



ENERGY IMPROVEMENT CORPORATION, LDC Board Meeting Minutes: February 6, 2014

A meeting of the Board of Directors of EIC was held on Thursday, February 6, 2014.

Roll call was taken and the meeting was called to order at 6:17pm by Mark Thielking who acted as chair of the meeting.

PRESENT:

Chris Burdick

Andrew Chintz

Mike Gordon

Kathryn Hoenig

Mary Beth Kass

Mark Thielking

Leo Wiegman

ABSENT:

Neil Alexander

David Church

Olivia Farr

Tom Kelly

OTHERS PRESENT:

Tom Bregman

Joe Del Sindaco

Robert Fischmann

Heather Flournoy

Dan Killourhy

Elyssa Rothe

Linda Whitehead

John Davies

MINUTES

On a motion by Mary Beth Kass and seconded by Chris Burdick, it was unanimously agreed to approve the January 9, 2014, minutes. All in favor, so be it

RESOLVED that the EIC Board of Directors meeting minutes of 1/9/14 is approved and accepted by the Board of Directors of which a copy is attached.

CITY OF NEW ROCHELLE

On a motion by Mike Gordon and seconded by Leo Wiegman it was unanimously agreed to approve the City of New Rochelle's request, that upon becoming a member of EIC, to have the option to not provide additional financings should they determine they no longer want to do so. So be it,

RESOLVED that the Board hereby approves, provided the City of New Rochelle becomes a member of EIC, if in the future New Rochelle determines it no longer wishes to permit additional financings in the City of New Rochelle, but cannot terminate its membership because of existing charges still being collected, upon request from the City of New Rochelle pursuant to paragraph 3 of the Municipal Agreement, the EIC Board will agree to limit the amount of future financings in the City of New Rochelle to \$0.

NYSERDA GRANT AGREEMENT

On a motion by Chris Burdick and seconded by Leo Wiegman it was unanimously agreed to grant approval to the EIC Chairman, Mark Thielking, to sign the NYSERDA Grant Agreement which will continue to fund EnergizeNY's residential program with said agreement having been reviewed and approved by legal counsel. So be it

RESOLVED that the Board hereby approves the Chairman, Mark Thielking, to sign the NYSERDA Agreement for \$50,000 of which a copy is attached here.

PRESENTATIONS

December Expense Report - Dan Killourhy presented the expense report for the month of December, 2013. Dan will be moving toward accrual based financial statements.

Energize Advisory Committee – Tom Bregman provided status of the Energize residential program. December was a productive month for NWEAC. There continues to be a lack of data and information provided by NYSERDA.

New Member Update - Joe Del Sindaco provided an update on membership status. Mt. Kisco has passed a resolution to join EIC but must pass the local law before requesting membership. County letter announcing QECBs has generated some interest from municipalities such as Eastchester. EIC has been invited back to present in Ulster County to the Environment and Energy Committee of Legislature.

Commercial Program - Bob Fischmann described how the multifamily program operates. EnergizeNY will be training multifamily partners on the energy efficiency finance program so they can then market the program on Energize's behalf. The multifamily partners will be trained on the advantages of EnergizeNY financings as a means of driving deeper energy savings, greater conversion rates for projects which will lead to customers getting larger retrofit contracts.

Finance Advisory Committee – Joe Del Sindaco provided an update on the financial status of Energize. The projected numbers are still expected, but the timing of such is shifting toward the latter part of the year.

Solarize – Mark Thielking stated Nina Orville is refining the NYSERDA contract. NYSERDA has requested clarifications on some of the documentation which was provided to them.

Important dates to note: Finance Committee Meeting on 2/20; Westchester County Property Owners Summit on 2/25 in Pt. Chester; Mark Thielking will be speaking at the ULI Conference on 2/27 in White Plains; and Greenburg Property Owners Summit on 3/6.

PUBLIC COMMENT

John Davies, Healthy Home, spoke of his support of EnergizeNY. John stated EnergizeNY has had a huge impact in the residential sector of retrofits and would like to see the program to continue. Healthy Home has realized tremendous growth from EnergizeNY's efforts.

On a motion by Mike Gordon and seconded by Chris Burdick, at 8:32pm it was unanimously agreed to suspend the regular meeting and to reconvene in Executive Session for the purpose of personnel matters.

On a motion by Chris Burdick and seconded by Kathryn Hoenig and having the discussion of personnel matters completed the Board unanimously agreed to return to the regular meeting at 10:15pm.

On a motion by Kathryn Hoenig and seconded by Mary Beth Kass, there being no business before the Board the meeting ended at 10:15pm.

The next meeting of the EIC Board of Directors will be held on March 6, 2014, at 6:15pm at the Town of Bedford's Offices at 425 Cherry Street.



