

Facilitation Services in Support of the West Valley Citizen Task Force
Request for Proposal (RFP) 3526

Proposals Due: May 18, 2017 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (NYSERDA) is seeking proposals for facilitation services to support the West Valley Citizen Task Force near the Western New York Nuclear Service Center in West Valley, NY. The Task Force has been meeting for twenty years, providing advice to NYSERDA and DOE regarding cleanup and long-term management of facilities located at the Center. Continued success of the CTF will be, in part, dependent on securing the services of a highly-qualified, professional facilitator with experience in group facilitation. The facilitator will assist the West Valley Citizen Task Force (CTF) in its deliberations and communications with the site managers. NYSERDA has convened a Scoring Committee with representation by DOE, NYSERDA and the CTF to assist in selection of the facilitation contractor. This Scope of Work is being circulated to solicit bids from firms and/or individuals with facilitation expertise interested in managing the CTF meetings and interactions with NYSERDA and DOE as specifically outlined in the various tasks below. Work under this contract is expected to begin October 1, 2017 and continue through September 30, 2022 (a period of 5 years). This announcement is not a solicitation for proposals.

For additional information on this and other funding opportunities at NYSERDA, please visit
<https://www.nyserda.ny.gov/Funding-Opportunities>

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

If mailing or hand-delivering, proposers must submit (2) paper copies of their proposal with a completed and signed Proposal Checklist, along with a CD or DVD containing either a PDF or MS Word digital copy of the proposal, following the above guidelines. Mailed or hand-delivered proposals must be clearly labeled and submitted to:

**Proposals, RFP 3256
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399**

No communication intended to influence this procurement is permitted except by contacting Lee Gordon (Designated Contact) at (716) 942-9960, ext. 4963 or Lee.Gordon@nyserda.ny.gov (for technical questions). If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507 or Venice.Forbes@nyserda.ny.gov. Contacting anyone other than the Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

* Late proposals will be returned. Incomplete proposals may be subject to disqualification. It is the proposer's responsibility to ensure that all pages have been included in the proposal. Faxed or e-mailed proposals will not be accepted. Proposals will not be accepted at any other NYSERDA location other than the address above. If

changes are made to this solicitation, notification will be posted on NYSERDA's web site at <https://www.nyserdera.ny.gov>.

- I. **Introduction** The West Valley Citizen Task Force (CTF) has been functioning as an effective advisory group to DOE and NYSERDA on the cleanup and management of the West Valley Demonstration Project and Western New York Nuclear Service Center for 20 years. Part of the successful functioning of the CTF includes active expert facilitation.
- II. **Program Requirements** NYSERDA is seeking a facilitation expert to coordinate the work of the West Valley Citizen Task force (CTF), provide logistical support in anticipation of regular CTF meetings, facilitate meetings in a collaborative manner that shares information to achieve consensus, compile meeting summaries and information, and maintain effective working relationships within the CTF and the agencies. Close collaboration with all CTF members and agency representatives is essential to assure continued success of the CTF process. Duties of the facilitator also include overall maintenance of the CTF website, including hosting and IT-related services, content development, updates, and adherence with accessibility regulations.
- III. **Proposal Requirements** Proposals shall be no more than 12 pages of content (excluding cover and title pages and table of contents) in 10-12 point font. Proposals shall be specifically responsive to each of the tasks listed in the Statement of Work (Attachment E). Proposers shall describe the relevant experience and training of all project team members and of the proposing organization as a whole. Proposals shall describe the technical approach for completion of all tasks listed in the Scope of Work (Attachment E). Proposals shall contain a complete cost proposal according to the format of the Solicitation Budget Excel File (Attachment C) using all assumptions listed in the Statement of Work (Attachment E). Proposals shall include details on whether and/or how the proposal addresses NYSERDA's Minority and Women Owned Business goals as described in Attachment F (MWBE solicitation language).

A completed and signed Proposal Checklist must be attached as the first page of your proposal. **Late proposals will be returned and proposals lacking the appropriate completed and signed Proposal Checklist may be returned. Faxed or e-mailed copies will not be accepted.**

Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the PON/RFP number, and the page number. The proposal must be in the following format:

- a. Introduction
 - i. Qualifications - Experience, Education, and Training
 - ii. Technical Approach for Providing Services
 1. Task 1 – Pre-Meeting Activities
 2. Task 2 – Meeting Management
 3. Task 3 – Post Meeting Activities
 4. Task 4 – Coordination of the CTF
 5. Task 5 – Communication with the Agencies
 6. Task 6 – Management of CTF Website
 - iii. Deliverables
 - iv. Schedule

v. Proposal Budget Details

IV. Proposal Evaluation

- Proposals that meet solicitation requirements will be reviewed by a Scoring Committee using the Evaluation Criteria below **listed in order of importance. Items (b) and (c) are equally important.** At NYSERDA's discretion, proposers may be requested to interview with all or part of the Scoring Committee to address any potential questions or clarifications outlined in the proposals. Proposers will be notified if they are requested to attend an interview.
 - (a) **Quality of the Organization** - Quality and depth of the resources and support systems necessary to complete the work requested in the RFP. Qualifications of the firm including years of experience, listing of similar group facilitation and group deliberation projects. Training, education and experience of facilitator and backup facilitator.
 - (b) **Technical Approach to the Work** - Ability to provide the necessary resources to conduct high quality work in a timely and high quality manner. Approach to managing CTF deliberations, advancing the mission of the CTF, building consensus within the CTF and with the agencies, and enhancing the organizational behavior, interpersonal relations, group dynamics, and communications of the CTF. Proposal addresses these elements with respect to all tasks listed in the RFP.
 - (c) **Cost** - The reasonableness of the unit rates proposed. A comparison of all proposers' costs and fees. A comparison of all proposers cost estimate for required activities. Consideration of cost saving measures.
 - (d) **Diversity** - Acceptance of the terms and conditions in sample agreement. Utilization of MWBE/SDVOB to meet NYSERDA's project goals.

NYSERDA reserves the right to accept or reject proposals based on the following factor(s):

- The degree to which pricing and hourly rates are in line with the rest of the market.
- A proposal is not responsive to each task listed in the Statement of Work (Attachment E)

V. GENERAL CONDITIONS

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

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

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

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

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

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

State Finance Law sections 139-j and 139-k - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at <https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx> . The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) . Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. See, ST-220-CA (available at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) . The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf> .

Contract Award - NYSERDA anticipates making one award under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA may at its discretion elect to extend and/or add funds to any project funded through this solicitation. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the submitted proposal (see Proposal Checklist). Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA expects to notify proposers in approximately six to eight weeks from the proposal due date whether your proposal has been selected to receive an award. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

Accessibility Requirements - NYSERDA requires contractors producing content intended to be posted to the Web to adhere to New York State's Accessibility Policy. This includes, but is not limited to, deliverables such as: documents (PDF, Microsoft Word, Microsoft Excel, etc.), audio (.mp3, .wav, etc.), video (.mp4, .mpg, .avi, etc.), graphics (.jpg, .png, etc.), web pages (.html, .aspx, etc.), and other multimedia and streaming media content. For more information, see [NYSERDA's Accessibility Requirements](#).

Limitation - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest. NYSERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Agreement. NYSERDA reserves the right to disqualify proposers based upon the results of a background check into publicly available information and the presence of a material possibility of any reputational or legal risk in making of the award.

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

VI. Attachments:

Attachment A – Proposal Checklist (required)

Attachment B – Disclosure of Prior Findings

Attachment C – Solicitation Budget (Excel File)

Attachment D – Instructions for Electronic Proposal Submission

Attachment E – Statement of Work

Attachment F – MWBE Language (non-construction)

Attachment G – Sample Agreement



**ATTACHMENT A
PROPOSAL CHECKLIST (MANDATORY)**

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

NOTE: This completed form **MUST** be signed and attached to your proposal.

Attachment B

**Disclosure of Prior Findings of Non-responsibility Form
(Mandatory)**

Name of Individual or Entity seeking to enter the procurement contract:		
Address:		
Date:		
Solicitation or Agreement Number:		
Name and Title of Person Submitting this Form:		
Has any Governmental Entity made a finding of non-responsibility regarding the Individual or Entity seeking to enter the Procurement Contract in the last four years?		Yes
		No
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law?		Yes
		No
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?		Yes
		No
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility:		
Government Agency or Authority:		
Date of Finding of Non-responsibility:		

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ATTACHMENT C Budget			Solicitation/Contract No. 3526		Page
Contractor:			Name of Project:		
Address:					
Location (where work is to be performed):			NYSERDA funding:		
			Total Project Cost:		
Cost Element			Total Project Cost:	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding
1. Labor (specify names or titles)	Hours	Rate/hr			
Total Labor					
2. Direct Materials, Supplies, Equipment, and Other Costs					
Total Direct Materials, Supplies, Equipment and Other Costs					
3. Travel					
Total Travel					
4. Final Deliverable					
5. Subcontractors/Consultants					
Total Subcontractors/Consultants					
Total Project Cost					

☐ By checking this box I certify that hourly rates included in this budget are the same or less than the hourly rates charged to other government or commercial entities for similar work performed.

