

New York State Energy Research and Development Authority
AGREEMENT

1. Agreement Number: 39020
2. Contractor: Horseheads Central School District
3. Contact: Ms. Jane Bradley, School Business Executive
4. Award Date: January 17, 2014
5. Project Period: January 17, 2014 to January 31, 2018
6. Federal ID: 166002681
7. Total Amount of Contract: \$98,600.00
8. TERMS AND CONDITIONS:

The Agreement is made pursuant to a grant from the New York State Energy Research and Development Authority pursuant to the Clean Water/Clean Air Act of 1996 Clean Air School Bus Program. The Agreement consists of this page plus the following documents which are incorporated herein by reference:

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

9. ACCEPTANCE

Horseheads Central School District

NEW YORK STATE ENERGY RESEARCH AND
DEVELOPMENT AUTHORITY

By: _____

By: _____

Name: _____

Jeffrey J. Pitkin
Treasurer

Title: _____

STATE OF _____)
) SS.:
COUNTY OF _____)

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

Notary Public

EXHIBIT A STATEMENT OF WORK

1.0 Goals and Objectives

Up to \$98,600.00 of 1996 Clean Water/Clean Air Bond Act funds distributed by the New York State Energy Research and Development Authority (NYSERDA) for the Horseheads Central School District (the Contractor) to perform a school bus idling reduction project. These funds shall be used to retrofit twenty nine (29) school buses with New York State Department of Transportation-qualified diesel fuel-fired coolant heaters that provide supplemental heat and have an output of 40,000 BTU/hour or greater (the Work).

2.0 Project Management

- 2.1. The Contractor shall be responsible for all management tasks associated with the Work and shall provide technical direction for the completion of such tasks as necessary.
- 2.2. The Contractor shall assure that all equipment and the installation of such equipment that is part of the Work complies with all applicable local, State and Federal codes and regulations.
- 2.3. Drivers and mechanics responsible for the safety, repair and logging of information related to the operation of the coolant heaters shall be trained by the Contractor's administrative or technical staff or equipment vendors.
- 2.4. The Contractor shall have appropriate staff available for site visits by NYSERDA, or other vehicle fleet personnel, and shall provide technical information on the operation of the coolant heaters.
- 2.5. The Contractor shall maintain title and ownership of the equipment and operate the retrofitted buses for a period of three years. If the Contractor fails to maintain ownership as required, Contractor will be subject to recoupment of grant funds.
- 2.6. The Contractor shall use the retrofitted buses on a regular daily route to and from a school and must be driven at least 3,000 miles per year for a period of three years. If the Contractor fails to do so, Contractor will be subject to recoupment of grant funds.
- 2.7. The Contractor shall be responsible for submitting required reports and documentation to NYSERDA in advance of the pre-determined deadlines. If the Contractor fails to submit reports as required, Contractor will be subject to recoupment of grant funds.

3.0 Retrofit Deployment and Installation

- 3.1. The Contractor shall retrofit twenty nine (29) school buses with coolant heaters that provide supplemental heat and have an output of 40,000 BTU/hour or greater, as detailed in Attachment A. If the Contractor's internal protocols require competitive procurement processes, it must abide by such protocols. All procurements must comply with Section 5.02 of Exhibit B to this agreement.
- 3.2. The Contractor shall install all coolant heaters in accordance with the New York State Department of Transportation's current guidelines for installing such products on school buses. Guidelines as of September 2009 are detailed in Attachment B.

- 3.3. The Contractor shall apply NYSERDA-supplied signage to any vehicles purchased or retrofitted with funding from this agreement stating that the vehicles are clean vehicles. Contractor shall maintain signage for the duration of the project.
- 3.4. The Contractor shall submit Vehicle Data Sheets (Attachment C) to NYSERDA as detailed in Section 7.1.1.
- 3.5. The Contractor shall complete the Work by October 31, 2014.

4.0 Training Development

- 4.1. The Contractor shall implement trainings specific to the school bus retrofits detailed in Attachment A. Training materials should focus on educating vehicle operators and technicians about proper use and maintenance of equipment.
- 4.2. The Contractor shall provide appropriate training to all employees that regularly use the equipment.
- 4.3. The Contractor shall perform on-going evaluations and identify any additional training needs and hold follow-up training, as necessary.