ENERGY IMPROVEMENT CORPORATION, LDC Board Meeting Minutes: January 9, 2014

A meeting of the Board of Directors of EIC was held on Thursday, January 9, 2014.

Roll call was taken and on a motion by Chris Burdick and seconded by Kathryn Hoenig the meeting was called to order at 6:20pm by Mark Thielking who acted as chair of the meeting.

PRESENT:

Chris Burdick	Kathryn Hoenig	Mark Thielking
Andrew Chintz	Mary Beth Kass	
Mike Gordon	Tom Kelly	

ABSENT:

Neil Alexander	David Church	Olivia Farr
Leo Wiegman		

OTHERS PRESENT:

Tom Bregman	Dan Killourhy	Joe Del Sindaco
Robert Fischmann	Nina Orville	Jim Staudt
Heather Flournoy	Elyssa Rothe	

MINUTES

On a motion by Mary Beth Kass and seconded by Chris Burdick, it was unanimously agreed to approve the December 5, 2013, minutes. All in favor, so be it

RESOLVED that the EIC Board of Directors meeting minutes of 12/5/13 is approved and accepted by the Board of Directors of which a copy is attached.

PRESENTATIONS

November Expense Report - Dan Killourhy presented the expense report for the month of November, 2013. Dan states a \$50,000 check is expected from NYSEDA as well as approximately \$40,000 from NYSEDA to fund the Westchester Solar Initiative Project.

Energize Advisory Committee – Tom Bregman provided status of the Energize residential program reporting a December with healthy activity. Tom described the realignment of some staff to support the commercial program.

New Member Update - Joe Del Sindaco provided an update on membership status. Mount Kisco passed a resolution to join EIC but must hold a public hearing before applying for membership. Westchester County Chief of Staff will mail letters to announce QECB Energize Finance Westchester Project to help generate interest from other Westchester Municipalities.

Commercial Program - Bob Fischmann reported progress with fifty leads and 9 hard leads.

Finance Advisory Committee – Joe Del Sindaco provided updates on the financial status of Energize. Projection of \$8M in commercial financings is not looking possible, additional funding will need to be secured by July, 2014.

Contractor Training – Tom Bregman described the MPP Training Session scheduled for January 14, 2014, for multi-family contractors. Approximately 13 are contractors expected to attend.

Westchester Solar Initiative Grant – Nina Orville took the Board through a presentation of the Westchester Solar Initiative, WSI, describing the approach, timeline and steps to promote PV installations and goals.

On a motion by Mike Gordon and seconded by Mary Beth Kass, at 8:22pm it was unanimously agreed to suspend the regular meeting and reconvene in Executive Session for the purpose of contract negotiation.

On a motion by Kathryn Hoenig and seconded by Mary Beth Kass and having the discussion of contract negotiation completed, the Board unanimously agreed to return to the regular meeting at 9:17pm.

On a motion by Kathryn Hoenig and seconded by Mary Beth Kass, there being no further business before the Board the meeting ended at 9:18pm.

The next meeting of the EIC Board of Directors will be held on February 6, 2014, at 6:15pm at the Town of Bedford's Offices at 425 Cherry Street.

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
PERSONAL SERVICES AGREEMENT**

1. Agreement Number: 35707
2. Contractor: Energy Improvement Corporation
3. Contact: Tom Bregman
4. Project Period: October 1, 2013 - September 30, 2014
5. Total Amount of Award: \$50,000

6. Commitment Terms and Conditions:

The 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; and
- Exhibit D, Prompt Payment Policy Statement.

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

Energy Improvement Corporation

NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

By 

By _____

Name Mark Thielking

Jeffrey J. Pitkin
Treasurer

Title Chairman Board of Directors

STATE OF)
New York) SS.:
COUNTY OF)
Westchester)

On the 12th day of February in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Mark Thielking, 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(s), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the document.

Nina Kellogg
Notary Public

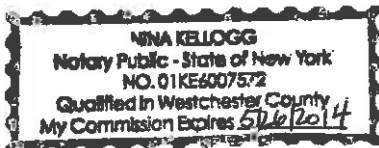


EXHIBIT A

STATEMENT OF WORK Energy Improvement Corporation Energize New York

The Energy Improvement Corporation (EIC) will serve as the prime contractor and Program Administrator for the Energize New York (ENY) community based energy efficiency program (Program). The ENY Program covers 16 municipalities in the northern part of Westchester County, and works with the non-profit Northern Westchester Energy Action Consortium (NWEAC). Starting in January 2011, the Program launched a set of program support services with funding support from the Department of Energy (DOE) Topic 2 award and the DOE Topic 1 award through NYSERDA. The full roster of program support services was initiated in a phased schedule, beginning with the Energize Bedford Pilot. Program support services expanded into additional NWEAC municipalities, and the Program has now launched into 15 municipalities. This Agreement will go towards the project objectives detailed below so ENY can continue providing support services as funding from the DOE and NYSERDA runs low.

