete	On Or About November 1 <sup>st</sup> 2018	45% of Total Contract Value	\$54,760.00
Commercial Operation	On Or About November 15 <sup>th</sup> 2018	5% of Total Contract Value	\$6,084.00

- b. Any change order agreed to in writing by Owner and Contractor shall be paid in separately from the values listed below and at the time agreed to by Owner and Contractor.
- c. Owner shall pay Contractor within 30 days of receipt of invoice from Contractor.

2. Payments from Owner to Contractor

- a. Owner Shall Pay Contractor according to the schedule listed below for the installation at the Department of Public Works Building.


Contract Execution	Effective Date	10% of Total Contract Value	\$12,834.80
Equipment Order	On Or About February 1 <sup>st</sup> , 2019	40% of Total Contract Value	\$51,339.20
Construction Complete	On Or About July 1 <sup>st</sup> , 2019	45% of Total Contract Value	\$57,756.60
Commercial Operation	On Or About July 15 <sup>th</sup> 2019	5% of Total Contract Value	\$6,417.40

- b. Any Change order agreed to in writing by Owner and Contractor shall be paid in separately from the values listed below and at the time agreed to by Owner and Contractor.
- c. Owner shall pay Contractor within 30 days of receipt of invoice from Contractor.

**EXHIBIT C**  
**NYSERDA Contract**

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

**AGREEMENT**


1. Agreement Number: 122237
2. Contractor: Town of Irondequoit
3. Project Director: Lauren Kelly
4. Effective Date: June 15, 2018
5. Total Amount of Award: ~~\$250,000.00~~ <sup>\$250,000.00</sup> 
6. Project Period: June 15, 2018 – June 15, 2020
7. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement; and
- Exhibit E, Metrics Reporting Instructions.

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

**TOWN OF IRONDEQUOIT**

Signature:   
Name: DAVID A SEELEY  
Title: Supervisor

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

Signature:   
Jeffrey J. Pitkin  
Treasurer

STATE OF New York  
COUNTY OF Monroe ) SS.:

On the 22<sup>nd</sup> day of June in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared David A. Seeley 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

ANN C. DOELLER  
Notary Public, State of New York  
Qualified in Monroe County  
Commission Expires September 25, 2018

**Exhibit A – Statement of Work  
Clean Energy Communities (CEC) Program  
Town of Irondequoit  
CEC310322 & CEC 10322/Contract 122237**

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**Project Background**

The project includes the installation of two (2) roof-mounted Solar photovoltaic (PV) system for the Town of Irondequoit (hereafter, the “Contractor” or “Town”). The sites include: 1) the soon-to-be-built Department of Public Works facility is located in a high-traffic area of Town, on a parcel located just east of two major highways (Route 104 and Route 590) and on a main road (2629 Ridge Road), and 2) the installation of a 53.1kW roof-mounted Solar PV system within Town Hall campus on the roof of the Police Department Building.

Under this Agreement, the Contractor shall implement:

Component 1: The Contractor will install or cause to be installed a 56.4kW roof-mounted Solar PV system on the roof of the Department of Public Works building, and a 53.1kW roof-mounted Solar PV system within Town Hall campus on the roof of the Police Department Building.

**Definitions**

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

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

**Metrics Report:** The Contractor shall provide preliminary (design) and final (completion) quantified documentation of the benefits of the project, including Greenhouse gas reductions and energy savings, determined and documented as outlined in Exhibit E, Metrics Reporting Instructions. NYSERDA shall use the Metrics Report to: assess activities in the project, capture the extent of benefits delivered, and gauge performance of the project and of the CEC Program.

**Deliverable Review Process**

The Contractor shall submit all Deliverables outlined in this Agreement to the NYSERDA Project Manager once a Task is completed. The Contractor shall submit all Deliverables in Microsoft Word, Microsoft Excel, and/or PDF format (or other format as identified in the Tasks below). Within thirty (30) business days of receipt of each Deliverable, the NYSERDA Project

Manager shall provide comments to the Contractor or, if the Deliverable is acceptable, the NYSERDA Project Manager shall provide final approval. The Contractor shall prepare revisions to the Deliverable reflecting the NYSERDA Project Manager's comments, and resubmit any revised Deliverable within thirty (30) business days after receipt of these comments. All Deliverables shall not be considered final unless approved by the NYSERDA Project Manager in writing to the Contractor.

