Attachment 5 – Sample Purchase Order

Date

Contractor Name ("Contractor" or "Vendor")
Contractor Address
City, State Zip
Attn: Contractor Contact

Subject: BioFuel Station Project

For the Contractor Name Biofuel Station Project located at, Contractor Address. The incentive will be paid upon completion of all deliverables listed in the attachments to this Contract and in PON 2290. Final payment will be calculated as described in PON 2290 and in Exhibit A, Statement of Work, attached hereto and made a part hereof.

The incentive shall be paid upon receipt and approval of invoices for deliverables as defined in PON 2290 and subject to the limitations contained in the attachments to this Contract. Such invoices shall provide documentation of evidence that costs have been incurred and are consistent with the eligible costs listed in section 1.3 of Exhibit A. Payment shall be made to the Vendor in accordance with the terms of Exhibit C, Prompt Payment Policy Statement, attached hereto.

This Contract expires 12 months from the date on this Contract. NYSERDA will not make payment on an expired Contract.

Please send Invoices to: NYS Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203-6399, Attn: David McCabe

By its signature below, the Contractor agrees to all terms, conditions and obligations set forth herein and in the attachments hereto.

TOTAL COST NOT TO EXCEED: $XX,XXX

[CONTRACTOR]

By _____

Name _____

Title _____

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By _____
Jeffrey J. Pitkin
Treasurer

RE: Contract ID: xxxxx

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
Biofuel Station Program

1.0 PROGRAM REQUIREMENTS

1.1 Eligibility Requirements

The Biofuel Station Program ("Program) is open to any entity that owns or operates one or more retail fueling station that is registered with the New York State Department of Tax and Finance to sell gasoline or diesel fuel to the general public and that is capable of accepting major credit cards as a form of payment for fuel. The entity that applies must be the entity that will own the biofuel equipment and must have the legal authority to make improvements to the site at which the Biofuel dispenser(s) will be located. If the entity leases the property or does not own the property, it must prove it has the right under the lease agreement to make improvements to the property. These rights should be in place for a minimum of 6 years going forward from the time the Program funds are dispersed to the Contractor. If the Contractor is a franchisee, it must present documentation of its franchise agreement.

Applications must be received prior to the purchase of equipment or commencement of equipment installation to be eligible for Program funding. In all cases any work started or equipment purchased before May 7, 2011 is not eligible for Program funding.

1.2 Program Incentive

NYSERDA will provide a reimbursement incentive of 50 percent of the eligible costs (defined in Section 1.3), up to $50,000 per site, for a Biofuel Station Project (defined in Section 1.5).

There is no cap on the total amount of funds that any one entity can receive. Applications from entities that own or operate multiple fueling sites in New York State are encouraged to apply, but no single facility or site can receive more than $50,000.

1.3 Eligible Costs

Biofuel equipment eligible for funding under this Agreement includes storage tanks, cleaning of existing tanks, piping, dispensers, concrete tank pad, concrete drive mat, pea stone, fire suppression system, sump pumps, veeder root system, card reader systems for the sale of the biofuels, point of sale system including associated electrical work, paving over areas that needed to be torn up to allow for the installation of piping, site work directly related to the tank, piping and dispenser installation and signage kits.

NYSERDA will not reimburse Contractor for site work not directly related to the installation of the equipment, nor will NYSERDA attribute such costs to Contractor's required50% cost-share. Examples of work that are not eligible for reimbursement include upgrades to buildings; general site paving; general aesthetic site work such as flower beds; and any other equipment not directly related to the Biofuel equipment required to store, dispense, and sell the Biofuels.

At the completion of the project, the Contractor shall provide detailed cost information for all equipment and labor including the biofuel equipment. The Contractors shall make installing contractors and equipment suppliers aware of this requirement, as documentation is most easily developed throughout the procurement and construction process. Only eligible items can be used to

meet the Contractor's required 50% cost-share contribution. The Contractor shall provide documentation to justify costs.

1.4 Recapture Provision

The Contractor shall offer the Biofuel made available as a result of this Program for sale to the public (further described in Section 1.5, Station Requirements) for a minimum of six years from the date the dispenser(s) are operational. If the Biofuel is offered for sale for any period less than six years, or any of the requirements in Section 1.5 below are not met, the funds are subject to recapture. The recapture amount will be based upon the proportion of time the fuel was actually available for sale against the minimum amount of time, six years, that the fuel was obligated to be available for sale. (See the formula following.)

$$\text{Recoupment payment} = \frac{\text{Total incentive paid x number of years biofuels available}}{\text{6 years}}$$

1.5 Station Requirements

- A Biofuel Station Project must be comprised of: one or more above- or below-ground tanks capable of storing a minimum of 2,000 gallons of fuel; one or more dispenser systems for dispensing either E85 Ethanol or B20 Biodiesel; and a card reader/payment system that accepts major credit cards for sale of the fuel to the general public.