5.0 NYSERDA Reporting

- 5.1. The Contractor shall develop and submit the following reports:
 - 5.1.1. Vehicle Data Sheets (see Attachment C) shall be submitted to NYSERDA within two weeks after all school buses are retrofitted. The Contractor must complete one Vehicle Data Sheet for each school bus that is retrofitted. Copies of any new emission certifications or tests must be included.
 - 5.1.2. Semi-annual Reports (see Attachment D) summarizing the operation of the vehicles during the preceding six months. Each report shall include information regarding mileage driven, fuel usage, maintenance events and costs, and problems associated with operation and/or maintenance of the vehicles. The results of any emissions tests conducted on the vehicles shall be included.

Semi-annual Reports are to be submitted by January and July 31 of each year to cover all or a portion of the previous six months of vehicle operation. Reports shall commence when the retrofitted vehicle is placed back into service and continue for three (3) years following re-introduction of the vehicle into service.
 - 5.1.3. Vehicle Data Sheets and Semi-annual Reports are to be submitted via mail or electronically to:

Adam Ruder
Project Manager
New York State Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399
(518) 862-1090, ext. 3411
Fax (518) 862-1091
E-mail ar3@nyserda.ny.gov

6.0 Eligible Expenses

- 6.1. Expenses that will be eligible for reimbursement include:
 - 6.1.1. The cost of equipment and installation for diesel fuel-fired coolant heaters, up to \$3,400 per heater and up to \$100,000 per applicant.
- 6.2. Any expenses incurred before the award date are ineligible for reimbursement.

7.0 Payments

- 7.1. Reimbursement for Equipment Expenses: The Contractor shall be reimbursed for school bus retrofit costs as specified in Section 10.2 of this Statement of Work and detailed in Attachment A. Upon completion of Work, the Contractor shall notify NYSERDA, which will assign a consultant to perform a final verification to ensure that the equipment is fully operational, that it meets all Program requirements, and that all the eligible costs are documented. If the equipment meets all of the necessary requirements, the consultant will forward the Section 7.1.1 report to NYSERDA. Payments shall be made only after the Section 7.1.1 report is accepted by NYSERDA's Project Manager (Milestone Billing Event). Report shall include invoice, proof of payment to the Contractor's vendor, Vehicle Data Sheets, and a positive verification of the work from the Contractor. This shall take the form of a signature of a party authorized by the Contractor at the bottom of the Section 7.1.1 report indicating acceptance of the work and equipment.
- 7.2. Equipment purchased under this contract will remain the property of the Contractor at the conclusion of the Work for the life of the equipment.

8.0 Cost Sharing

- 8.1. The Contractor shall ensure that the cash and in-kind contributions of local partners, if any, as described in Section 10.0 of this Statement of Work, are provided for completion of the Work.

9.0 Project Schedule

Execution of contracts or purchase orders	April 30, 2014
Completion of purchase and installation of equipment	December 31, 2014
Operation of Vehicles	Duration of project

Submission of Vehicle Data Sheets
 First Semi-Annual Report
 Final Report

Two weeks after vehicles are delivered
 January 31, 2015
 January 31, 2018, or three years after
 introduction of last retrofit into service

10.0 Budget

10.1. Summary Budget

	NYSERDA Share	Contractor Share	Total
Coolant Heaters	\$98,600.00	\$0.00	\$98,600.00
Total	\$98,600.00	\$0.00	\$98,600.00

10.2. Retrofit Budget

Bus Model Year	Bus Manufacturer	Chassis Model Number	Engine Manufacturer	Engine Model Number	Number of Buses	Type of Retrofit	Cost per Retrofit	Total Cost
2007	Bluebird	Vision	Cummins	ISB	8	DFCH	\$3,400	\$27,200
2010	Bluebird	Vision	Cummins	ISB	15	DFCH	\$3,400	\$51,000
2013	Bluebird	Vision	Cummins	ISB	6	DFCH	\$3,400	\$20,400
				Total	29			\$98,600

Attachment A

Contractor: Horseheads Central School District
Contact Person: Jane Bradley
Title: School Business Executive
Phone Number: 607-739-5601 x4205
Fax Number: 607-795-2415
Mail Address: One Raider Lane, Horseheads, NY 14845
Email Address: jstamour@gstboces.org