INSTRUCTIONS FOR PREPARATION OF BUDGET

Your budget may be the basis of contract negotiation; it should be specific and complete in every detail. Supporting schedules (as described in Section B) providing the basis for your estimates must be provided. Each offer should submit using the most favorable cost. NYSERDA reserves the right to accept or reject proposals based on the degree to which pricing and hourly rates are in line with the rest of the market.

A. GENERAL

The schedule must be submitted on NYSERDA's Budget Form.

B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL

(Title each supporting schedule and cross-reference it to the item number on the Budget)

1 LABOR (DIRECT)

a. Attach supporting schedules showing:

- o Each category or type (Title) of labor being estimated
- o Applicable labor rates per hour, fully burdened
- o Estimated hours required to perform the proposed statement of work

b. EDUCATIONAL INSTITUTIONS

Provide the following for each calendar year of the contract:

- 1 For individuals not on an "actual hours worked" basis:
 - o individual's name
 - o annual salary and the period for which the salary is applicable (preferably in weeks)
 - o the proportionate time to be charged to this effort
- 2 For individuals who maintain time records as the basis for charging costs, supply the detail as requested in Instructions 1(a.)

2 DIRECT MATERIALS (PURCHASED PARTS), SUPPLIES, EQUIPMENT, AND OTHER COSTS

- Provide the following information for each proposed item with an estimated unit cost in excess of \$15,000.
- a.
 - o Description of the item
 - o Proposed vendor
 - o Quantity needed
 - o Unit cost
 - o Basis for cost (i.e., catalog, prior purchase, quote, etc.)
 - o Total cost
 - o Evidence of a competitive selection process in accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement.
 - b. OTHER DIRECT MATERIALS

In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, for all items in excess of \$5,000, provide whatever information would be necessary to understand what is being obtained, how it is being obtained, what it will cost and how the estimated cost was determined with justification for all items.
 - c. OUTSIDE SPECIAL TESTING
 - o Describe the effort.
 - o Provide the units of time (hours, days, or weeks), cost rates, and the vendor.
 - o In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, provide the basis for selection of the vendor. Identify M/WBE vendors contacted for quotes and if none, explain why. Explain and justify the basis for any non-competitive selection.
 - d. EQUIPMENT

Capability to perform the work with existing facilities and equipment is assumed. It is NYSERDA's policy not to compensate for general purpose facilities or equipment. If some special purpose items are needed solely for this contract and are not available by other means (contractor assets, lease, etc.), then provide the following information for each item of required equipment.

 - o vendor
 - o model number
 - o quantity
 - o competitive selection process
 - o unit cost and source of cost/price (i.e., quote, catalog, purchase history)
 - o description of the use or application (NYSERDA dedicated, contract dedicated, other)
 - e. OTHER DIRECT COSTS
 - o Identify the type of cost (i.e. postage, telephone, publications, graphics, etc.)
 - o Provide cost details for the amounts estimated (hours or units, rates, etc.)
 - o If any internal service center rates are applied, provide details similar to that required in Instruction #B.

3 TRAVEL

- o NYSERDA will accept as a direct charge only that travel required to perform the statement of work. Attach a schedule indicating the need for the proposed travel, the estimated number of person-trips required, destinations, mode and cost of transportation, and number of days subsistence per trip for each destination.
- o Identify and support any other special transportation costs required in the performance of this project.

4 FINAL DELIVERABLE

- o A payment based on the final deliverable will be reserved until project completion. This amount typically represents 10-20% of contract value and will be negotiated with NYSERDA.

5 SUBCONTRACTORS/CONSULTANTS

- o Explain the specific technical area in which such service is to be used and identify the contemplated consultants.
- o State the number of days and the hours per day of such service estimated to be required and the consultant's quoted rate per day.
- o Explain any administrative hours needed to manage sub-contractors and include those hours in the direct labor category above (1. Direct Labor). NYSERDA does not accept a percentage-based mark-up on subcontractor tasks.

5 CERTIFICATION (CHECK BOX)

Proposers must certify, via an attestation statement, that hourly rates included in the proposal budget are the same or less than the hourly rates charged to other government or commercial entities for similar work performed.

ATTACHMENT D

NYSERDA - INSTRUCTIONS FOR ELECTRONICALLY SUBMITTING PROPOSALS

Please read the following instructions before submitting a proposal.

1. Submit one proposal for each session.
2. Enter your e-mail address and click the "Validate Email" button to generate an automated email.
3. Check your email for the auto-generated email containing a link to validate your email address. Click the link to be taken back to the Funding Opportunity page and to begin the online submission process.
4. Upload as many files as needed, one at a time.
5. The electronic file names should include the proposing entity's name in the title of the document. Note: there is a **100** characters limit.
6. You may submit Word, Excel, or PDF files. Individual files should be less than **1GB** file size. (Note: **Please do not submit 'Zip' file documents with your proposal submission**)
7. PDF files must be searchable and therefore should be converted directly from an electronic document to PDF, rather than scanned.
8. After clicking the "Upload File" button, a list of your files will appear on the web page. You can delete files from this list if needed.
9. After all necessary files have been uploaded, review the list of documents to ensure that your proposal is complete and accurate.
10. Click the "Submit Proposal button."
11. You will then be brought to a confirmation page listing the files received. Please print and save the confirmation page.
12. An auto-generated confirmation e-mail will be sent to the e-mail address you entered. Please save this e-mail.
13. When choosing to submit files electronically, the award/non-award notification letter will be sent to the e-mail address of the **Primary Contact listed on the Proposal Checklist.**

Important Reminders:

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

If you make an error:

If after you click "Submit Proposals" you discover that a document(s) you submitted is incomplete or inaccurate follow these instructions:

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

If you need help:

If you need help with this electronic proposal submission process, please contact Jill Baxter at Jillina.Baxter@nyserda.ny.gov or 518-862-1090 ext. 3279 and the Program contact listed in the solicitation.

Attachment E

Statement of Work - RFP #3526 Facilitation Services in Support of the West Valley Citizen Task Force

Objectives

The New York State Energy Research and Development Authority (NYSERDA) is seeking proposals for facilitation services to support the West Valley Citizen Task Force near the Western New York Nuclear Service Center (Center) in West Valley, NY. The Task Force has been meeting for twenty years, providing advice to NYSERDA and DOE regarding cleanup and long-term management of facilities located at the Center. Continued success of the CTF will be, in part, dependent on securing the services of a highly-qualified, professional facilitator with experience in group facilitation. The facilitator will assist the West Valley Citizen Task Force (CTF) in its deliberations and communications with the site managers. NYSERDA has convened a Scoring Committee with representation by DOE, NYSERDA and the CTF to assist in selection of the facilitation contractor. This Scope of Work is being circulated to solicit bids from firms and/or individuals with facilitation expertise interested in managing the CTF meetings and interactions with NYSERDA and DOE as specifically outlined in the various tasks below. Work under this contract is expected to begin October 1, 2017 and continue through September 30, 2022 (a period of 5 years).

Background

In March 1996, the New York State Energy Research Authority (NYSERDA) and the U.S. Department of Energy (DOE) issued a Draft Environmental Impact Statement (DEIS) for public comment which focused on evaluating closure options for the future management of facilities at the Center. During the development of the DEIS, NYSERDA perceived a need for broader public participation, above and beyond the public comments on the DEIS, to help in the development of a closure option for the Center. Forming a community advisory group seemed to be the best way to ensure that the issues and concerns of the community were understood. To make this a reality, NYSERDA, along with the support of DOE, initiated the formation of the West Valley Citizen Task Force (CTF). The CTF currently has 17 members, two (2) Ex-Officio Members, and nine (9) alternate members. An independent facilitation contractor was hired to assist NYSERDA in convening the group and provide facilitation and coordination of its deliberations.

The West Valley Citizen Task Force held its first meeting in late January 1997. In July 1998, NYSERDA and DOE received the Task Force's Final Recommendations Report on its policies, priorities, and guidelines for the decommissioning, closure, or long-term management of the Center. Since 1998, the Task Force has met regularly to discuss a variety of issues regarding facility closure and long-term management of the Center. During the 2000s, the group was actively involved in review and discussion of the Draft and Final Environmental Impact Statements (DFEIS and FEIS) and associated Phase 1 Decommissioning Plan, including the development of the Preferred Alternative in the FEIS. Since 2010, the group has received updates on the Phase 1 Studies and path to Phase 2 Decisions, including the preparation of a Probabilistic Performance Assessment (PPA) and Supplemental Environmental Impact Statement (SEIS). Since its inception, the CTF has monitored the deactivation and decommissioning of site facilities. Over the years, the mission of the Task Force has expanded into other areas including future site use, long-term stewardship, and regulatory issues. The group has provided several sets

of comments to the U.S. Nuclear Regulatory Commission on its policy statement on the decontamination and decommissioning criteria for West Valley. The Task Force is also active in keeping the Congressional Representatives from the Western New York Region informed about the ongoing issues at the West Valley Site.

Responsibilities of the independent facilitator have included coordinating and facilitating CTF meetings, preparing written meeting summaries, convening and maintaining CTF membership, and fostering good working relationships with, and between, each CTF member. The independent facilitator will also assist CTF members with outreach, communications, and advocacy.