#### **Minimum Performance Requirements**

- Listed below are the minimum performance requirements for efforts and/or technologies funded under this Agreement. NYSERDA will consider written requests for modifications to the minimum requirements, however modifications are subject to NYSERDA review and approval. The Contractor may propose a project based on previous design efforts, but the project must meet the Minimum Performance Requirements. Implementation or installation must occur after approval of the design. Previous design services, installed, or implemented measures or project elements will not be funded under this Contract. The NYSERDA Project Manager will schedule routine conference calls to ensure the project is on track and meet the required guidelines.

#### **Photovoltaic (PV) Project Minimum Performance Requirements**

- Contractor must work with a participating NY Sun Contractor For residential and small commercial systems, visit <https://www.nyserdera.ny.gov/All-Programs/Programs/NY-Sun/Customers/Find-a-contractor/Residential-Installers>. For large commercial and industrial systems, visit <https://www.nyserdera.ny.gov/All-Programs/Programs/NY-Sun/Customers/Find-a-contractor/Commercial-Installer>.
- Projects must participate in the NY Sun Program (Projects not eligible for the NY Sun program must still comply with all NY Sun requirements).
- Project costs shall be recovered by the applicant through energy savings within twenty (20) years;
- Equipment must be in continuous use for a period of at least four (4) years.

#### **Total Contract Award**

The total NYSERDA award amount and the total project cost for all Tasks shall not exceed the amount identified in the Milestone Payment Table below. All cost overruns shall be the sole responsibility of the Contractor.

#### **Tasks**

The Contractor is solely responsible for all Tasks in this Statement of Work. Submission of deliverables to NYSERDA electronically (by email or via Salesforce) constitutes certification of the veracity of information contained therein, and compliance with Minimum Performance Requirements as identified in this Agreement. The Contractor shall conduct all work as outlined in the following Tasks:

#### **Task 1.0: Executed Agreement**

The Contractor shall submit documentation attesting to agreement to perform the project according to the Performance Requirements and terms and conditions of the Agreement.

**Deliverables:**

1.0 Submit invoice that executed Agreement as outlined under Task 1.0 above is completed.

**Task 2.0: Design Phase**

The Contractor shall complete or cause to be completed the design/specifications and then the metrics workbook in accordance with Exhibit E, Metrics Reporting Instructions. The Task 2 Design Metrics Submittal shall be completed to demonstrate that the design/specifications meets the Minimum Performance Requirements described above and data collected to the level of detail needed to estimate the energy and greenhouse gas (GHG) savings benefits. Throughout the term of the contract, any deviations from the approved Minimum Performance Requirements and the implemented project shall be approved in writing by the NYSERDA Project Manager. By request, NYSERDA reserves the right to obtain and review design/specifications.

**Deliverables:**

2.0 Design Metrics Submittal, completed metrics workbook (in Excel format) and any required additional documentation.

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

**Task 3.0: Implementation Phase**

The Contractor shall complete or cause to be completed the Task 3 - 50% Implementation Submittal in accordance with Exhibit E, Metrics Reporting Instructions, documenting that purchase orders or equivalent have been issued, the project meets Minimum Performance Requirements, and 50% of the Project is complete.

Upon request, the Contractor must provide documentation illustrating that 50% of the project has been completed (e.g., photos, invoices, specifications or reports). If requested, the Contractor shall coordinate with the NYSERDA Project Manager to schedule a date for a site inspection. For outreach and planning activities (where applicable), the Contractor shall provide documentation of public outreach conducted and a draft version of the Plan. NYSERDA may also request documentation outlining the municipality’s competitive procurement process.

**Deliverable:**

3.0 50% Implementation Submittal and other documentation (where applicable).

**Task 4.0: Project Completion**

The Contractor shall complete or cause to be completed the Task 4 - Project Completion Submittal(s) in accordance with Exhibit E, Metrics Reporting Instructions. This submittal documents final metrics data, verifies that the project is complete and the design/specifications meet the project Minimum Performance Requirements. For outreach and planning activities (where applicable), the Contractor shall provide a final report and/or Plan.

Site Inspection: If requested, the Contractor shall coordinate with the NYSERDA Project Manager to schedule a date for a site inspection upon the completion of the Project. NYSERDA may also request applicable documentation including, but not limited to photos of the funded project components.

**Deliverable:**

4.0 Project Completion Submittal(s), final metrics workbook (in excel format), and other documentation (where applicable) as outlined under Task 4.0 above.