Bus Model Year	Bus Manufacturer	Chassis Model Number	Engine Manufacturer	Engine Model Number	Number of Buses	Type of Retrofit	Cost per Retrofit	Total Cost
2007	Bluebird	Vision	Cummins	ISB	8	DFCH	\$3,400	\$27,200
2010	Bluebird	Vision	Cummins	ISB	15	DFCH	\$3,400	\$51,000
2013	Bluebird	Vision	Cummins	ISB	6	DFCH	\$3,400	\$20,400
				Total	29			\$98,600

Attachment B

NYS Department of Transportation Installation Guidelines

1. Fuel oil fired auxiliary heaters, supplemental heat application.

Auxiliary fuel-fired supplemental heating systems are permitted, provided they comply with the following:

- (A) The auxiliary heating system shall utilize the same type fuel as specified for the vehicle engine.
 - a. Fuel lines are to be metal, Aero-quip metal braid reinforced, or Synflex tubing equal to vehicle manufacturer's standard utilizing pre existing fittings on the fuel tank. **Additional fuel tank penetrations are not permitted. If there are no available fittings on the tank one may be added provided that it is put in place in a manner approved by the tank manufacturer.**
 - b. **Any fuel line passing through the vehicle frame rail will do so using a metal bulkhead fitting or a grommet that prevents any abrasion damage to the fuel line.**
 - c. Short flexible lines are permitted at the fuel tank and heater assembly only for vibration isolation.
 - d. All flexible lines are to be hose assemblies with crimped or threaded fittings. **Barbed fittings and hose clamps are not acceptable**
- (B) The heaters are to be mounted in an enclosure behind the bus's left rear wheels or between the rear frame rails and connected to the vehicles cooling system via the existing hot water heater circuit.
 - a. The heater manufacturers recommended low voltage circulator pump is to be mounted in the heater enclosure if it is not an integral part of the heater.
 - b. Coolant hose used is to be equal in size and specification to the vehicle manufacturer's.
 - c. Any frame penetrations necessary to mount the unit are to be done following vehicle manufacturers established procedures.
- (C) An auxiliary heating system, when connected to the engine's cooling system, may be used to preheat the engine coolant, preheat the passenger compartment, and / or add supplementary heat to the bus's cabin heating system.
- (D) Auxiliary heating systems shall be installed pursuant to the manufacturer's recommendations.
 - a. Exhaust shall be routed through solid tubing flexible welded stainless tubing Clevaflex Mini E 30mm is also acceptable. Exhaust tubing is to be properly clamped and supported. Exhaust routing shall generally be parallel to the vehicle exhaust to its discharge end and may not be directed in a manner that will endanger bus passengers.
 - b. A 1/8 inch hole shall be drilled in the lowest point of the heater exhaust system if the pipe does not slope continuously downward from the heating unit to the discharge end.
- (E) Auxiliary heating systems which operate on diesel fuel shall be capable of operating on #1, #2, blended, or Bio Diesel fuel in grades up to B 20 without the need for combustion system adjustment.
- (F) Auxiliary heating systems shall be low voltage with a minimum output of 40,000 BTU /hr.
- (G) Auxiliary heating systems and their installation shall comply with all applicable Federal Motor Vehicle Safety Standards, including FMVSS 301 as well as all applicable SAE standards.
- (H) Each installation shall include an easily operated 7 day programmable timer to control the heater operating cycle.
- (I) An operator installing multiple units should contact the local NYSDOT Supervising Motor Vehicle Inspector for guidance on the initial installation and ensure that all subsequent installations are identical to the first.
- (J) Each location having heaters installed shall be provided operation and maintenance training including operation, service / overhaul, and parts manuals for the equipment provided.

ATTACHMENT C **IDLING REDUCTION VEHICLE DATA SHEET**

Submit one sheet for each vehicle.

Fleet Name	Contact
Address 1	E-mail
Address 2	Phone
City, State, Zip	Fax

Vehicle Information	
Make	Model Number
VIN Number	Model Year of Vehicle
License Number or Vehicle Number	Date Placed in Service
Engine Manufacturer	Model Number
Engine Displacement and Number of Cylinders	Engine Horsepower
Gross Vehicle Weight (GVW)	

Equipment Information	
Type of Technology Installed	Length of Warranty
Manufacturer	Model Number
Installation Company	Contact Name
Address 1	E-mail
Address 2	Phone
City, State, Zip	Fax
Date Retrofit Completed	Date Placed into Service

I, (Fleet Operator) certify that the equipment stated above has been installed to the fleet's satisfaction.