Additional background information about the Western New York Nuclear Service Center can be found in Appendix 1. Additional information about the CTF can be found on the Task Force website (www.westvalleyctf.org).

Tasks

The successful contractor will be required to provide the full range of services as described below in a collaborative, professional and responsive manner. Proposals should be specifically responsive to all tasks listed below.

Task 1 - Pre-Meeting Activities

The Contractor shall provide logistical support to the CTF. In coordination with NYSERDA and DOE, the Contractor shall:

- Propose CTF meeting dates, places, and times in a manner consistent with recent practice.
- Develop draft and final CTF meeting agendas based on the objectives, roles and challenges of the CTF process.
- Provide materials to CTF members in advance of CTF meetings.
- Make necessary arrangements for CTF meetings including meeting sites, room set-up, travel, and accommodations. Proposers may assume DOE/NYSERDA will continue to make available a meeting conference room to include internet connection, phone line, and projector. All other meeting materials and shall be provided by contractor. Proposers should detail travel cost (including labor) from their specific location to and from meetings in West Valley, New York.
- Establish, test, and ensure smooth functioning of audiovisual equipment, web conferencing, and/or telephone conference line.
- Make recommendations as to the need for outside speakers at CTF events and arrange for internal and external speakers to address the CTF issues (if necessary).
- Arrange with site security for bringing any computer equipment into site offices and for securing internet/phone access for meetings

Task 2 - Meeting Management

The facilitator shall act as a neutral party who seeks out the interests and positions of individual CTF members and supports each member in contributing to the deliberations of the CTF. The facilitator shall:

- Facilitate each CTF public meeting ensuring that the CTF Mission and Ground Rules (Appendix 2) are followed by the participants.
- Manage CTF meetings in a manner that respects the agenda and allotted times for each speaker.
- Manage CTF meetings such that meetings end on time, deferring additional discussion to after the meeting or to a future meeting. This includes managing expectations of the audience and each individual meeting speaker.
- Facilitate CTF meetings to avoid discussion that strays from the agenda topic and CTF objectives.
- Facilitate CTF meetings to avoid repetitive or non-productive discussion.
- Take notes during meetings and note CTF questions and responses.
- Identify areas of agreement between CTF members and facilitate the development of consensus agreements.
- Assist CTF members in coordinating and facilitating caucus meetings (if necessary).
- Organize and distribute background materials and relevant handout information at each meeting.
- Provide a back-up facilitator, identified in the proposal, to substitute if extraordinary circumstances prevent the primary facilitator from participating. The back-up facilitator should not be treated as or considered a routine optional replacement. It is expected that the primary facilitator would only miss a meeting/call/activity in the event of extreme circumstances.

Task 3 - Post-Meeting Activities

The Contractor shall ensure follow-up information is shared in a timely manner with the CTF and agencies between CTF meetings. The Contractor shall:

- Prepare and distribute (first to DOE and NYSERDA for review) a draft meeting summary after each CTF meeting;
- Coordinate the mailing of final meeting summaries. Additional written materials and relevant information may also be required to be distributed to CTF members and the CTF mailing list in a timely manner.
- Coordinate and facilitate all CTF Work Group (WG) meetings or conference calls including the Agenda WG, Education WG, Future Site Use WG, Legislative WG, and Technical WG.
- Maintain positive working relationships with CTF members and agency representatives. communicating in between CTF meetings, as appropriate.

Task 4 - Coordination of CTF

The role of the Contractor shall be to encourage and guide the CTF in achieving its goals in a timely manner. The Contractor shall:

- Coordinate CTF correspondence.
- Encourage in-person CTF member attendance at meetings.
- Consult with each CTF member and their constituencies to gain an understanding of the various community interests to help define objectives, roles, purpose, and challenges of the CTF process.
- Work with the CTF to identify CTF Work Group (WG) members including

membership of the Agenda WG, Education WG, Future Site Use WG, Legislative WG, and Technical WG.

- Assign responsibility of CTF action items to the appropriate WG. For example, drafting of a funding request letter to elected officials would be assigned to the Legislative WG. Having designated working groups helps avoid ad hoc assignment of responsibilities when they arise.
- Keep up-to-date on emerging issues and ensure the Mission and Ground Rules of the CTF process are met.
- Develop and maintain a schedule for CTF activities to delineate the issues for discussion, integrating the CTF activities with those of DOE and NYSERDA.
- Develop and maintain a CTF mailing list, including a list of CTF member constituents (up to 10 per CTF member) to whom materials will be sent.
- Develop and maintain a Work Plan for CTF activities that focuses on relevant and/or emerging issues important to the cleanup at West Valley, and is consistent with the objectives, roles, purpose and challenges of the CTF process.
- Help maintain a diverse CTF membership – coordinate with DOE and NYSERDA to identify and potentially interview candidates when a vacancy occurs.
- Develop, coordinate, and compile annual CTF-assessment surveys in the ongoing evaluation of the process to identify potential issues of concern and areas for improvement.
- Prepare an annual summary of CTF accomplishments.
- Proposers may assume an average of 15 hours each month for Task 4.

Task 5 - Communication with the Agencies

The Contractor is responsible to communicate regularly with agency representatives about the developments of the CTF process. The Contractor shall:

- Consult regularly with NYSERDA and DOE in defining the objectives, roles, purpose, and challenges of the CTF process and ensure CTF and other site activities are coordinated.
- Develop and maintain a DOE/NYSERDA mailing list, to whom CTF related materials and correspondence will be sent.
- Promote open communication between CTF members and agency representatives.
- Keep the NYSERDA and DOE representatives apprised of new developments and/or issues associated with CTF deliberations.

Task 6 - Management of CTF Website

- Arrange for and maintain hosting of the CTF website. The existing contractor will share the website hosting account credentials with the incoming contractor, who will then make arrangements to change billing/contact information with the website hosting company on October 1, 2017. Following this turnover, contractor will be responsible for management and maintenance of the CTF website.
- Keep the CTF website up-to-date.
- Post schedules, agendas, meeting materials, member info, etc. to CTF website following authorization by DOE and NYSERDA.
- Website Accessibility: The website shall be maintained so that it is accessible to

users with disabilities and/or impairments and conforms to the guidelines outlined in NYS policy “NYS-PO8-OO5 Accessibility of Web-Based Information and Applications Compliance Reporting”, found at: <https://www.its.ny.gov/document/accessibility-web-based-information-and-applications-compliance-reporting>. Accessibility requirements apply to web pages as well as PDFs, images, video, multimedia, and other file-types found on the website.

- Website Security: The website server, databases, and applications shall be constructed so that it is secured against unauthorized threats and complies with guidelines outlined in NYS policy “NYS-S15-OO2 Enterprise Vulnerability Scanning”, found at: <https://its.ny.gov/sites/default/files/documents/Enterprise%20Vulnerability%20Scanning.pdf>. The website will be scanned for vulnerabilities by NYSERDA Information Security Officer (ISO) upon transfer of website. The website will require a clean vulnerability scan approved by NYSERDA ISO in order to continue publishing.

Deliverables

- At least 3 weeks prior to a meeting of the CTF, the contractor shall prepare and submit a draft meeting agenda to DOE and NYSERDA for their review and comment
- At least 1 week prior a meeting of the CTF, the contractor shall distribute the final agenda to the CTF, DOE, and NYSERDA.
- At least 1 week prior to a meeting of the CTF, the contractor shall post the agenda to the CTF website.
- At least 2 days prior to a meeting of the CTF, the contractor shall post meeting materials, including slide packages and other documents to the CTF website.
- Within 60 days of the start of the contract, the contractor shall deliver to DOE and NYSERDA a draft running high-level schedule of CTF activities (including discussion topics) for the upcoming year. This schedule should be updated and delivered to DOE and NYSERDA prior to each routine CTF meeting.
- Within 60 days of the start of the contract, the contractor shall deliver to DOE and NYSERDA a draft running high-Work Plan for CTF activities (including discussion topics) for the upcoming year. This Work Plan should be updated and delivered to DOE and NYSERDA prior to each routine CTF meeting.
- At the start of the contract, the contractor shall assume management responsibilities for the CTF website. Prior to posting new content or documents, the contractor shall receive approval from DOE and NYSERDA.
- Within 1 week following a meeting of the CTF, the contractor shall deliver a written meeting summary (in a format and level of detail similar to past meeting summaries) to DOE and NYSERDA for their review. A previous meeting summary is included as Appendix 3.
- Within 2 weeks following a meeting of the CTF, the contractor shall deliver the written meeting summary to CTF members for their review
- Within 3 weeks following a meeting of the CTF, the contractor shall post the final meeting summary to the CTF website
- The contractor shall maintain a schedule of meetings for the entire current calendar year on the CTF website.
- By January 1 of each year, submit a summary of the previous year’s CTF

activities to DOE and NYSERDA.

Proposer Qualifications

NYSERDA seeks proposals from firms and/or individuals with facilitation expertise who have 1) relevant education and training in facilitation, 2) experience with group facilitation and the coordination of group deliberations, and 3) the resources necessary to provide the full breadth of services required.