  Code Compliance: The Contractor shall ensure all installations of Biofuel equipment must comply with applicable local and State Building and Fire Codes or have a waiver from the local authority having jurisdiction ("AHJ").

- First Responder Preparation: The Contractor shall ensure that the local first responders have the proper fire fighting foam equipment to respond to an E85 fire or other incident related to the storage or dispensing of the Biofuel. This includes purchasing special fire fighting foam for the local responders, if needed. The cost of the foam is an eligible item for reimbursement under the Program. A letter from the local fire chief stating they have the necessary equipment is required as part of the stations invoice to NYSERDA.

- Signage. The Contractor shall install proper signage to notify the public of the availability and price of the Biofuel at the site receiving funds through the Program. Signs should be placed on the marquee of the fueling facility, however if such placement is prohibited by local jurisdiction, another appropriate sign, approved by NYSERDA, must be prominently displayed on the property, in order to provide uniformity.

  A signage kit for E85 comprised of items such as pump toppers, decals, and banners, developed by Growth Energy, must be used at the site. These items can be viewed at the following site. www.Ethanolretailer.com/store/FREE_Amer.Ethanol_Station_Kits.To purchase these items, contact Growth Energy by the information listed below. Ask for the New York/NYSERDA Pump Imaging Package. These station kits are usually complimentary with the exception of the purchase of one of the three signs offered plus shipping cost. The minimal cost of these items is an eligible item for reimbursement under PON 2290. Station owners and operators are also encouraged to make promotional information about Biofuels available as take-aways for the public. For additional information on the signage kit please contact the Market Development Coordinator at:

  Growth Energy
  Sara Courter
  PH: 402.932.0567 ext 211
  order@growthenergy.org

Signage kits for Biodiesel refueling facilities can be purchased from the National Biodiesel board. The link to preview these kits is: **www.allthingsbiodiesel.com/NYSERDA**
For additional information on the signage kit please contact Doug Whitehead at:

Doug Whitehead
Director of Operations
National Biodiesel Board
PO Box 104898
Jefferson City, MO 65110-4898
PH: 800-841-5849
dwhitehead@biodiesel.org

- Sale of Biofuel: The Contractor shall offer the Biofuel for sale on a continual basis, without interruption, for at least 12 hours per day for a period of six years. The Biofuel must be offered at the lowest possible retail price to the general public. Contractors need to keep in mind the significant public investment in these upgrades. Every reasonable attempt must be made to keep the gross margin for E85 no higher than the gross margin the station charges for premium gasoline and B20 Biodiesel no higher than the gross margin the station charges for premium diesel. Stations are subject to NYSERDA audits regarding pricing margins. Stations that are found to be charging higher than allowed margins will be notified by NYSERDA in writing. Any stations that consistently continue to charge higher margins on E85 will be subject to recoupment of incentive funds.

- Public Announcement: The Contractor shall announce the opening of the site through the local media, local automobile dealerships, and other appropriate venues, and schedule events to highlight the availability of the Biofuel. All announcements, press releases, and advertisements must be approved by NYSERDA prior to release and must include a statement pre-approved by NYSERDA noting support given by NYSERDA through the Program.

2.0 DEFINITIONS

2.1 Biodiesel

Biodiesel is a domestic, renewable fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of ASTM D 6751 as updated and revised. Biodiesel can be used in any concentration with petroleum based diesel fuel in existing diesel engines with little or no modification. Biodiesel is produced by a chemical process which removes the glycerin from the oil. Blended biodiesel is a blend of biodiesel fuel meeting ASTM D 6751 with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend. Download the Handling and Use Guidelines for Biodiesel at the National Renewable Energy Laboratory website.
http://www.nrel.gov/vehiclesandfuels/npbf/pdfs/43672.pdf

Additional information about Biodiesel including how and where to purchase the fuel can be found on the National Biodiesel Board website. http://www.nbb.org/

2.2 E85

E85 is a blend of typically 85% denatured ethanol [ethyl alcohol (C2H5OH) containing 5% hydrocarbon denaturant] and 15% hydrocarbon by volume. The hydrocarbons must meet all applicable State and Federal requirements. Total hydrocarbon volume must range from 15% to 30% of the total volume of the E85 based on information provided at http://www.afdc.energy.gov/afdc/ethanol/specs.html . Such specifications are incorporated by

reference, are available upon request, and located on the Growth Energy Market Development website at www.ethanolretailer.com.

2.3 Completed Facility

NYSERDA will determine a site is a completed facility based on the following: all necessary equipment has been installed, all suppliers and contractors have been paid in full, all necessary State and local permits have been received, appropriate signage has been installed, a card reader system that takes major credit cards is activated, the station is open to the general public, and additional requirements for fueling stations as described in Section 1.5. All facilities are subject to inspection by NYSERDA's Consultant to determine if the Biofuel Station Project is completed. The facility must meet all conditions set forth in Section 1.5.