Name: _____ **Title:** _____

Signature: _____ **Date:** _____

Attachment D

School Bus Idling Reduction Semi-Annual Report

(This form is designed as an outline for reports required for projects involving diesel fuel-fired coolant heaters in Clean Air School Bus Program, Round 3 contracts.)

1. Please describe the type of bus(es) used in the demonstration. (I.E. Bluebird, Thomas, International, etc)
2. What is the Vehicle Identification Number (VIN) and Model Year of the bus(es)?
3. What is the total time in service of the bus(es) to date?
4. How long have the bus(es) been in service since being retrofitted with coolant heaters?
5. What is the estimated remaining life expectancy of the bus(es)?
6. What was the bus(es) average daily idling time before retrofitting?
7. What is the average daily idling time of the bus(es) from retrofitting to date?
8. What is the most recently available annual mileage and fuel usage of the bus(es)?
9. Give a description, number and cost of the maintenance and service events related to the installed coolant heaters.
10. Give a comparison of the operating costs (fuel and maintenance costs) of the bus(es) compared to before retrofitting.
11. What were the overall impressions of the drivers and maintenance people who interacted with the bus(es)?
12. Would your organization retrofit additional bus(es) in the future? If no, please explain.
13. Is there any additional information about the operation or performance of the bus(es) or coolant heater(s) that you feel is important but has not been covered in this report?

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.

Agreement: Exhibits A, B, C, and D attached hereto, all of which are made a part hereof as though herein set forth in full.

Budget: The Budget set forth in Exhibit A hereto.

Category A will utilize funds from a settlement between the New York State Office of the Attorney General (OAG) and AES Corporation (AES) to serve Southern Tier Counties impacted by power plants operated by AES (Broome, Yates and Seneca Counties). Open to public and private school bus operators.

Category B will utilize funds from a settlement between the OAG and Niagara Mohawk Power Corporation (Niagara Mohawk) to serve Western New York Counties that were impacted by power plants owned at one time by Niagara Mohawk (Chautauqua, Erie, Niagara, Orleans, Genesee, Wyoming, Allegany and Cattaraugus counties). Open to public and private school bus operators.

Category C will utilize funds from a settlement between the OAG and Rochester Gas and Electric Corporation (RG&E) to serve Rochester area Counties that were impacted by power plants owned at one time by RG&E (Orleans, Monroe, Wayne, Ontario and Livingston Counties). Open to public and private school bus operators.

Category D will utilize New York State Clean Water/Clean Air Bond Act Funds and U.S. Environmental Protection Agency (EPA) grant funds to serve all eligible applicants throughout New York State. Open to public fleets, but a school district may apply on behalf of a contractor as long as ownership of the equipment will remain with the district.

Category E will utilize funds from a settlement between the OAG and American Electric Power Service Corp. (AEP) to serve Eastern Hudson Valley Counties (Westchester, Putnam, and Dutchess counties). Open to public and private school bus operators.

Clean Air School Bus Equipment. Equipment must be EPA-certified/verified. Eligible emission-reducing equipment and technologies include, but are not limited to, particulate traps or filters and catalytic converters that decrease emissions of particulate matter, hydrocarbons, oxides of nitrogen, carbon monoxide, greenhouse gases and/or toxic air pollutants, and are not part of a standard/required engine configuration (i.e., if

the equipment is required by law to be installed on the bus for the bus to be sold, then the equipment would not be eligible). Equipment must be sold under standard commercial terms from one or more EPA – certified/verified, emission-reducing technology manufacturers.

Clean Air School Bus Retrofit Project. Any currently owned and operated diesel-fueled School Bus in New York State that is to be retrofitted with Clean Air School Bus Equipment or Idling Reduction Equipment. The Program can only pay for eligible equipment and the cost of installing the eligible equipment.

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

Contract Data: Technical Data first produced in the performance of the contract, Technical Data which are specified to be delivered under the contract, or Technical Data actually delivered in connection with the contract.

Eastern Hudson Valley Counties: Westchester, Putnam, and Dutchess Counties.

Effective Date: The effective date of this agreement shall be the date appearing in Item 4, "Award Date," on page one of the Agreement.