Relevant education and training includes degrees, training certificates, and other accredited education focused on, but not limited to, facilitation, consensus building, collaboration, organizational behavior, interpersonal relations, mediation, group dynamics, and communications.

Experience with group facilitation and the coordination of group deliberations includes past work efforts in managing the ongoing deliberations of a community advisory group including planning, implementation, personal interactions, and process evaluation.

Resources necessary to provide the full breadth of services includes sufficient organizational resources to provide the services described in this Scope of Work.

Budget and Payments

Proposers shall include proposed labor rates for all individuals who will perform work under this contract. Given the proposed labor rates, proposers shall submit a proposed total cost for all tasks listed above, with an annual breakdown of costs. Labor rates should be provided for each year of the contract and total costs should take into account annual rate escalations. This proposed total project cost shall include all expected travel costs and ancillary expenses expected to support all tasks listed above. Contractor invoices shall detail individual tasks and subtasks performed, hours worked on each task and subtask, and expenses incurred. The contractor shall invoice NYSERDA monthly, by the 15th of each month.

Schedule

The contractor will be expected to maintain the current schedule of CTF meetings and activities. In recent years, approximately seven monthly meetings of the CTF have been held, on the third Wednesday evening of each month other than February, May, August, and November; when Quarterly Public Meetings are held by the West Valley Demonstration Project. The CTF typically chooses not to meet in December. Meetings are typically held in Ashford, New York, at the Ashford Office Complex, Conference Room C-1, from 6:30 to 8:00pm.

Appendix 1 – Additional Information

BACKGROUND

Site Location and Responsible Agencies - The Western New York Nuclear Service Center (Center) is a 3300 acre property located in southwestern New York State. The Center, which is commonly referred to as “West Valley,” is owned by New York State, and is the location of the only commercial nuclear fuel reprocessing plant ever to operate in the United States. Currently, approximately 200 acres of the Center is managed by the U.S. Department of Energy (DOE) to conduct the West Valley Demonstration Project (WVDP). The New York State Energy Research and Development Authority (NYSERDA) holds title to the Center and manages the Center property, with the exception of the 200 acres managed by DOE. As part of its responsibilities at the Center, NYSERDA also manages the State-Licensed Disposal Area (SDA), a commercial radioactive waste disposal facility that operated during the 1960s and 1970s.

Site History - The Center was established in the 1960s in response to a federal call for efforts to commercialize the reprocessing of spent nuclear fuel from power reactors. The Center is a 3,300-acre parcel owned by the New York State Energy Research and Development Authority (NYSERDA) on behalf of the State of New York, located near the hamlet of West Valley in Cattaraugus County. The reprocessing facilities were constructed and operated by a private company, Nuclear Fuel Services, Inc. (NFS). The NFS reprocessing operations began in 1966 and were performed under license from the U. S. Atomic Energy Commission (AEC) and its successor, the NRC. In 1972, NFS shut the reprocessing plant down for expansion, modifications and additions. Reprocessing never resumed, however. During the six years of operation, the plant processed approximately 640 metric tons of spent nuclear fuel, about three-fourths of which was provided by the AEC (60 percent of the total was from U. S. defense reactors). Over 600,000 gallons of liquid high-level radioactive waste was produced during reprocessing and stored in underground steel tanks that had a design life of approximately 40 years. In 1976, NFS informed New York State that it intended to leave the reprocessing business and not renew the lease when the initial term expired at the end of 1980.

West Valley Demonstration Project Act - The United States Congress gave DOE responsibility for decontamination and decommissioning activities at West Valley in 1980 through the West Valley Demonstration Project Act (Public Law 96-368). DOE’s responsibilities at the Center under the WVDP Act include: 1) solidifying high level waste (HLW) at the Center; 2) developing containers suitable for the permanent disposal of the solidified HLW; 3) transporting the solidified waste to a Federal repository for permanent disposal; 4) disposing of low-level waste and transuranic waste produced by the solidification of the HLW; and 5) decontaminating and decommissioning the tanks and other facilities in which the HLW was stored, the facilities used in the solidification of the waste, and any hardware and material used in connection with the project. DOE took possession of approximately 200 acres of the Center in 1982 for the purposes of conducting the West Valley Demonstration Project. To date, the majority of the HLW at the site has been solidified, and containers have been developed for the permanent disposal of the solidified HLW. The other activities required of DOE under the WVDP Act are under way but are not complete, and the current focus of the WVDP is on decontamination and decommissioning Main Plant Process Building and other ancillary facilities over the next decade.

Appendix 2 – Mission and Ground Rules of the West Valley Citizen Task Force

I. OBJECTIVES

The New York State Energy Research and Development Authority (NYSERDA) has formed a Citizen Task Force with participation from the U.S. Department of Energy (DOE), to provide advice on the completion of the West Valley Demonstration Project and cleanup, closure and/or long-term management of the facilities at the site. The objectives of forming the Task Force are to:

- Provide a forum for open discussion of related issues by community representatives;
- Identify and understand the various interests of the community and other interested parties;
- Increase the flow of information between DOE, NYSERDA and the Task Force Members (“Members”) (and their constituencies);
- Expand areas of agreement, clarify differences, and explore ways to establish mutually agreed upon recommendations among the Task Force Members;
- Enhance public involvement in the decision-making process; and
- Coordinate with regulators.

The Citizen Task Force process is being conducted in addition to the public comment process required by the National Environmental Policy Act and the State Environmental Quality Review Act. The Task Force will discuss the following specific topics and provide comments or recommendations to the agencies for consideration:

- Phase 1 Studies identification, implementation, results, impacts and applicability to decisionmaking;
- EIS process for Decommissioning including the development of the preferred alternative;
- NRC Decommissioning Plan process;
- Long-Term Stewardship;
- Future land use options and long-term impacts; and
- The continued communication with, and significant engagement of, the general public, interested environmental organizations and local and regional governments.

Either the site managers or the CTF may propose additional topics, as amendments to the CTF Mission and Ground Rules (in accordance with Section IV. H).”

II. ROLES OF THE PARTICIPANTS

A. Task Force Members

The role of the Task Force Members is advisory. The Task Force is being asked to advise NYSERDA and DOE on issues regarding the preferred alternative and other aspects of cleanup, closure and/or long-term management of the facilities at the site. To do this, Task Force Members are expected to:

- Attend regular meetings of the group;
- Openly communicate Task Force progress with people or groups with whom they are affiliated;
- Present their concerns and issues, and those of people and groups with whom they are affiliated, at Task Force meetings; and

- Work collegially with other Task Force Members and strive towards consensus agreements.

1. Meeting Attendance and Alternates

The success of the Task Force will depend largely on the consistent attendance by the Task Force Members, NYSERDA, and DOE. Task Force Members, NYSERDA, and DOE are expected to make a concerted effort to attend all meetings of the Task Force. Members who fail to attend half of the scheduled meetings in a calendar year may be removed from the CTF by consensus of the CTF Members present at the first scheduled meeting of each year. An individual Member may have an alternate attend a meeting in his or her place. Each alternate is encouraged to represent the organizational interest or affiliation of the Member, attend Task Force meetings, and exchange full briefing information with the Member, so that the presence of the alternate will not delay the progress of the Task Force.

2. Length of Service

There is no defined length of service for Task Force Members. However, the maximum number of Task Force Members serving at any one time is nineteen (19). NYSERDA and DOE will periodically review Task Force membership to promote and ensure appropriate community representation.

3. Right to Resign

Any Task Force Member may resign from the Task Force at any time. NYSERDA, DOE, and the Task Force will jointly select replacements for those Members who have resigned from the Task Force.

B. NYSERDA and DOE

NYSERDA and DOE are committed to working with, and supporting the Task Force, and carefully considering its advice on the preferred alternative and other aspects of decisions about the future of the site. Senior management from NYSERDA and DOE will participate in the discussions of the Citizen Task Force, openly discussing site knowledge including technical details, institutional constraints, and budgetary information, and will communicate current information on regulatory criteria affecting the site.

C. Task Force Facilitator

NYSERDA and DOE will provide a facilitator to help coordinate the Citizen Task Force process and facilitate meetings. (See Section IV. F and G.)

D. Technical Resources for the Task Force

During its deliberations, the Task Force will receive information from various technical resources including, but not limited to, NYSERDA and DOE contractors and regulatory officials.

III. DECISIONS OF THE TASK FORCE

A. Consensus

The Task force will endeavor to operate by consensus of all Members who are present at the meeting.

B. Work Groups

Work Groups may be formed to address specific issues and make recommendations to the

full Task Force. The Work Groups are not authorized to make decisions for the Task Force as a whole. Work Group meetings will be held between meetings of the full Task Force and scheduled at the convenience of the participants. Alternately, Work Group meetings may be held by teleconference. Each Task Force Member will be notified of all Work Group Meetings.

C. Consensus Recommendations

To the extent that the Task Force reaches a consensus agreement on recommendations regarding the development of a preferred alternative and the NYSERDA and DOE Task Force participants concur with these recommendations, then the NYSERDA and DOE participants will use their best efforts to persuade their respective agencies to adopt the consensus recommendations.