**Milestone Payment Table**

The project milestones and schedule of payments is shown below. Any adjustments to the milestone deliverable dates must be approved in writing by the NYSERDA Project Manager. The Contractor shall submit invoices for payment of a completed milestone once the associated Deliverable(s) is approved by the NYSERDA Project Manager. Invoices shall be submitted in a template provided by NYSERDA and as outlined in Article IV of the Agreement. NYSERDA funding shall not exceed 100% of the cost of any milestone. NYSERDA is not responsible for any Deliverable costs that are greater than the NYSERDA contribution for each milestone. If the Contractor fails to complete the project or any milestone of the project, funds disbursed shall be subject to recapture as outlined in Section 2.03 under Exhibit B.

NYSERDA CEC grant funds shall only cover the cost of the project after any other incentives (private, state, federal, etc.) received by the Contractor are removed.

It is NYSERDA's expectation that all dollars awarded under this contract will be used to support clean energy projects. Should Contractor find available funds, through cost savings achieved in performance of the Statement of Work, Contractor agrees to use those funds for clean energy projects.



Milestone #	Milestone Dates	Deliverable Description	NYSERDA Contribution (%) (Not to Exceed)	NYSERDA Contribution (\$) (Not to Exceed)	Contractor Contribution (\$)	Total
1.0	Q3 2018	Executed Contract	25%	\$62,500.00		\$62,500.00
<b>Design Phase</b>						
2.1	Q3 2018	Design Phase – Component 1	5%	\$11,250.00	\$0.00	\$11,250.00
<b>Implementation Phase</b>						
3.1	N/A	Implementation Phase - Component 1	0%	\$0.00	\$0.00	\$0.00
<b>Project Completion</b>						
4.1	Q3 2019	Project Completion - Component 2	70%	\$176,250.00	\$0.00	\$176,250.00
		<b>Total Project Budget</b>	<b>100%</b>	<b>\$250,000.00</b>	<b>\$0.00</b>	<b>\$250,000.00</b>

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 Exhibits noted thereon, all of which are made a part hereof as if set forth here in full.

Budget: The Budget set forth at Exhibit A hereto.

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

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

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

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

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

**Responsible:** Responsible or Responsibility means the financial ability, legal capacity, integrity and past performance of Contractor and as such terms have been interpreted relative to public procurements. See NYS Finance Law Section 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 or cause such work to be performed 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 procure such personnel, materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the Work in accordance with this Agreement.

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

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

- (a) If the Contractor fails to complete all Task(s) of this Agreement, the Contractor is subject to recapture of the full NYSERDA contribution under any tasks of the Agreement under which NYSERDA contributions have been made. NYSERDA reserves the right to pro-rate the final award amount if the completed project deviates from the proposed design submitted and approved in Task 2.
- (b) If the Contractor fails to own and operate the equipment installed under the terms of this Agreement for the duration specified under the Minimum Performance Requirements of this Agreement, the Contractor will be subject to the recapture of a portion of the value of the equipment purchased or leased under Task 3 of this Agreement. The recapture will be prorated based upon the amount of time the Contractor has kept the equipment in operation divided by the number of years the Contractor is required to operate the equipment according to the Minimum Performance Requirements under this Agreement, or as approved in writing by the NYSERDA Project Manager.

Recapture payment for the equipment sold, retired or disposed of, or time contractor does not comply with the reporting requirement outlined under the Minimum Performance Requirements under this Agreement = NYSERDA Funded Amount - (Total Project Value \* percent of duration required under the Minimum Performance Requirements).

### 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. In consideration for this Agreement and as NYSERDA's full payment for the costs of the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor amounts not to exceed the maximum amount set forth in Item 5, Page One of this Agreement. Subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D, payment will be made according to the Milestone Billing Events set forth in Exhibit A, Statement of Work.

#### Section 4.02. Payments.

(a) Invoicing: Subject to any applicable provisions set forth in Exhibit A, Statement of Work, at the completion of each Milestone Event, the Contractor shall submit the identified deliverables, including documentation reasonably sufficient to demonstrate completion and evidence of the Contractor's cost share, if applicable, and may request payment by NYSERDA

of the amounts corresponding to the amounts indicated in Exhibit A, Statement of Work. The agreement number shown as Item 1 on page 1 of this Agreement, as well as the purchase order number, which will be generated and provided to the Contractor upon contract execution, should be referenced when submitting documentation of deliverables. Documentation shall be submitted electronically via email to the assigned Project Manager along with a statement "I hereby request that upon NYSERDA's approval of these deliverable(s), payment of the corresponding milestone payment amount be made in accordance with NYSERDA's Prompt Payment Policy, as detailed in the NYSERDA agreement" or, if this project is managed through NYSERDA's Salesforce application, via NYSERDA's Salesforce Contractor Portal with the Contractor's log-in credentials.