Governing Body: For a county outside the City of New York, the governing body is the board of supervisors or other elective governing body. For a city or village, the governing body is the local legislative body thereof, as the term is defined in Municipal Home Rule Law. For a town, the governing body is the town board. For a school district, the governing body is the board of education thereof. For a supervisory district, the governing body is the board of cooperative educational services thereof. For a public benefit corporation, the governing body is the board of directors, members or trustees thereof. For a public authority, the governing body is the board of directors, members, or trustees thereof. In the case of an Indian tribe, the governing body is that which is recognized as such by the United States or the State of New York. (For this program, the authorization may come from the Superintendent of the school district.)

Idling Reduction Equipment: On-board diesel fuel-fired coolant heaters that are not part of a standard/required engine configuration (i.e., if the equipment is required by law to be installed on the bus for the bus to be operated, then the equipment would not be eligible). Equipment must be sold under standard commercial terms from one or more New York State Department of Transportation-qualified idling reduction technology vendors. To be eligible, coolant heaters must be for a supplemental heat application and must have an output of 40,000 BTU/hour or greater. The only New York State Department of Transportation-qualified vendors at this time are Espar Heater Systems, Teleflex Power Systems, and Webasto Products North America.

Municipality: A local public authority or public benefit corporation, a county, city, town, village, school district, supervisory district, district corporation, improvement district within a county, city, town or village, or Indian nation or tribe recognized by New York State or the United States with a reservation wholly or partly within the boundaries of New York State, or a combination thereof.

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

Project or Projects: Includes a Clean Air School Bus Project or Projects and Clean Air School Bus Retrofit Project or Projects.

Proprietary Data: Technical Data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) have not been made available by the owner to others without obligation concerning its confidentiality; and

(iii) are not already available to NYSERDA without obligation concerning their confidentiality.

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).

Rochester Region Counties: Orleans, Monroe, Wayne, Ontario or Livingston Counties.

School Bus. Any motor vehicle that has a seating capacity of fifteen or more passengers in addition to the driver and is used exclusively for the transportation of New York State school children on public highways.

Southern Tier Counties: Broome, Yates, and Seneca Counties.

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.

Technical Data: Recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental or developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer software programs, computer software data bases, and computer software documentation). Examples of Technical Data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.

Unlimited Rights: Rights to use, duplicate, or disclose Contract Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

Western New York Counties: Chautauqua, Erie, Niagara, Orleans, Genesee, Wyoming, Allegany, and Cattaraugus Counties.

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 "Contact Person" identified in Item 3 of page one of the Agreement shall serve as Project Director and as such shall have the responsibility of 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. NYSEDA shall be notified in writing of any change of Project Director by the Contractor.

Section 2.03. Contractor Certification. The Contractor certifies that:

- (a) NYSEDA payments will be used for the Work and consists of capital projects that have or will have a period of probable usefulness of at least ten (10) years pursuant to Section 61(21) of the State Finance Law and shall have an actual useful life of at least ten (10) years; and
- (b) None of the Work, and no portion of any of the Work, is or will be used (directly or indirectly) in a trade or business carried on by any persons or entities other than a governmental unit on any basis other than the same basis that such Work or portion thereof is available for use and used by the general public and (ii) other than user fees charged to all members of the general public (including businesses) on the same basis, the Contractor will not receive any payments from any private person or United States agency of any monetary compensation for the use of the facilities financed with such disbursements and have no agreement for such payment; and
- (c) The Contractor expects to expend the moneys received for the Work by March 31, 2014;
- (d) It qualifies as a State agency or department, public authority, or municipality of the State as defined by the Clean Water/Clean Air Bond Act of 1996 (Chapter 412 of the Laws of 1996) ("Municipality") and the disbursements made to the Contractor will be used for capital projects.(i.e. a Clean Air School Bus Project or a Clean Air School Bus Retrofit Project) owned and operated by the municipality; and

- (e) No payments have been or will be made directly or indirectly, on behalf of the State by any private user of any facility. No portion of the award will be used (directly or indirectly) to finance loans to any persons or entities.

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. For Clean Air School Bus Retrofit Projects, it is understood and agreed that, in consideration for this Agreement and as full compensation for 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 the actual costs incurred up to the maximum amount of not to exceed the amount set forth in Item 7, "Total Amount of Contract," shown on page one of the Agreement, subject to the provisions and restrictions contained herein. Such amount will be paid only to the extent that costs are incurred by the Contractor in performance of the Work in accordance with the provisions of this Award and the Budget.