D. Majority/Minority Reports

If the Task Force is unable to reach consensus on its recommendations, the Task Force may report its findings in majority and minority reports.

IV. PROCEDURES

A. Open Meetings

Meetings of the Task Force will be open to the public. As needed, meetings will be held monthly, unless the Task Force adopts a different schedule. Work Group meetings will be held as needed and may be closed to the public at the discretion of the Members. A brief summary of the deliberations of any closed session must be prepared and made available within a reasonable time.

B. Conduct at Meetings

Participants agree to the following guidelines:

- Treat each other with respect;
- Only one person speaks at a time;
- Listen as an ally, not as an adversary;
- Ask for clarification, don't assume you know what someone means;
- Every Member can participate equally, avoid dominating;
- It's okay to disagree; and
- Honor time limits.

C. Observers

All persons attending meetings who are not Task Force participants are considered observers. Observers may speak only at times designated for observer comments on the meeting agenda.

D. Media Relations

The Task Force Members may develop a specific plan for interacting with media representatives. No CTF Member will speak for the CTF to the media without the consensus of the CTF.

E. Meeting Summaries

Draft summaries of the Task Force meetings will be prepared by the facilitator and reviewed by the Task Force Members, and NYSERDA and DOE site management. Also, summaries will be made available at the next regular Task Force meeting and sent to all

individuals on a mailing list developed by the Task Force.

F. Agendas

Full Task Force meeting agendas will be drafted by the facilitator in consultation with the Task Force Members, NYSERDA and DOE site management. The agenda will be reviewed at the beginning of each meeting and will be revised, if necessary.

G. Facilitator

A facilitator will chair the meetings of the Task Force and work with all of the Members to ensure that the process runs smoothly. The facilitator serves at the pleasure of the Task Force. The role of the facilitator usually includes developing draft agendas, focusing meeting discussions, working to resolve any impasses that may arise, preparing meeting summaries and a draft of consensus work products, assisting in location and circulation of background materials and documents the Task Force develops, and other functions as the Task Force requests. At the request of the CTF, an independent facilitator will be available for meetings.

H. Amendments to CTF Mission and Ground Rules

After adoption, these ground rules may be amended only by consensus of all Members present at the meeting in which the amendments are presented for adoption. Members shall be given reasonable notice of proposed amendments.

V. SAFEGUARDS FOR THE PARTICIPANTS

A. Good Faith

All participants agree to act in good faith in all aspects of the Task Force's deliberations. In order to encourage the free and open exchange of ideas, views, and information prior to achieving consensus, participants agree not to use specific offers, positions, or statements made by another participant outside the Task Force process.

B. Personal Attacks

Personal attacks and prejudiced statements will be not be tolerated.

C. Right to Caucus

Any participant can request a caucus at any time during a meeting.

Appendix 3 – April 2016 Citizen Task Force Meeting Summary (Example)

To: West Valley Citizen Task Force
From: Bill Logue, Citizen Task Force Facilitator
Date: , 2016
Subject: **Summary of the April 27, 2016 Meeting**

Next Meeting

Date & Time: **June 22, 2016 6:30 – 9:00 PM**
Location: Ashford Office Complex
9030 Route 219
West Valley, NY

CTF Members and Alternates Attending

Barbara Frackiewicz, Heidi Hartley, Paul Kranz*, Kathy McGoldrick, John Pfeffer, Ray Vaughan, John Walgus, Eric Wohlers.

Agency Participants and Observers

Department of Energy (DOE): Bryan Bower, Sandra Szalinski, Zintars Zadins.

New York State Energy Research and Development Authority (NYSERDA): Paul Bembia, Brad Frank, Andrea Mellon, Jane Pietraszek.

CH2M HILL BWXT West Valley, LLC. (CHBWV): Scott Anderson, Lynette Bennett, John Rendall.

New York Department of Environmental Conservation: Patrick Concannon.

Nuclear Regulatory Commission (NRC): Amy Snyder*.

Observers: Thomas Carpentey, Diane D'Arrigo, Paul Siepierski.

INTRODUCTIONS AND ANNOUNCEMENTS

Bill Logue welcomed all present and reviewed the meeting agenda and materials¹. New CTF member Heidi Hartley introduced herself as the representative for Assemblyman Joseph Giglio. She will be replacing Mike Brisky. The facilitator discussed the status of scheduling a meeting of CTF members with leadership of DOE Environmental Management the week of May 2. He also noted that he was in contact with NRC about their presenting at an upcoming CTF meeting and that he had not yet heard back from representatives of the congressional delegation about a possible meeting.

CHBWV PROJECT UPDATE

Scott Anderson of CHBWV stated that, as of April 14, CHBWV and its subcontractors had worked almost 2 million hours, more than 3 years, without a lost-time work accident or illness. WVDP has the best or closest to the best safety record in the DOE complex.

Milestone 1: High-Level Waste. (HLW). The HLW campaign has resumed relocation with Vertical Storage Casks (VSC) scheduled for transport to the HLW Interim Storage Pad in the coming week at the pace of one per week until mid-June when an additional shift will be added and two casks will be moved each week. The goal is to complete the move of the remaining VSCs by December 2016 – one year ahead of schedule.

Milestone 2: Waste Operations. The NRC issued a Special Package Authorization for transport of the melter package. Special conditions include things such as an impact limiter (steel and foam bumper) and limits of ambient temperature conditions during transport. MHF Logistics will manage the shipment via truck and rail.

¹ Each is listed at the end of this summary and may be found at www.westvalleyctf.org

* Participated by telephone.

Shipment to a disposal site in Texas will occur in September.

A little more than half of Legacy Waste has been shipped for disposal. Further shipments have been postponed to reallocate funds for deactivation activities. One-hundred seventy-seven of 241 drums of remote handled waste have been relocated from the Chemical Process Cell in the Main Process Plant Building (MPPB).

Milestone 3: Facility Disposition. The BROKK machine that was used for size reduction was packaged in a waste container and moved from the Vitrification Cell to storage. Two out-of-service cranes were drained of fluids. The MPPB deactivation is 49% complete and the Vitrification Facility 92% complete. Deactivation of the latter should be complete in 2016 with demolition to start in early 2017.

Milestone 4: Balance of Site Facilities. Construction and demolition debris from the Test and Storage Building office/restroom complex was shipped for disposal. Completion of the installation and setup of the 10-Plex office space continues with workers beginning to move in. Thirty percent of the 47 site facilities have been demolished. Material in the warehouse that is no longer in service is being excessed. The warehouse will be reconfigured for lockers for workers. The reconfiguration and utility system rerouting continues and the 2015 Annual Site Environmental Report is being prepared.

SDA TRENCH LEACHATE ELEVATION UPDATE

Jane Pietraszek, Project Manager and hydro geologist for NYSERDA presented an update on the State-Licensed Disposal Area (SDA) Trench Leachate Elevation for Trenches 14 and 1, and identified a change for Trench 3. For each of the updates she stated that there is currently no threat to public health or safety. Ms. Pietraszek displayed graphics of the leachate elevations from 1986 to the present noting that infiltration controls were installed in 1992-1993. All other trench leachate levels are decreasing or holding stable.

Trench 14 elevations generally decreased until 2011. Since then, elevations increased by 0.6 feet and have stabilized again. If the current increase were to continue at the same rate it would take 11.3 years to reach the highest previous leachate levels and 115.8 years to reach the surface. The Trench 1 leachate was generally decreasing between 1996 and 2006 when increases were noted and have continued totaling 0.44 feet. If the current increase were to continue at the same rate it would take 27.1 years to reach the highest previous leachate levels and 313.7 years to reach the surface. Trench 1 leachate had been decreasing until it stabilized in 2014.

Ms. Pietraszek reviewed the history of changes that could impact leachate levels. These include installation, maintenance and repair of geomembrane covers and slurry walls on the SDA and NDA (NRC-Licensed Disposal Area) at various times. Several tears in geomembrane seems may have contributed to infiltration. An evaluation of the increases in Trench 14 and 1, which looked at groundwater and precipitation rates increases was completed in March 2015. No pathway or source for the increases was identified. An additional evaluation was prepared in October 2015 identifying further areas for investigation. A work plan is being developed to implement those recommendations which include installation of soil probes and piezometers on the perimeter of the SDA, soil sampling and pumping tests. Ms. Pietraszek communicated that field activities associated with the work plan were scheduled to commence in late May 2016. An update will be provided when results are available.

In response to questions, Ms. Pietraszek stated that leachate, monitoring well and piezometers measurements generally happen quarterly and for Trenches 14, 1, and 13 these measurements occur monthly. A datalogger was suggested as a way of correlating precipitation rates and elevation changes. Mr. Bembia noted that the nature of the changes did not appear to fluctuate as would be expected from precipitation. However, he committed to raise this with the contractor. A brief discussion was held on how the water flow impact peat layers in the area at depths of approximately 6 - 12 feet. may have on the trench leachate Leachate leaving the trenches flows downward through the clay layer where the constituents tend to bind with the clay. The downward flow rate is less than 1"/year. A question was asked concerning how long it would take to "load" the clay beneath the trenches and how long it could take for radiological contaminants to travel downwards and out to the creeks. Mr. Bembia stated that it would take approximately 1,500 years just for the water to travel through the clay and then laterally through the underlying gravel to Buttermilk Creek. He stated that this time would be significantly longer considering

the geochemical barrier properties of the clay. A question was asked about the frequency of inspection of the geomembrane cover. The geomembrane cover is visually inspected five times per year and a coupon sample is taken for evaluation of UV degradation every 5 years. The SDA cover will be replaced except for the areas over Trenches 12-14, which was already replaced.

