



Fuel NY Portable Emergency Generator Program
Program Opportunity Notice (PON) 2924

PROGRAM SUMMARY

The New York State Energy Research and Development Authority (NYSEERDA) is seeking applications from eligible retail motor fuel outlets (Stations) for the Fuel NY Portable Emergency Generator Program (Program). Program eligibility is limited to Stations in the downstate region affected by Section 192-h of the New York State (NYS) Agriculture and Markets Law, Alternate Generated Power Source at Retail Gasoline Outlets. Through the Program, NYSEERDA will provide participating Stations with portable emergency generators and associated services during a declared energy or fuel supply emergency (Declared Emergency).

CONTACT INFORMATION

For technical questions please contact:

NYS Energy Research and Development Authority
PON 2924 Administrator
C/O ARCADIS
855 Route 146, Suite 210
Clifton Park, NY 12065

Phone: Toll free 855-452-4859
Email: PEGprogram@nyserda.ny.gov

For contractual questions please contact:

Venice Forbes, Contracts Department (518) 862-1090 x3507 or venice.forbes@nyserda.ny.gov

APPLICATION SUBMISSION

Applications are accepted online [here](#).

For assistance with the Application please call 855-452-4859

*Incomplete or inaccurate applications will not be accepted. Faxed applications will not be accepted. If changes are made to this solicitation, a notification will be posted on NYSEERDA's website at www.nyserda.ny.gov

I. INTRODUCTION

Many Stations in the downstate area lost electric power as a result of damage caused by Superstorm Sandy. This loss of power contributed to widespread disruptions in the gasoline supply that impacted public safety and well-being as well as economic activity in the region. In response to this problem, Governor Cuomo signed legislation requiring strategic Stations in the downstate region to install wiring and a transfer switch to enable the use of backup generators and to develop a plan to secure an emergency generator within a set period of time following a Declared Emergency.

New York State enacted the legislation as an amendment to the Agriculture and Markets Law by adding Section 192-h, entitled, *Alternate Generated Power Source at Retail Gasoline Outlets*. In addition, an amendment to Section 1854 of the Public Authorities Law has authorized NYSERDA to create a program to assist Station owners with implementing these requirements. See Attachment A.

NYSERDA has established this Program to provide, deploy and install portable emergency generators (PEGs) in the event of a Declared Emergency. In the event that an insufficient number of PEGs is available to meet required emergency deployment, NYSERDA, in consultation with the NYS Commissioner of Homeland Security and Emergency Services, will prioritize such Stations as are most essential to public safety and well-being during the Declared Emergency. Participation in the Program through NYSERDA is voluntary and other alternatives are available to Stations to ensure compliance with Section 192-h. Participation in the Program provides Stations with compliance to Section 192-h of the NYS Agriculture and Markets Law, even should an insufficient number of PEGs be available to meet required emergency deployment.

II. PROGRAM

OVERVIEW

During a Declared Emergency, PEGs will be systematically deployed to participating Stations and connected to the Station's existing transfer switch to provide an emergency power supply. The Program does not guarantee deployment of a PEG to a participating Station during a Declared Emergency. However, participation in the Program does ensure compliance with Section 192-h of NYS Agriculture and Markets Law.

Stations receiving a PEG will be charged a rental fee of \$1,500 per week, or portion of a week. The rental fee will cover deployment costs, connection to the transfer switch by a qualified electrician, routine maintenance during the rental period, and refueling service. The cost of diesel fuel for the PEG will be invoiced separately at market cost. No rental fees will be charged to participating Stations which do not receive a PEG during a Declared Emergency. Further details may be found in the terms and conditions of the Program Contract.

APPLICANT ELIGIBILITY REQUIREMENTS

The New York State Department of Agriculture and Markets (Ag & Markets) has identified and notified eligible Stations that are known to be required to comply with Section 192-h of the NYS Agriculture and Markets Law. Please visit <http://stormrecovery.ny.gov/fuel-ny> to see if your Station is located in a designated strategic area.

Eligible Stations are located in the downstate region (including Nassau, Suffolk, Rockland, Westchester, Bronx, Kings, Queens, Richmond, and New York counties); and meet the following criteria:

- The Station must be required to comply with Section 192-h of the NYS Agriculture and Markets Law.
- The Station must have a manual transfer switch installed by a licensed electrician and be registered with Ag & Markets.