Section 4.02. Award Payment. Such amount shall be paid only to the extent that costs are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement and the Budget. Funds awarded under the Clean-Fueled Bus Program must be committed, and applicable purchase orders and contracts executed, within nine (9) months of the date of award set forth in Item 4, "Award Date" shown on page one of the Agreement, subject to the provisions and restrictions contained herein. The payment request shall be addressed to: "NYSERDA, 17 Columbia Circle, Albany, New York 12203, Attention: Accounts Payable." Payment will be made in accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, if applicable. Furthermore, NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds paid to NYSERDA by third parties for the purposes of this Agreement.

Section 4.03. Administrative Expenses: No funds received pursuant to this Agreement shall be used for administrative or operating expenses of the Contractor.

Section 4.04. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

Section 4.05. 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 4.06. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of this Agreement and for a period of ten years after acceptance of the Work, full and detailed books, accounts, and records pertaining to the performance of this Agreement, including

without limitation, all bills, invoices, payrolls and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and such period thereafter to inspect and audit any and all such books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to this Section.

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is the amount shown in Item 7, "Total Amount of Contract" on page one of the 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 4.08. Audit Adjustment. Any payment made hereunder 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 an agency of the United States, State of New York or NYSERDA 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 under \$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 B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. 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.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action which would impair its rights thereunder. The Contractor shall not assign, cancel or terminate any Subcontract without prior written notification to the Contract Administrator as long as this Agreement remains in effect.

Article VI

Schedule

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in Exhibit A, Statement of Work.

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

Technical Data

Section 8.01. Rights in Technical Data.

(a) Technical Data: Rights in Technical Data shall be allocated as follows:

(1) NYSERDA shall have:

- (i) Unlimited Rights in Contract Data except as otherwise provided below with respect to Proprietary Data; and
- (ii) no rights under this Agreement in any Technical Data which are not Contract Data.

(2) The Contractor shall have:

- (i) the right to withhold Proprietary Data in accordance with the provisions of this clause; and

(ii) the right to use for its private purposes subject to patent, or other provisions of this Agreement, Contract Data it first produces in the performance of this Agreement provided the data requirements of this Agreement have been met as of the date of the private use of such data.

The Contractor agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless another use is specifically authorized by prior written approval of the Contract Administrator.

Article IX

Warranties and Guarantees

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

- (a) it is financially and technically qualified to perform the Work;
- (b) 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;
- (c) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted construction and design standards and best engineering practices;
- (d) 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 construction and design standards and best engineering practices;
- (e) 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;
- (f) there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or the NYSERDA's rights hereunder;
- (g) 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; and
- (h) Contractor certifies that all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

(i) 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 the 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 cost to NYSERDA, the OAG and the New York State Department of Environmental Conservation (DEC), 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) 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.

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 this Article and bearing notations evidencing

the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order.

(a) NYSERDA may at any time, by written Order to the Contractor, require the Contractor to stop all, or any part of, the Work called for by this Agreement for a period of up to 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 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 30 days prior written notice to the Contractor. In such event, compensation shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefore).

(b) NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

(c) NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a was intentionally false when made. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

Section 12.03. Suspension or Termination for Non-Responsibility.

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

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

Article XIII

Independent Contractor

Section 13.01. Independent Contractor. 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 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, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

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

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. 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. If the project is funded using funds from one of the Attorney General's settlements, Contractor shall additionally collaborate with the Attorney General's Press Office 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. If the project is funded using funds from one of the Attorney General's settlements, Contractor shall additionally collaborate with the Attorney General's Press Office regarding any media interview in which the Work is referred to or discussed.

(b) The Contractor shall not use NYSERDA's corporate name, logo, identity, any affiliation, or the service mark **New York Energy SmartSM**, and any related logo, without NYSERDA's prior written consent.

Section 15.02. 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: cle@nyserda.ny.gov
Personal Delivery: Reception desk at the above address

Horseheads Central School District

Name: Jane Bradley
Title: School Business Executive
Address: One Raider Lane, Horseheads, NY 14845
Phone Number: 607-739-5601 x4205
Fax Number: 607-795-2415
E-Mail Address: jstamour@gstboces.org

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

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

Section 15.03. 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.

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
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
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
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
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

PART 504

PROMPT PAYMENT POLICY STATEMENT

Section 504.1 Purpose and applicability.