CATTARAUGUS CREEK PRESENTATION

CTF member Ray Vaughan presented “Cattaraugus Creek: A Story of Flowing Water and the Geology of the Channel it Flows Through.” Mr. Vaughan opened by explaining that a clay particle, sand grain, pebble, cobble or boulder all can be moved downstream depending on the volume and speed of water movement. As water slows, at bends and deltas for instance, the ability to carry material decreases with the heavier/larger material dropping out first. In this way sediment and gravel will be deposited on the inside of a bend or at the mouth. He showed pictures and satellite images demonstrating this for Cattaraugus Creek including a sediment plume from the 2009 storm event flowing into Lake Erie that continued on into the Niagara River and Lake Ontario. He noted that Cattaraugus Creek has an extremely variable flow rate and thus a “flashy” response to rainfall and snowmelt with quick drainage because of its steepness.

Mr. Vaughan then explained that the area bedrock is sedimentary and more than 300 million years old with layers that are flat and almost horizontal and how erosional processes interact with this type of rock. This is a cycle of erosion, glacial action deposition and cementing together. Glacial action formed many of the rivers and creeks in Western New York up to a million years ago. However, the Zoar Valley and Cattaraugus Creek appear to be more recent, within the last 15,000 years, and could be postglacial. He showed pictures of creek features demonstrating his points. He then reviewed the role of plate tectonics in the formation of local bedrock, its stratigraphy and the orientation of the valleys in the region. Cattaraugus Creek is unusual in that it cuts east to west across the other bedrock valleys and ridges.

Mr. Vaughan noted that this Zoar Valley history is important to decision making at the WVDP because it should be incorporated into the landscape evolution model being used to predict erosion for the next 10,000 years and how it factors into model calibration based on understanding of the last 10,000 years. For example, model calibration runs have generally assumed that the confluence of Buttermilk and Cattaraugus Creeks has remained at its current elevation (about 1,100 feet) throughout the past 10,000 years, but this may not be possible if the Zoar Valley gorge was still in the process of downcutting to the level we see today. An additional concern is whether it is realistic to assume a constant past climate versus today’s climate versus a future climate. Climate affects the amount of water flowing down the creek, and this in turn controls the rate of erosional downcutting through the bedrock. He suggested that the Phase 1 Studies Erosion Working Group examine if the gorge existed as a drainage pathway throughout the past 10,000 years, and thought that some of the EWG’s age-dating studies could help answer this question.

Long-term erosion is a threat to the buried waste with the question remaining over what period of time? He noted that past releases of radionuclides flowed down Cattaraugus Creek and on into Lake Ontario. In his opinion current releases are relatively low. In conclusion, he noted that the level of cleanup determined in the 2020 decision and future contamination transport downstream are interrelated. The Phase 2 decisions will be informed by prediction(s) of future erosion processes and rates, which could be quite different from actual future erosion if the landscape

evolution modeling is poorly done or miscalibrated. The greatest risk is from a scenario that *predicts a low rate of erosion*, thereby resulting in a Phase 2 decision with the tanks and burial grounds closed in place, and an actual *future erosion rate that is high*. The hope is that the predicted and actual erosion rates will result in scenarios that have a low risk of release of contamination into the creek.

In response to questions Mr. Vaughan noted that with the generally slow rate of flow it may take several days for contamination to reach Lake Erie.

OTHER BUSINESS

Mr. Bower stated that the House Appropriations Committee has proposed FY 2017 funding at \$61.9 million for non-defense and about \$2 million in Defense funding for the WVDP. He anticipated continuing resolutions in an election year.

OBSERVER COMMENTS

There were no observer comments.

ACTION ITEMS

Action	Who; When
None	

DOCUMENTS DISTRIBUTED

Description	Generated by; Date
Meeting Agenda	Logue; 4/27/16
CHBWV Project Update	CHBWV; 4/27/16
SDA Trench Leachate Elevation Update	NYSERDA; 4/27/16
Cattaraugus Creek Presentation	Vaughan; 4/27/16
News Clippings Distributed at Meeting	NYSERDA; 4/27/16

ATTACHMENT F
Article 15-A (MWBE) Provisions for Solicitation Documents (non-construction)

New York State Law

Pursuant to New York State Executive Law Article 15-A, NYSERDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises (MWBE) and the employment of minority group members and women in the performance of NYSERDA contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that NYSERDA establishes goals for maximum feasible participation of New York State Certified MWBEs, and the employment of minority groups members and women in the performance of New York State contracts.

Article 15-A EEO Policy

- (1) Contractors and subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed (religion), color, national origin, sex, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.
- (2) All proposers shall submit an equal employment opportunity ("EEO") policy statement to NYSERDA with their proposal (See Attachment 1). A proposer's failure to timely submit the EEO policy statement could result in NYSERDA's rejection of that proposer's proposal.
- (3) The proposer's EEO policy statement shall contain, but not necessarily be limited to, and the proposer, as a precondition to entering into a valid and binding State contract, shall, during the performance of the State contract, agree to the following:
 - (i) The proposer will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
 - (ii) The proposer shall state in all solicitations or advertisements for employees that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

ATTACHMENT F

Article 15-A (MWBE) Provisions for Solicitation Documents (non-construction)

- (iii) At the request of NYSERDA, the proposer shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the proposer's obligations.
- (iv) Pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (4) **Staffing Plan:** The proposal shall contain a completed staffing plan of the anticipated work force to be utilized on the State contract. See Attachment 3. In the case where the workforce to be utilized in the performance of this Agreement cannot be separated out from the Contractor's and/or its subcontractor workforce, the Contractor shall submit, in lieu of a staffing plan, information on the Contractor's and/or subcontractor's total workforce. The staffing plan or workforce information shall be broken down by ethnic background, gender and Federal occupational categories, or other appropriate categories specified by NYSERDA. A proposer's failure to submit the staffing plan or workforce data could result in NYSERDA's rejection of that proposer's proposal. If a proposer changes its staffing plan after submission, it shall notify NYSERDA in writing of such change and obtain approval from NYSERDA in accordance with the Regulations §§ 142.6 & 142.8.
- (5) A proposer's failure to submit an EEO policy statement and staffing plan or total work force data shall result in NYSERDA's rejection of proposer's proposal, unless the proposer provides NYSERDA with a reasonable justification in writing for such failure (e.g., the failure to submit a staffing plan where proposer has a work force of 10 employees or less), or makes a commitment to submit an EEO policy statement and a staffing plan or total work force data by a date to be specified by NYSERDA.
- (6) To demonstrate compliance with the stated participation goals as set forth herein, a contractor shall be required to periodically submit compliance reports to NYSERDA, on the forms attached to the contract, during the entire term of the contract.

Contract Participation Goals by MWBE on NYSERDA procurements

In accordance with Article 15-A of the N.Y. Executive Law ("Article 15-A") and pursuant to the regulations adopted thereto, NYSERDA has established certain contract participation goals for MWBEs. NYSERDA's participation goals for contracts awarded pursuant to this solicitation are 15% for minority-owned business enterprises and 15% for women-owned business enterprises. These participation goals are subject to the requirements of Article 15-A, and its implementing regulations as set forth in Title 5, Chapter XIV, Parts 140-144 of the New York Codes, Rules and Regulations (the "Regulations").

MWBE Utilization Plan

NYSERDA requires every winning proposer to undertake "good faith" efforts to actively solicit MWBE participation in connection with its potential award of the NYSERDA contract. A proposer must submit a completed MWBE Utilization Plan Form with its proposal. See Attachment 2. Within twenty (20) days

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Article 15-A (MWBE) Provisions for Solicitation Documents (non-construction)

following its receipt of the Utilization Plan, NYSERDA will issue a written notice of acceptance or deficiency. If NYSERDA issues a notice of deficiency then proposer must provide NYSERDA with a written remedy in response to said notice of deficiency within seven (7) business days of its receipt. If the proposer's remedy to the notice of deficiency is not timely provided or if it is found by NYSERDA to be inadequate, NYSERDA shall so notify proposer and request proposer to submit a waiver form within five (5) business days. Failure to file the written remedy or a waiver form in a timely manner as set forth above may be grounds for disqualification of proposer's award for non-responsibility, after NYSERDA gives proposer notice and opportunity to be heard in accordance with Article 15-A § 313(5)(c) and the Regulations § 142.9.

MWBE Waiver Request

A proposer may request a total or partial waiver of the requirements of the participation goals set forth above. See Attachment 6. Prior to granting or denying a waiver, NYSERDA shall evaluate proposer's "good faith efforts" and may consider the factors set forth in the Regulations §143.7. In the event NYSERDA refuses to grant proposer a waiver, proposer may file a complaint with the NYS Empire State Development's Division of Minority and Women Business Development (the "Division") in accordance with Sections 313(8) & (9) of Article 15-A and Section 142.12 of the Regulations.