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

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

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

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

**Section 4.07. Audit.** NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for

amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

## Article V

### Assignments, Subcontracts and Performance

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

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling less than \$50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. If this Agreement includes a provision requiring Contractor to make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any subcontract(s) specified in the Statement of Work as requiring NYSERDA approval, including any replacements thereof. Notwithstanding the foregoing, in the event the provisions of this Section

conflict with the requirements of Chapter 51 of the Irondequoit Town Code (the "Procurement Policy)", the requirements of the Procurement Policy shall control.

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.

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

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

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

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

## 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 (<http://www.nyserda.ny.gov/-/media/Files/About/Board-Governance/NYSERDA-Code-of-Conduct-Contractors.pdf>); 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 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.

## 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 and the State of New York 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 therefore). Articles VIII, IX, and X shall survive any termination of this Agreement, and Article XVII 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.

Section 12.03 Suspension or Termination for Non-Responsibility.

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

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

Article XIII

Independent Contractor

Section 13.01. Independent Contractor. (a) The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants, including the Project Director, shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, vicarious liability, professional liability coverage or indemnification, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Contractor to perform the Work shall be Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

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

request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

## Article XIV

### Compliance with Certain Laws

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

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

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

## Article XV

### Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

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

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, return receipt requested.

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

**NYSERDA**

Name: Cheryl M. Glanton  
Title: Director of Contract Management  
Address: 17 Columbia Circle, Albany, New York 12203  
Facsimile Number: (518) 862-1091  
E-Mail Address: [Cheryl.Glanton@nyserda.ny.gov](mailto:Cheryl.Glanton@nyserda.ny.gov)  
Personal Delivery: Reception desk at the above address

**Town of Irondequoit**

Name: Lauren Kelly  
Title: Director of Development Services  
Address: 1280 Titus Ave, Rochester, NY 14617  
Facsimile Number: 585-336-6039  
E-Mail Address: [lkelly@irondequoit.org](mailto:lkelly@irondequoit.org)

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

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

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

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

## Article XVI

### Publicity

#### Section 16.01. Publicity.

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

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

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



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.ny.gov/about/foil2.html>) and NYSERDA's Regulations, Part 501 <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

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

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

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

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

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

**11. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete

upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development  
Division for Small Business  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5884

<http://www.esd.ny.gov>

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

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

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

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

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

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

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

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

**17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York

State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

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

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

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

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

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

## EXHIBIT D

### NYSERDA PROMPT PAYMENT POLICY STATEMENT

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

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

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

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

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

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

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

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

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

**Exhibit E**  
**Clean Energy Communities Program**  
**Metrics Reporting Instructions**

**Overview**

This guide is designed to help customers of NYSERDA's Clean Energy Communities (CEC) Program develop the standardized metrics reporting that must be submitted as a preliminary document in Task 2 and as a final document in Task 4 with confirmed final benefits after implementation of their project. NYSERDA has prioritized CEC projects with continuing, on-going benefits. Therefore, NYSERDA expects all CEC investments to produce annual long-term environmental, community, and economic development benefits, which are to be measured using the metrics described below. All CEC customers are required to develop preliminary estimated metrics and submit these estimated values in the Design Metrics Submittal (Task 2). Each project requires a submittal once 50% of the project is complete (Task 3). The final Project Completion Submittal (Task 4) will incorporate any final changes to the project information and metrics and any required documentation to demonstrate that the project has been completed. NYSERDA will provide an Excel workbook (metrics workbook) to simplify and standardize project metric calculations.

**CEC Program Performance Metrics**

**Required Performance Metrics (RPMs):** NYSERDA will track the following metrics for all CEC grant projects to demonstrate CEC program values and progress. All CEC customers must quantify these project benefits for all the metrics applicable to the project. *It is not required that projects impact all metrics.* The RPMs are listed in the following table.