Applicants are limited to the owner or franchisee, or a duly authorized representative that has responsibility for regulatory and legislative compliance and has the authority to execute agreements required by this Program.

ROLES AND RESPONSIBILITIES

PARTICIPATING STATIONS:

Participating Stations will be required to assist NYSERDA in developing a Site Plan that will include but is not limited to:

1. Physical location of Station.
2. Estimated PEG size/capacity.
3. Electrical connection type/requirements.
4. Site access requirements.
5. Location and technical specifications of electric transfer switch.
6. Staging location for the PEG during a Declared Emergency.
7. Length and specifications of cable needed to connect PEG to electric transfer switch.
8. Name and contact information for responsible person(s) with signature authority able to receive delivery of PEG, accept refueling services, and acknowledge the removal of PEG.

The Station will be responsible for initiating the request for a PEG once the following four criteria have been met:

1. An energy or fuel supply emergency has been declared for the area that the Station is located.
2. The Station has lost power.
3. The site is clear of any hazards that would prevent the PEG from safely being delivered, located, and connected in accordance with the Site Plan.
4. A responsible person named in the Site Plan is on site and will be available to receive and sign for PEG delivery.

NYSERDA:

NYSERDA, through its contractor(s), may provide delivery of the appropriate sized PEG to the affected Station. Upon delivery to the site and placement in the location designated in the Site Plan, NYSERDA, through its contractor(s), will provide the following services:

1. Connect the PEG to the existing electric transfer switch at the Station.
2. Start up the generator, ensuring that the PEG is providing power to the Station.
3. Refuel the PEG while the PEG is deployed at the Station.

4. Maintain records of delivery of the PEG, amount of diesel fuel supplied to the PEG, any damage that was sustained to the PEG, and record of when the PEG is moved off-site. These records will be used as the basis for billing the individual Stations by NYSERDA.
5. Provide maintenance technicians to perform routine maintenance during PEG operations and if necessary emergency maintenance in the event of a PEG mechanical failure.
6. Pick-up of the PEG after it has been determined that the PEG is no longer required.

III. PROGRAM PARTICIPATION

Contracting Process

The following provides a general overview of the process that will be followed by all parties for program participation:

1. Applicant must complete and submit the Application Form available [here](#).
 - a. Incomplete or inaccurate applications will not be accepted.
2. NYSERDA reviews the application for completeness and verifies eligibility for Program participation.
3. NYSERDA will visit the site and work with the Applicant to develop the Site Plan.
4. The Site Plan will be finalized and appended to the Program Contract.
5. Program Contract will be submitted to the Applicant for signature and return to NYSERDA.
6. NYSERDA will fully execute the Program Contract, return a copy of the Program Contract to the Station, and Program enrollment will be finalized.

NYSERDA reserves the right to inspect any site during regular business hours to verify the Applicant's compliance with the requirements of this Program.

Deployment Process

Should a Declared Emergency occur, NYSERDA requires the Station to have an authorized person at the Station to receive delivery of the PEG. This individual will be responsible for inspecting the PEG and all ancillary materials and equipment with NYSERDA's contractor to ensure that the PEG was not damaged prior to delivery to the Station. Additionally, the authorized person will be required to sign for the PEG and all ancillary materials and equipment.

During the Declared Emergency, NYSERDA will provide refueling services for the PEG as necessary. Refueling delivery will require the signature of an authorized on-site person. At the time the PEG is picked-up, an on-site authorized person will be required to inspect the PEG and document any damage sustained during the rental period and to go over the checklist of all materials and ancillary equipment that were provided to ensure that all is returned. Additional details on the roles and responsibilities of NYSERDA and the Station will be outlined in the Program Contract.

In the event that the PEG has a mechanical failure during the period of deployment, the Station will be responsible for notifying NYSERDA. NYSERDA will then dispatch its contractor to fix the PEG or if necessary replace the PEG with an available unit. Participating Stations are relieved from risks of loss or

damage to the PEGs and ancillary materials and equipment during the period of transportation and installation. Participating Stations are responsible for loss or damage to the PEGs and ancillary materials and equipment during the entire time the products are in the possession of the Station, including but not limited to damage resulting from failure to comply with the Program Contract or Station Site Plan, and theft.