A. HIGH LEVEL PROJECT OBJECTIVES

The ENY Program will enlist a broad cross-section of resources to advance a sustaining effort to promote residential energy efficiency through home energy assessments and energy efficiency upgrades. The NWEAC geography has a total population of approximately 250,000 with close to 60,000 1- to 4- family homes. The Program's primary goal is to increase the number of NYSERDA Home Performance with ENERGY STAR (HPwES) energy efficiency upgrades in the target geography. ENY will accomplish this goal by increasing the number of home energy assessments performed and dramatically improving conversion ratios by overcoming known barriers to action using innovative community-based marketing, local homeowner support, creative IT and Web services, and innovative financing solutions. ENY's combined goal for their DOE and NYSERDA contracts was to complete 1,485 upgrades throughout NWEAC by the end of Year 3 (3Q 2013). At the end of 2Q 2013 386 retrofits have been reported. This \$50,000 grant will go towards assisting ENY in achieving the goals set forth in the DOE and NYSERDA grant.

B. PROGRAM ADMINISTRATION AND MANAGEMENT

The Program shall be administered and managed by a full-time Director, Tom Bregman, who will provide management, oversight and administration of the Agreement and the Program. The Director and his staff operate within the Energy Improvement Corporation, a NYS Not for Profit Local Development Corporation. The Director will have the following Program management and leadership responsibilities:

- Serve as liaison between NYSERDA and Consortium members
- Serve as a liaison and point of contact between other participating organizations (e.g. trusted sources) and Consortium members
- Monitor and review monthly invoices and Program expenses

- Help to coordinate ENY marketing strategies with NYSERDA's statewide marketing efforts
- Manage Program staff, contractors and volunteers
- Assist Consortium members with Program implementation and support, while ensuring compliance with NYSERDA's Agreement and program design, the DOE grant, state laws and regulations and federal laws and regulations

C. PROJECT SCOPE

1. Facilitate HPwES project completions through the duration of the grant

- Increase number of project completions beyond the 386 that have already been achieved at the close of Q2 2013
- Maintain a full roster of program support services to all NWEAC communities to facilitate successful audits that lead to project completions

2. Promote Use of Statewide GJGNY Consumer Loan

The Program will continue to leverage the NYSERDA Smart Energy Loan and On Bill Recovery financing products by promoting them in all of ENY's marketing and outreach campaigns.

- Wrap GJGNY and HPwES program elements into a local community brand
- Promote homeowner access to GJGNY financing

3. Pursue Additional Financing Strategies and Revenue Sources

Finance Strategies

The ENY Program will market NYSERDA's Smart Energy Loan and On Bill Recovery financing products. However, to extend financing to homeowners not fully served by these loan products, to create a potential source of long term Program revenue, and to leverage the benefits of a property attached finance mechanism, ENY will market its Property Assessed Clean Energy (PACE) product offered through EIC to eligible 1-4 family homes owned by corporate entities.

Additional Revenue

As ENY actively offers PACE financing to members that make up the Energy Improvement Corporation, revenue will be generated through fees and interest payments on loans to replenish the pool of capital and create an income stream for the Program. Specific revenue streams are dependent on the timing and market adoption of the PACE offering.

4. Continue Strategic Marketing / Leverage Community Trusted Sources to Drive Demand, Build Market and Increase Conversion Rates / Homeowner Support

A strategic marketing plan has already been developed in concert with ENY's marketing consultant, providing a wide range of informative materials on home energy assessments and energy efficiency upgrades, innovative social and community-based marketing strategies, Program branding and naming support, community outreach guidance, and other services. The Program will be implemented by the Program Director, paid staff, the direct help of trusted and trained community-based resource groups and volunteers, informed individuals, and owners of retrofitted homes who are willing to share their experiences. ENY shall continue to provide the following:

- Keep up to date list of "Comfort Corps" contracts and conduct homeowner surveys to maintain contractor rating index
- If funding is available, offer homeowners the option to receive a consultation or in home visit from the Energy Coach to review contractor work scopes
- Develop case studies on homeowners who have completed projects, including actual pre and post utility bill analysis where appropriate
- Continue working with NYSERDA and referring homeowner concerns as needed

5. Program Data Management

NYSERDA will provide ENY staff with access to Home Performance with ENERGY STAR program data, including:

- Monthly retrofit and financing production metrics
- Permission rights to NYSERDA program database, targeting ENY catchment areas

ENY may use Program data solely for the purposes of internal planning and DOE reporting requirements. ENY may not release project data or customer information without customer and/or NYSERDA consent.