2.4 NYSERDA Consultant

NYSERDA's consultant for this Program is Bergmann Associates, P.C. and the contact person is Gary Flisnik. Gary's contact information is listed below:

Bergmann Associates, P.C.
Attention: Gary Flisnik
200 First Federal Plaza
28 East Main Street
Rochester, New York 14614
Phone: 585-232-5137 ext. 346
Fax: 585-232-4652
E-mail: gflisnik@bergmannpc.com

3.0 REPORTING REQUIREMENTS

3.1 The Contractor must notify NYSERDA when it believes it has a completed facility (see Section 3.3). NYSERDA will assign its Consultant to perform a final site inspection to ensure that the facility is fully operational, that it meets all Program requirements; and that all the eligible costs are documented and paid in full. If the facility meets all of the necessary requirements, the Consultant will forward the invoices, proof of payments, and documentation to NYSERDA. After NYSERDA reviews the post-construction inspection report and all required documentation is in place, NYSERDA will request an invoice from the Contractor. The invoice will be submitted and the authorized funding for that facility will be paid to the Contractor. Facilities must be completed within one year of the execution of the Purchase Order Agreement. Extension requests for the Purchase Order Agreement must be submitted to NYSERDA in writing 30 calendar days prior to the Purchase Order Agreement expiration date. Extensions may be granted or withheld at NYSERDA's sole discretion. The Contractor shall use this checklist and shall ensure the following information will be available at the final site inspection:

___ General Site Plan
___ Description of work performed
___ Tanks installed under the project (both biofuels and non-biofuels): Capacity/Fuels Stored
___ Dispensers: Type and number of each including fueling points (number of hoses per dispenser)
___ Pumps: Type
___ Piping: Type
___ Fire suppression system: Type
___ Signage: Listing of required signage in place
___ Building permit and certification of occupancy
___ Waivers/variances received
___ Written certification by the local fire company that E-85 compatible Fire Fighting Foam is on hand and available.
___ Promotional information availability

___ Description of Public Announcement
___ Contractor name
___ Construction start/completion dates
___ Petroleum Bulk Storage Certificate or Revised Application
___ Contractor's Statement of Completion
___ Tank manufacturer checklist
___ Cost Breakdown for all work, including Quotations, Invoices and Records of Payment

At the completion of the project, detailed cost information must be provided for all equipment and labor, including the biofuel equipment (see Section 1.3).

3.2 The Contractor shall submit semi-annual reports to NYSERDA and the Consultant due on January 31 and July 31 after the dispenser(s) are operational, detailing the amount of Biofuel sold and the average price of the fuel sold during the previous six months. The Contractor shall submit reports for a period of six years after the facility is completed, and shall include information on the operation of the facility and equipment installed under this Agreement. If the Contractor fails to submit reports, funds awarded will be subject to the recapture provisions described in Section 1.4 above.

EXHIBIT B

REVISED 9/06

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts)

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

1. NON-DISCRIMINATION REQUIREMENTS. In accordance with 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, age, disability 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.

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. 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 B, the terms of this Exhibit B shall control.

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. ADDITIONAL TERMS AND CONDITIONS. The following terms and conditions shall apply to this Purchase Order:

(a) Release by the Contractor. The acceptance by the Contractor of final payment pursuant to this Purchase Order shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

(b) Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Purchase Order and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to the performance of the Purchase Order, including without limitation, all bills, invoices, payrolls, subcontracting efforts 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.

(c) Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Purchase Order and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to paragraph (b) hereof. Any payment made under the Purchase Order 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.

(d) 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 Purchase Order. The obligations of the Contractor under this clause shall survive any expiration or termination of this Purchase Order, and shall not be limited by any enumeration herein of required insurance coverage.

(e) Insurance

(i) The Contractor, at no additional 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) 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.

(ii) The types and amounts of insurance required to be maintained under this Article are as follows: 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.

(iii) Delivery of Policies; Insurance Certificates. Prior to commencing work on the project, 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 payment by NYSERDA pursuant to Section 3.1 of Exhibit A, Statement 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.

(f) Termination. This Purchase Order may be terminated by NYSERDA at any time during the term of this Purchase Order, with or without cause, upon 30 days prior written notice to the Contractor. In such event, compensation shall be paid to the Contractor for allowable costs incurred prior to the effective date of termination.

(g) Independent Contractor. The status of the Contractor under this Purchase Order shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor and its subcontractors, and their respective officers, agents, employees, representatives and servants, shall at all times during the term of this Purchase Order conduct themselves in a manner consistent with such status and by reason of this Purchase Order 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.

(h) Laws of the State of New York. The Contractor shall comply with all of the requirements set forth in this Exhibit B. References to particular laws of the State of New York in this Exhibit B and elsewhere in this Purchase Order, however, are not intended to be exclusive and nothing contained in such Exhibit and Purchase Order shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

(i) Executory Clause. In accordance with Section 41 of the New York State Finance Law, NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds appropriated and available under this Agreement.

Exhibit C

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.