<b>CEC Project Benefit Metrics</b>	
<b>Benefit/Metric</b>	<b>Unit</b>
<b>Economic</b>	
Jobs created (permanent)	#
NYSERDA CEC Grant Amount (\$)	\$
Investment by Others (matching and leveraged funds to complete the project-Private investment)	\$
Conventional Energy Cost Savings (\$ / year)	\$/year
<b>Energy</b>	
Renewable Energy Installed Capacity (MW)	MW
Renewable Energy Annual Electric Generation / Savings (MWh)	MWh/yr.
Energy Efficiency Peak Demand Electric Savings (MW)	MW
Energy Efficiency Annual Electric Savings (MWh)	MWh/yr
Energy Efficiency Annual Natural Gas Savings (MMBtu)	MMBtu/yr
Energy Efficiency Annual Gasoline Savings (MMBtu)	MMBtu/yr
Energy Efficiency Annual Diesel Savings (MMBtu)	MMBtu/yr
Energy Efficiency Annual #2/Distillate Oil Savings (MMBtu)	MMBtu/yr
Energy Efficiency Annual #6/Residual Oil Savings (MMBtu)	MMBtu/yr
Energy Efficiency Annual Propane Savings (MMBtu)	MMBtu/yr
Energy Efficiency Annual Other Fuel Savings (MMBtu)	MMBtu/yr
Total Energy Savings (except electricity) (MMBtu/year)	MMBtu/yr

<b>CEC Project Benefit Metrics</b>	
<b>Benefit/Metric</b>	<b>Unit</b>
<b>Sustainability</b>	
GHG Savings (MTCDE / year)	MTCO <sub>2</sub> e/year
Vehicle Miles Reduced	mi/year

**Instructions for Creating Metrics Reporting Submittals**

Each CEC customer will be provided with a metrics workbook in Excel, which will include all assumptions, factors and calculations needed to quantify the RPMs and project specific performance requirements. The metrics workbook will include instructions for completion, including needed input data. The metrics workbook will provide emission factors and assumptions for different types of projects to quantify benefits consistently across the CEC program. The metrics workbook may be updated periodically, therefore the customer should confirm with NYSERDA that they have the latest version. The metrics workbook will also serve as the submittal for applicable tasks identified in the Agreement.

**Task 2: Project Design Metrics**

For each project, a Design Metrics Submittal will be completed under Task 2. The metrics workbook will provide instructions and input requirements to allow the customer to estimate metrics. Task 2 shall be completed when the project design is complete. As noted above, all benefits that will be achieved by the project are to be quantified with the RPMs that are applicable, using the metrics workbook supplied by NYSERDA.

The Design Metrics Submittal will serve as documentation that the project has been designed to the specification of the CEC program, the contract performance requirements and that the data provided to estimate benefits was based on the design. Upon request, the Contractor may be required to provide NYSERDA with project design documentation, which may include energy audits, contractor proposals, outreach or draft plans, or purchase orders. Depending on the number of types of projects within a contract, there may be one or more Task 2 Submittals to complete within the metrics workbook. Once the necessary data has been entered, the Task 2 Design Metrics Submittal sheet from the metrics workbook shall be submitted as a separate pdf to NYSERDA, with additional documentation if requested. The entire metrics workbook in Excel format shall also be submitted as part of Task 2, as required by the contract schedule.

**Task 3: 50% Implementation**

For each project, a 50% Implementation Submittal will be completed for Task 3. The metrics workbook will provide instructions and input requirements. This submittal will provide documentation that the project meets Minimum Performance Requirements and 50% of the project is complete. A project is considered to be at least 50% complete when equipment has been ordered and half of the equipment has been installed, or when half of the outreach or planning effort has been completed. Upon request, the Contractor may be required to provide NYSERDA with completed purchase orders, photographs of installed equipment, timesheets, meeting agendas, etc. to demonstrate that 50% of the project has been implemented. Depending on the number of types of projects within a contract, there may be one or more Task 3 Submittals to complete within the metrics workbook. Once the necessary data has been entered, the Task 3-50% Implementation Submittal sheet shall be submitted as a separate pdf to NYSERDA with additional documentation if requested.

**Task 4: Project Completion Metrics**

For each project, a Project Completion Submission with a final metrics workbook will be completed for Task 4. Once the project has been completed, the customer will use the metrics workbook to revise the RPM values if appropriate to reflect the final implementation of the project. The metrics workbook will provide instructions on input requirements.

This submittal will serve as the documentation that the project has been completed in accordance with the CEC program, the contract performance requirements and that the data provided to calculate the RPMs were based on the final implementation conditions. Upon request, the Contractor may be required to provide NYSERDA with project completion documentation, such as executed contracts or purchase orders, photographs, and or final outreach or planning reports. Depending on the number of types of projects within a contract, there may be one or more Task 4 Submittals to complete within the metrics workbook. Once the necessary data has been entered, the Project Completion Metrics Submission sheet shall be submitted as a separate pdf to NYSERDA with additional documentation if requested. The final metrics workbook in Excel format shall also be submitted as part of Task 4, as required by the contract schedule.