During a Declared Emergency, a Station receiving a PEG will be required to operate the PEG 24-hours a day regardless of the Station's normal operating schedule. Once the PEG has been delivered to the site and started, it will not be shut down and restarted for any reason except for refueling or routine maintenance by NYSERDA's contractor or mechanical problems if any should arise.

Invoice Process

Once a PEG has been deployed, the receiving Station will be required to pay NYSERDA \$1,500 per week, or portion of a week. At the time of refueling, the gas Station will be required to sign for the amount of fuel that was delivered to the PEG. Should excess fuel appear to have been consumed or lost, NYSERDA will investigate and charge the Station for any unwarranted use or loss of fuel. The rental period duration will be determined based on Station Receipt of Delivery and Station PEG Release Forms, both signed by an authorized person from the Station. Within 45 business days of the last date of the Declared Emergency deployment, each individual Station will be billed by certified mail for the costs incurred. Failure to pay for the invoiced costs will result in NYSERDA turning over the claim to the NYS Attorney General's Office for further action.

IV. GENERAL CONDITIONS

GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes.

The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2) (d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the Applicant wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://nyscrda.ny.gov/~media/Files/About/Contact/NYSERDA-Regulations.ashx>. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

Empire State Development
Division for Small Business
30 South Pearl Street
Albany, NY 12245

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

Empire State Development
Minority and Women's Business Development Division
30 South Pearl Street
Albany, NY 12245

Contract Award - NYSEDA anticipates awarding multiple contracts under this PON. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. NYSEDA may request additional data or material to support applications.

Limitation - This PON does not commit NYSEDA to award a contract, pay any costs incurred in preparing an application. NYSEDA reserves the right to accept or reject any or all applications received, to negotiate with all qualified applicants, or to cancel in part or in its entirety the solicitation when it is in NYSEDA's best interest.

Disclosure Requirement - The Applicant shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five (5) years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When an Applicant is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSEDA after the award of a Program Contract, NYSEDA may exercise its stop-work right pending further investigation, or terminate the Program Contract; the Applicant may be subject to penalties for violation of any law which may apply in the particular circumstances. Applicants must also disclose if they have ever been debarred or suspended by any agency of the United States Government or the New York State Department of Labor.

V. ATTACHMENTS

Attachment A: Amendments to NYS Agriculture and Markets Law Section 192-h, and NYS Public Authorities Law Section 1854.

Attachment B: Sample Application

Attachment C: Sample Agreement

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ATTACHMENT A - Amendment to Part 192-h Legislation

27 Section 1. Legislative findings. The legislature hereby finds and
28 determines:

29 1. In 2011 and 2012, three storms of enormous magnitude - Hurricane
30 Irene, Tropical Storm Lee and Superstorm Sandy - each battered New York,
31 causing billions of dollars of damage to roads, buildings and other
32 infrastructure. The three storms collectively resulted in millions of
33 residential, business and industrial customers of electric utilities
34 losing electricity for extended periods of time.

35 2. Each of these storms caused, among other things, a disruption in
36 the distribution and supply of motor fuels, and in the case of Super-
37 storm Sandy, downstate motorists were unable to obtain routine supplies
38 of fuel for several weeks.

39 3. In addition, temporary fuel distribution disruptions associated
40 with the aftermath of a storm can result in emergency vehicles and
41 responders unable to adequately address ongoing public safety and health
42 emergencies, delay an appropriate response to infrastructure damages
43 caused by a storm, and otherwise disrupt commerce in the state due to
44 difficulty to obtain readily available motor fuels.

45 4. On November 15, 2012, in response to Superstorm Sandy, Governor
46 Andrew M. Cuomo announced the creation of the NYS Ready Commission and
47 tasked it with finding ways to ensure critical systems and services are
48 prepared for future natural disasters and other emergencies. As related
49 to this act, the Commission was tasked with addressing vulnerabilities
50 in the state's energy systems.