Relevant sections of the Regulations may be found at the following link, which Regulations and each party's rights and obligations set forth therein, are incorporated herein by this reference (in the event of a conflict between this solicitation and the Regulations, the Regulations shall govern):

http://www.empire.state.ny.us/MWBE/Data/122210_MWBE15-ARegs.pdf.

A Directory of certified MWBEs may be found at the Division's website, here:

<http://www.empire.state.ny.us/MWBE/directorySearch.html>

Disqualification and Dispute Resolution Procedures

NYSERDA, and applicable proposers and contractors, shall be subject to and bound by the disqualification and dispute resolution procedures contained in Article 15-A (including, without limitation, Sections 312(5), 313(5)(c), 313(8), 313(9) and 316), and in relevant sections of the Regulations (including, without limitation, Sections 142.9, 142.12 and 143.6), as and where applicable.

NYSERDA may disqualify a proposer as being non-responsive under the following circumstances:

- a) If a proposer fails to submit a MWBE Utilization Plan;
- b) If a proposer fails to submit a written remedy to a notice of deficiency;
- c) If a proposer fails to submit a request for waiver; or
- d) If NYSERDA determines that the proposer has failed to document good faith efforts.

Penalties

In accordance with the Regulations §142.13, NYSERDA's contract shall require contractor to agree that its willful and intentional failure to comply with the MWBE requirements of Article 15-A shall create liability to NYSERDA for damages in an amount equal to NYSERDA's actual cost related to its expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified minority- and women-owned business enterprise programmatic goals and Affirmative Action and Equal Opportunity compliance.

Attachment G

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

AGREEMENT

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Total Amount of Award:
6. Project Period:
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, Article 15-A Contract Provisions

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

[CONTRACTOR]

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

By _____

By _____

Name _____

Jeffrey J. Pitkin
Treasurer

Title _____

STATE OF)
) SS.:
COUNTY OF)

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

Notary Public

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

(a) General Definitions:

Agreement: This Agreement shall consist of Page One and Exhibits A, B, C, D and E hereto, 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 L. Earley, or such other person who may be designated, in writing, by NYSERDA.

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

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

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

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

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

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

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

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

Article II

Performance of Work

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

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

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

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

Article III

Deliverables

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

Article IV

Payment

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

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

(b) Direct Charges: To the extent Cash-based Expenses are incurred by the Contractor, the Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel and other costs directly associated with

the performance of the Agreement) to the extent required in the performance of the Work and to the extent such costs are anticipated in the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs shall not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate in effect at the time the expense was incurred.

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

Section 4.02. Progress Payments.

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

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

Section 4.03. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six (6) months following

Acceptance of Work pursuant to Section 6.02 hereof. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments/milestone payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Section 4.06 hereof.

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

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

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

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

Article V

Assignments, Subcontracts and Purchase Orders

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

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

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

receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

Article VI

Schedule; Acceptance of Work

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

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

Article VII

Force Majeure

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

Article VIII

Rights in Information; Confidentiality

Section 8.01. Rights in Contract and Proprietary Information.

(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;¹ and

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

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

Article X

Indemnification

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to

¹http://www.nyserda.ny.gov/~media/Files/About/Board%20Governance/CodeConduct.ashx?sc_database=web

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, the State of New York and the Contractor as additional insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

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

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

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims,

encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order.

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

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

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

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

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

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

Section 12.02. Termination.

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

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

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

12.03 Suspension or Termination for Non-Responsibility.

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

suspension order. Contract activity may resume at such time as NYSERDA issues a written notice authorizing a resumption of performance under the Contract.

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

Article XIII

Independent Contractor

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

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

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

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

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

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

NYSERDA

Name: Cheryl L. Earley

Title: Director of Contract Management

Address: 17 Columbia Circle, Albany, New York 12203

Facsimile Number: (518) 862-1091

E-Mail Address: cheryl.earley@nyserda.ny.gov

Personal Delivery: Reception desk at the above address

[Contractor Name]

Name:

Title:

Address:

Facsimile Number:

E-Mail Address:

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

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

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

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

Article XVI

Publicity

Section 16.01. Publicity.

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

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

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

EXHIBIT C

REVISED 5/12

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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).

EXHIBIT D

NYSERDA PROMPT PAYMENT POLICY STATEMENT

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

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

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

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

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

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

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

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

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

² This is only a summary; the full text of Part 504 can be accessed at:
<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>

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
Article 15-A Contract Provisions (non-construction contract)

1. General Provisions.

(a) NYSERDA is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-144 (“Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

(b) The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NYSERDA, to fully comply and cooperate with NYSERDA in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state, or local laws.

(c) Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section 9 of these provisions or enforcement proceedings as allowed by the Contract.

(d) The Contractor further agrees to fully cooperate with NYSERDA in the implementation of such additional reporting requirements as may be required by the Division of Minority and Women’s Business Development during the duration of this Agreement.

2. Equal Employment Opportunities.

(a) The Contractor shall submit an EEO policy statement to NYSERDA within seventy two (72) hours after the date of the notice by NYSERDA to award the Contract to the Contractor. If Contractor or Subcontractor does not have an existing EEO policy statement, Contractor or Subcontractor may adopt the model statement provided as **Attachment 1 – Minority- and Women-Owned Business Enterprises And Equal Employment Opportunity Policy Statement**. Contractor hereby agrees that this policy shall remain in full force and effect during the performance of this Agreement.

(b) During the performance of this Agreement, Contractor agrees to the following:

- (i) Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document Contractor's conscientious and active efforts to employ and utilize minority group members and women in its work force on this Agreement. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- (ii) At the request of NYSERDA, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status; and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- (iii) Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- (iv) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (c) Contractor shall include, in all subcontracts related to its performance of its obligations in this Agreement, the requirements set forth in Section 2(b) above, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with this Agreement.
- (d) The provisions of this Section shall not be binding upon Contractors or its subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate, or distinct from this Agreement, as expressed by its terms.

(e) The requirements of this Section shall not apply to any employment outside New York State or application for employment outside New York State or solicitations or advertisements therefor, or any existing programs of affirmative action regarding employment outside New York State.

3. Contract Goals. For purposes of this procurement, NYSERDA hereby establishes the following goals for MWBE participation: 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation.

4. Participation Goals. The Contractor represents that it has reviewed and familiarized itself with the regulations related to Article 15-A found at 5 NYCRR Parts 140-144 (see http://www.empire.state.ny.us/MWBE/Data/122210_MWBE15-ARegs.pdf), which regulations (the “Regulations”) are hereby incorporated herein by this reference. Any conflicts between this Agreement and the Regulations shall be resolved in favor of the Regulations. Contractor shall, in accordance with the Regulations, make good faith efforts and, in a manner that can be established in documentary form, solicit active participation by certified MWBE businesses as identified in the applicable state directory maintained by the NYS Empire State Development’s Division of Minority and Women Business Development (see <http://www.empire.state.ny.us/MWBE/directorySearch.html>). Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract. In furtherance thereof, the Contractor has submitted the following information to NYSERDA, which information sets forth NYSERDA’s and Contractor’s agreed upon participation goals during the performance of this Agreement:

- (a) A completed MWBE Utilization Plan Form (see **Attachment 2**) and/or a NYSERDA-approved Waiver Form (see **Attachment 6**); and
- (b) A staffing plan of the anticipated workforce to be utilized by the Contractor during this Agreement, or in the case where the workforce to be utilized in the performance of this Agreement cannot be separated out from the Contractor's and/or its subcontractor workforce, information on the Contractor's and/or subcontractor's total workforce. The staffing plan or workforce data, as applicable, is broken down by ethnic background, gender and Federal occupational categories, or other appropriate categories specified by NYSERDA (see **Attachment 3**).

5. Compliance Reporting Requirements. In order to demonstrate compliance with the stated participation and staffing goals as set forth above, Contractor shall be required to submit compliance reports as follows:

- (a) Unless NYSERDA has granted a total waiver or Contractor is a certified MWBE with the Division and is responsible for one hundred percent

(100%) of the performance of this Agreement, the Contractor shall submit to NYSERDA an MWBE Compliance Report on a quarterly basis in the form attached hereto as **Attachment 4**; and

- (b) Where the workforce to be utilized during the performance of this Agreement can be separated out from the Contractor's total workforce, the Contractor shall submit to NYSERDA on a quarterly basis, in the form attached hereto as **Attachment 5** (Workforce Employment Utilization Report): 1) the total number of employees performing work on the State contract, and 2) the Contractor's and all subcontractor's work force on the State contract broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by NYSERDA; or
- (c) In the circumstances where the workforce cannot be separated out from the Contractor's and/or subcontractor's total workforce, the Contractor shall submit to NYSERDA information related to the Contractor's total workforce data broken down by ethnic background, gender and Federal occupational categories on a semi-annual basis, or other appropriate categories specified by NYSERDA.