The Contractor shall provide a list of Approved Users to NYSERDA. Each Approved User will be provided a unique user name and password which is not to be shared with anyone. The Contractor and other Approved Users are permitted to use project data and customer information to contact individual customers regarding the status of their application and the progress of the work. The Contractor and each Approved User agree to only use aggregate HPwES and GJGNY program data for the purposes of internal planning, HPwES and GJGNY program promotion, and reporting.

Information in the HPwES database is confidential and constitutes personal information pursuant to Article 6-A of the Public Officers Law. The Contractor and Approved Users may not release individual project data or customer information unless required by law or after receiving customer and NYSERDA consent. Releasing individual project data or customer information without customer and NYSERDA consent will result in termination of user privileges.

Exhibit B
General Contract Provisions, Terms and Conditions

The New York State Energy Research and Development Authority ("NYSERDA") hereby offers to retain the Contractor on the terms and conditions set forth in this Agreement, to perform the services set forth in the Statement of Work attached hereto as Exhibit A and made a part hereof (the "Work").

1. Term. This Agreement will be deemed to be effective as of October 1, 2013 and the Work will be provided by the Contractor for the period shown in Item 4 of page one of the Agreement.
2. Compensation. NYSERDA will compensate the Contractor at the rate(s) indicated in Exhibit A for services rendered in performance of the Work hereunder. In no event shall the total cost to NYSERDA for the performance of Work under this Agreement exceed the amount shown in Item 5 of page one of the Agreement. The Contractor may submit monthly invoices for Work performed during the previous monthly period, and NYSERDA will pay the amount of such invoices in accordance with and subject to its Prompt Payment Policy Statement, a copy of which is attached hereto as Exhibit D. The Contractor shall be notified by NYSERDA in accordance with Section 504.4 (b)(2) of such Exhibit D, of any information or documentation not included with such invoice.
3. Release by the Contractor. The acceptance by the Contractor of final payment with respect to Work hereunder shall constitute and operate as a release by the Contractor in favor of NYSERDA for any and all claims against NYSERDA that the Contractor might otherwise have or assert for Work, materials or equipment furnished by the Contractor and for services rendered by the Contractor pursuant to or in connection with the Work for which such final payment is made. Receipt of the Advance by Contractor shall not be deemed final payment.
4. Representations. The Contractor represents and warrants to NYSERDA that:
 - a. it shall perform the Work in an efficient and expeditious manner with high diligence and skill in accordance with the best professional standards;
 - b. it has no, and shall not obtain during the course of this Agreement any, interest, financial or otherwise, direct or indirect, nor is the Contractor engaged in any business or transaction or professional activity, nor has the Contractor incurred any obligation of any nature, which is in substantial conflict with the rendering of services under this Agreement; and
 - c. 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.
5. Rights to Data. All reports, records, documents, and other papers and materials prepared in connection with this Agreement, and all Work, and the product of all Work performed hereunder, shall be the property of NYSERDA, and the Contractor shall not use or disclose same except upon the prior written approval of NYSERDA. The Contractor may not take any action, including signing any agreement, that has the effect of restricting or limiting in any way NYSERDA's rights unless it receives written approval from NYSERDA.
6. Publicity. Under no circumstances shall the Contractor issue, or permit to be issued, any press release, advertisement or literature of any kind, or conduct or permit to be conducted any interview or news conference referring to the Work, except upon prior written approval of NYSERDA.

7. 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.

8. Assignment. 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.
9. Maintenance of Records. The Contractor shall keep, maintain and preserve throughout the term of this Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts and records pertaining to the performance of this Agreement. NYSERDA will 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.
10. 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.
11. Insurance. 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.

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.

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, 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.

12. 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.

13. Compliance with Applicable Laws. In the performance of the Work hereunder, the Contractor shall comply with all applicable Federal, State and local laws and regulations, including, without limitation, the provisions set forth in Exhibit C attached hereto and made a part hereof. Further, it is the intent and understanding of the parties hereto 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. Accordingly, every such provision is deemed to 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. The references to particular laws of the State of New York in this paragraph, in Exhibit C and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such paragraph, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

14. 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 Section hereof entitled Compensation 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).

(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.

(d) 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.

(e) 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.

15. Notices. 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

Energy Improvement Corporation

Name: Thomas Bregman
Title: Director
Address: French Hill Elementary School, 2051 Baldwin Road, Suite 107
Yorktown Heights, NY 10598
Email address: tom@energizeny.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.

16. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor, 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

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, NYSEDA 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 NYSEDA 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 NYSEDA with a completed Form ST-220-CA.

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

NYSEDA 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).

REVISED 5/2012

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.¹

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

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

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

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

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

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

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

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

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

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

¹ 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>

(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.