51 5. The NYS Ready Commission recommended, among other things, to
52 require that retail gasoline outlets located in strategic locations have
53 on-site back-up power capacity to ensure that such outlets can continue
54 fuel sales operations during a long-term electric outage. The purpose of

1 this act is to ensure that the state is better situated in the future to
2 address the temporary disruption of retail fuel supplies.

3 § 2. The agriculture and markets law is amended by adding a new
4 section 192-h to read as follows:

5 § 192-h. Alternate generated power source at retail gasoline outlets.

6 1. Definitions. When used in this section:

7 (a) "Alternate generated power source" means electric generating
8 equipment that is of a capacity that is capable of providing adequate
9 electricity to operate all dispensers, dispensing equipment, life safety
10 systems and payment-acceptance equipment located at a retail outlet and
11 which can operate independent of the local electric utility distribution
12 system and provide electricity during a general power outage or declared
13 energy or fuel supply emergency to operate the systems named herein.

14 (b) "Chain of retail outlets" means a network of subsidiaries or
15 affiliates, under direct or indirect common control, that operate ten or
16 more retail outlets located in a single downstate region; provided,
17 however that this term does not include any franchisor of the brand of
18 motor fuel being sold at such outlet, except if such franchisor owns
19 such outlet.

20 (c) "Controlled access highway" means every highway, street, or road-
21 way in respect to which owners or occupants of abutting lands and other
22 persons have no legal right of access to or from the same except at such
23 points only and in such manner as may be determined by the public
24 authority having jurisdiction over such highway, street, or roadway.

25 (d) "Diesel motor fuel" means any fuel sold in this state and for use
26 in diesel engines which is commercially known or offered for sale as
27 diesel motor fuel.

28 (e) "Dispenser" means a device located at a retail outlet that is used
29 to pump motor fuel from an above-ground or underground storage tank into
30 a motor vehicle.

31 (f) "Downstate region" means each of the following regions of the
32 state:

33 (i) Long Island region: Includes Nassau and Suffolk counties.

34 (ii) Lower Mid-Hudson region: Includes Rockland and Westchester coun-
35 ties.

36 (iii) New York city region: Includes Bronx, Kings, New York, Queens
37 and Richmond counties.

38 (g) "Evacuation route" means those roads designated by each county
39 that are to be used by motorists in case of a hurricane or other natural
40 disaster.

41 (h) "Franchisor" means a person or company that grants a franchise to
42 a franchisee.

43 (i) "Gasoline" means any fuel sold in this state for use in internal
44 combustion engines which is commercially known or offered for sale as
45 gasoline, whether or not blended with ethanol or other chemicals.

46 (j) "Motor fuel" means any petroleum product, including any gasoline
47 or diesel motor fuel, which is used for the propulsion of motor vehi-
48 cles.

49 (k) "Retailer" means any person who owns, operates, or controls a
50 retail outlet that is subject to the requirements of subdivision two of
51 this section.

52 (l) "Retail outlet" means a facility, including all land, improvements
53 and associated structures and equipment, that dispenses motor fuel for
54 sale to the general public.