- (a) The purpose of this Part is to implement section 2880 of the Public Authorities Law by detailing the authority's policy for making payment promptly on amounts properly due and owing by the authority under contracts. This Part constitutes the authority's prompt payment policy statement as required by that section.
- (b) This Part generally applies to payments due and owing by the authority to a person or business in the private sector under a contract it has entered into with the authority on or after May 1, 1988. This Part does not apply to payments due and owing:
 - (1) under the Eminent Domain Procedure Law;
 - (2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;
 - (3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
 - (4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or
 - (5) if other State or Federal law or rule or regulation specifically requires otherwise.

Section 504.2 Definitions. As used in this Part, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (a) "Authority" means the New York State Energy Research and Development Authority.
- (b) "Contract" means an enforceable agreement entered into between the Authority and a contractor.
- (c) "Contractor" means any person, partnership, private corporation, or association:
 - (1) selling materials, equipment or supplies or leasing property or equipment to the Authority pursuant to a contract;
 - (2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the Authority pursuant to a contract; or

- (3) rendering or providing services to the Authority pursuant to a contract.
- (d) "Date of payment" means the date on which the Authority requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a payment.
- (e) "Designated payment office" means the Office of the Authority's Controller, located at 17 Columbia Circle, Albany, New York 12203.
- (f) "Payment" means provision by the Authority of funds in an amount sufficient to satisfy a debt properly due and owing to a contractor and payable under all applicable provisions of a contract to which this Part applies and of law, including but not limited to provisions for retained amounts or provisions which may limit the Authority's power to pay, such as claims, liens, attachments or judgments against the contractor which have not been properly discharged, waived or released.
- (g) "Prompt payment" means a payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Part in order for the Authority not to be liable for interest pursuant to Section 504.6.
- (h) "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 Part, in order for the Authority not to be liable for interest pursuant to Section 5.06.
- (i) "Proper invoice" means a written request for a contract 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 the Authority may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to the Authority's Controller, marked "Attention: Accounts Payable," at the designated payment office.
- (j) (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, the Authority has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.
- (ii) if a contract 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 contract 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 the Authority for the portion working, completed or delivered, the Authority 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.

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

Section 504.3 Prompt payment schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Part, the date of payment by the Authority of an amount properly due and owing under a contract shall be no later than 30 calendar days, excluding legal holidays, after such receipt.

Section 504.4 Payment procedures.

(a) Unless otherwise specified by a contract provision, 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 the Authority.

(b) The Authority shall notify the contractor within 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; and
- (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 the Authority fails to notify a contractor of a defect or impropriety within the fifteen 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 the Authority 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, the Authority shall make payment, consistent with any such correction or resolution and the provisions of this Part.

Section 504.5 Exceptions and extension of payment due date. The Authority has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Part, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the payment due date:

(a) If the case of a payment which a contract provides 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 the contract or other State or Federal mandate has not been submitted to the Authority 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 the Authority and the date when the Authority 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 the contract or by other State or Federal mandate, whether to be performed by or on behalf of the Authority or another entity, or is specifically permitted by the contract or by other State or Federal provision and the Authority 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, the Authority 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 the Authority 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 the Authority, 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 the Authority.

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. 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.

Section 504.7 Sources of funds to pay interest. Any interest payable by the Authority pursuant to this Part shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related contract payment.

Section 504.8 Incorporation of prompt payment policy statement into contracts. The provisions of this Part in effect at the time of the creation of a contract shall be incorporated into and made a part of such contract and shall apply to all payments as they become due and owing pursuant to the terms and conditions of such contract, notwithstanding that the Authority may subsequently amend this Part by further rulemaking.

Section 504.9 Notice of objection. Unless a different procedure is specifically prescribed in a contract, a contractor may object to any action taken by the Authority pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the Authority. 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

address set forth in Section 504.2(e). The Vice President of the Authority, or his or her designee, shall review the objection for purposes of affirming or modifying the Authority's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the contractor either that the Authority'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 30 working days.

Section 504.10 Judicial Review. Any determination made by the Authority pursuant to this Part which 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 Part or any other review procedure that may be specified in the contract or by other law, rule, or regulation.

Section 504.11 Court action or other legal processes.

(a) Notwithstanding any other law to the contrary, the liability of the Authority to make an interest payment to a contractor pursuant to this Part 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 the Authority 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.

Section 504.12 Amendments. These regulations may be amended by resolution of the Authority, provided that the Chair, upon written notice to the other Members of the Authority, may from time to time promulgate nonmaterial amendments of these regulations.