The Contractor's failure to follow the applicable reporting requirements or failure to comply with the stated participation goals in the previous Section set forth above may result in NYSERDA's submission of a complaint to the NYS Empire State Development's Division of Minority and Women Business Development (the "Division") in accordance with the Article 15-A Disqualification and Dispute Resolution Procedures set forth herein.

6. Waiver of participation goal requirements. In accordance with the Regulations § 142.7(c), Contractor may submit, at any time prior to its request for final payment, a request to NYSERDA for partial or total waiver of the MWBE participation goals set forth above. Upon Contractor's submission of a waiver form, NYSERDA may grant a partial or total waiver of the requirements of the participation goals established hereunder. Prior to granting or denying a waiver, NYSERDA shall evaluate the Contractor's "good faith efforts" and may consider the factors set forth in the Regulations §142.8. If NYSERDA, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, NYSERDA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals. In the event NYSERDA refuses to grant Contractor a waiver, Contractor may file a complaint with the Division in accordance with the Article 15-A Disqualification and Dispute Resolution Procedures set forth herein. A waiver form is provided in **Attachment 6**.

7. Article 15-A Compliance Monitoring. NYSERDA is responsible for monitoring Contractor's compliance with the applicable regulations. In that regard, NYSERDA may, at its discretion, notify the Contractor in writing of NYSERDA's intent to inspect relevant records and documents related to Article 15-A compliance. NYSERDA shall analyze and consider such records, documents and other data to determine whether the Contractor has made conscientious and active efforts to employ and utilize minority group members and women on the State contract.

8. Article Disqualification and Dispute Resolution Procedures. NYSERDA and Contractor hereby agree to be subject to and bound by the disqualification and dispute resolution procedures contained in Article 15-A of the Executive Law (including, without limitation, Sections 312(5), 313(8), 313(9) and 316), and in relevant sections of the Regulations (including, without limitation, Sections 142.12 and 143.6), as and where applicable.

9. Penalties. In accordance with the Regulations §142.13, Contractor hereby agrees that its willful and intentional failure to comply with the M/WBE requirements of Article 15-A as set forth in this Agreement shall create liability to NYSERDA for damages in an amount equal to NYSERDA's actual cost related to its expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified minority- and women-owned business enterprise programmatic goals and Affirmative Action and Equal Opportunity compliance.

ATTACHMENT 1

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

MWBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____
agree to adopt the following policies with respect to the project being developed or
services rendered at _____

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, ; will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination; and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, ; and that

Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.

- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title:

ATTACHMENT 2
**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT
AUTHORITY**
MWBE UTILIZATION PLAN FORM

Contract No. _____ Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address

Telephone No. () _____ Federal ID #

Contract Award Amount \$

Brief Description of Work

Prime Contractor M/WBE Status ☐ M/WBE ☐ Non-M/WBE

II. I, _____ HEREBY AGREE TO THE ____% MINORITY OWNED BUSINESS ENTERPRISE (MBE) GOAL AND THE ____% WOMEN OWNED BUSINESS ENTERPRISE (WBE) GOAL AS SET FOR IN THIS CONTRACT NO. . I FURTHER SUBMIT THE FOLLOWING NYS CERTIFIED M/WBES FOR YOUR REVIEW AND APPROVAL IN COMPLIANCE WITH THE GOAL REQUIREMENTS ESTABLISHED IN THIS CONTRACT.

Signature/Title of Authorized Representative

The Contractor shall undertake "good faith" efforts to actively solicit MBE/WBE participation in connection with its potential award of the NYSERDA contract.

III. MBE SUBMISSIONS

For each MBE, provide the company name, address, telephone number, contact person name, Federal ID number, estimated contract award date, contract award amount, estimated contract commencement date, and a BRIEF description of the contract scope of work.

IV. WBE SUBMISSIONS

For each WBE, provide the company name, address, telephone number, contact person name, Federal ID number, estimated contract award date, contract award amount, estimated contract commencement date, and a BRIEF description of the contract scope of work.

- V.** Provide the name, title, address and telephone of person(s) responsible for implementing this subcontracting plan.
- VI.** If the Contractor anticipates that it will not be able to meet the contract M/WBE participation levels, a written detailed explanation must be submitted with the bid or proposal.

I hereby declare that the above information is to the best of my ability and intention correct and that every effort will be made in the attainment of the established M/WBE goal.

Name _____ Title _____

ATTACHMENT 3

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) STAFFING PLAN FORM**

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____ Federal ID # _____

Contract Award Amount \$ _____

Brief Description of Work _____

II. I, _____ HEREBY SUBMIT THE FOLLOWING STAFFING PLAN.

Signature/Title of Authorized Representative

III. WORKFORCE DESCRIPTION

Provide a description of the work force to be utilized on the State contract, including the work force of any subcontractors, broken down by specified ethnic background, gender, and Federal occupational categories.

I hereby declare that the above information is to the best of my ability and intention correct.

Name _____ Title _____

ATTACHMENT 4

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MWBE COMPLIANCE REPORT FORM**

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____
Address _____

Telephone No. (____) _____ Federal ID# _____

Brief Description of Work

**II. AS EVIDENCE OF (_____) PROGRESS TOWARD
ACHIEVEMENT OF THE NYSERDA MBE AND WBE GOALS, AND IN
ACCORDANCE WITH THE TERMS AND CONDITIONS OF CONTRACT NO., THE
FOLLOWING INFORMATION IS HEREWITH SUBMITTED.**

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

- i. Provide the names, addresses and telephone numbers of each M/WBE you are actually using in compliance with your M/WBE goal.
- ii. Provide a brief description of work performed by the M/WBE, their scheduled dates for performance and current working status.
- iii. Provide a copy of your written agreement with the M/WBE. (A one-time request.)
- iv. In the event you have let a blanket purchase order or other open-ended contracts, only specify that amount actually awarded.
- v. Provide the actual amounts of payments made to any M/WBES as of the date the work force utilization report is submitted. Documentation must include copies of cancelled checks.
- vi. Provide the name, title and telephone number of person(s) responsible for submitting work force utilization reports.

- vii. Compliance Reports are due on the first day of the first month of each quarter, beginning three months after contract award date.

ATTACHMENT 5

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
WORKFORCE UTILIZATION REPORT FORM**

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. (____) _____ Federal ID# _____

Brief Description of Work

**II. AS EVIDENCE OF (_____) PROGRESS TOWARD
ACHIEVEMENT OF THE NYSERDA MBE AND WBE GOALS, AND IN
ACCORDANCE WITH THE TERMS AND CONDITIONS OF CONTRACT NO.
, THE FOLLOWING INFORMATION IS HEREWITH SUBMITTED.**

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

- i. If the work force of the contractor and/or subcontractors has changed since the last work force utilization report, provide 1) the total number of employees performing work on the State contract; and 2) the contractor's and all subcontractor's work force on the State contract broken down by specified ethnic background, gender, and Federal occupational categories.

If the contractor's and/or subcontractor's work force has not changed since the last work force utilization report, check here: ☐

- ii. Work Force Utilization Reports are due on the first day of the first month of each quarter, beginning three months after contract award date.

IV. ALTERNATIVE SUBMITTAL ITEMS

In the event that the Contractor cannot separate the workforce to be utilized in the performance of the NYSERDA contract from its total workforce, the Contractor shall submit, on a semi-annual basis:

- (i) The total workforce of the Contractor described categorically by: specified ethnic background, gender and the Federal occupational data.
- (ii) The Contractor acknowledges that the overall goal of an equal employment opportunity program involves the implementation of procedures and methods for the identification, recruitment and employment of minority group members and women.

ATTACHMENT 6

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MINORITY WOMEN BUSINESS ENTERPRISE (MWBE) REQUEST FOR WAIVER
FORM**

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. (____) _____

Federal ID # _____

Brief Description of Work:

- II. I, (_____) HEREBY REQUEST A PARTIAL OR TOTAL (Circle One) WAIVER OF MY MBE AND/OR WBE GOALS AS ESTABLISHED IN CONTRACT NO. I AGREED TO ATTAIN ____% MBE PARTICIPATION AND ____% WBE PARTICIPATION OF THE TOTAL CONTRACT PRICE. TO SUBSTANTIATE AND DEMONSTRATE MY GOOD FAITH EFFORTS, THE FOLLOWING INFORMATION IS SUBMITTED FOR THE AUTHORITY'S REVIEW AND APPROVAL.

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

1. Provide a statement setting forth your basis for requesting a partial or total waiver.
2. Provide all names of general circulation, trade association and M/WBE-oriented publications in which you solicited M/WBEs for the purposes of complying with your participation levels.
3. List all dates solicitations for M/WBE participation were published in any of the above publications.
4. List all M/WBEs appearing in the NYS Directory of certified vendors which were solicited for purposes of complying with your M/WBE participation levels.

5. Provide proof of all dates on which solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitations if an identical solicitation was made to all M/WBEs.
6. Provide copies of responses made by M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans or specifications made available to M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Contractor, and M/WBEs undertaken for purposes of complying with your M/WBE participation levels.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address and telephone number of contractor's representative authorized to discuss and negotiate this waiver request.
11. Have you explored or identified any other area where your company can implement an effective equal employment opportunity program to expand the employment opportunities of minority group members and women? If so, please provide the data supporting such efforts and the results.