1 2. Prewiring and transfer switch. (a) Retail outlets in the downstate
2 region shall be prewired with an appropriate transfer switch for using
3 an alternate generated power source at such retail outlets as follows:
4 (i) each retail outlet in operation on the effective date of this
5 section that is located within one-half mile by road measurement from an
6 exit road on a controlled access highway or from an evacuation route
7 shall be prewired by no later than April first, two thousand fourteen;
8 (ii) each retail outlet beginning operation after the effective date
9 of this section and before April first, two thousand fourteen that is
10 located within one-half mile by road measurement from an exit road on a
11 controlled access highway or from an evacuation route shall be prewired
12 by no later than April first, two thousand fifteen;
13 (iii) each retail outlet that is located within one-half mile by road
14 measurement from an evacuation route that is designated as such after
15 the effective date of this section or within one-half mile by road meas-
16 urement from an exit road that is established after the effective date
17 of this section shall be prewired within one year of such designation or
18 establishment provided that funding is available at such time for the
19 program established under subdivision twenty of section eighteen hundred
20 fifty-four of the public authorities law; and
21 (iv) thirty percent of all retail outlets that are part of a chain of
22 retail outlets, exclusive of those included in subparagraphs (i), (ii)
23 and (iii) of this paragraph, shall be prewired by no later than August
24 first, two thousand fifteen, provided, however, in the case of an exist-
25 ing retail outlet that becomes part of a chain of retail outlets after
26 the effective date of this section and that has been designated by the
27 chain as an outlet comprising such thirty percent, by no later than
28 August first, two thousand fifteen or one year after becoming part of
29 such chain, whichever is later, and provided further, in the case of a
30 retail outlet that is part of a chain of retail outlets, is part of such
31 thirty percent and is subject to paragraph (b) of this subdivision as
32 required in paragraph (b) of this subdivision.
33 (b) Each retail outlet for which a building permit is issued on or
34 after April first, two thousand fourteen for new construction or for
35 substantial demolition and reconstruction, shall be prewired with an
36 appropriate transfer switch for using an alternate generated power
37 source.
38 (c) Such transfer switch and all associated electrical wiring shall be
39 installed, operated, and maintained in compliance with all applicable
40 provisions of the New York state uniform fire prevention and building
41 code or any applicable local building code or standard. Installation of
42 appropriate wiring and transfer switches shall be performed by a
43 licensed electrical contractor.
44 (d) Each retailer shall keep on file at the retail outlet a written
45 statement in a form approved by the department and containing an attes-
46 tation by a licensed electrician that the wiring and transfer switch
47 were installed in accordance with the manufacturer's specifications. In
48 addition, each such retailer shall maintain the wiring and transfer
49 switch in accordance with the manufacturer's specifications.
50 (e) Each retail outlet in operation on the effective date of this
51 section that sold less than seventy-five thousand gallons of motor fuel
52 per month on average for the period they were in operation during the
53 twelve months prior to the effective date shall be exempt from the
54 requirements of this subdivision.
55 3. Emergency deployment. In the event that a declaration of an energy
56 or fuel supply emergency issued by the governor, the county executive of

1 a county in the downstate region or the mayor of a city with a popu-
2 lation in excess of one million inhabitants is in effect, a retailer of
3 a retail outlet within any such county or city for which such declara-
4 tion was issued shall deploy and install an alternate generated power
5 source as follows:

6 (a) For a retail outlet subject to the requirements of: (i) subpara-
7 graphs (i), (ii) or (iii) of paragraph (a) of subdivision two of this
8 section or (ii) paragraph (b) of subdivision two of this section that is
9 located in the downstate region and that is located within one-half mile
10 by road measurement from an exit road on a controlled access highway or
11 from an evacuation route, within twenty-four hours of such declaration,
12 if such outlet is without power at the time of such declaration.
13 Provided, however, if any such outlet loses power following such decla-
14 ration and while the declaration is still in effect, then the alternate
15 generated power source shall be deployed and installed within twenty-
16 four hours of such loss of power.

17 (b) For a retail outlet prewired pursuant to the requirements of
18 subparagraph (iv) of paragraph (a) of subdivision two of this section,
19 within forty-eight hours of such declaration, if such outlet is without
20 power at the time of such declaration. Provided, however, if any such
21 outlet loses power following such declaration and while the declaration
22 is still in effect, then the alternate generated power source shall be
23 deployed and installed within forty-eight hours of the loss of power.

24 3-a. Declaration of energy or fuel supply emergency. Upon issuance of
25 a declaration of an energy or fuel supply emergency pursuant to this
26 subdivision, a county executive of a county in the downstate region or
27 mayor of a city with a population in excess of one million inhabitants
28 who declared such emergency shall promptly notify the president of the
29 New York state energy research and development authority, the commis-
30 sioner of homeland security and emergency services, and impacted resi-
31 dents using such means as are practicable and efficient.

32 4. Plan for alternate generated power source. Each retailer subject to
33 subdivision three of this section shall by the date of the installation
34 of the prewiring and transfer switch required under subdivision two of
35 this section have in place at each applicable retail outlet documenta-
36 tion in a form approved by the department demonstrating a plan to deploy
37 and install an alternate generated power source located at such retail
38 outlet as required under subdivision three of this section. Such plan
39 shall take one of the following forms:

40 (a) a receipt or other documentation showing ownership of such power
41 source;

42 (b) for a retailer subject to paragraph (a) of subdivision three of
43 this section, documentation attesting to participation in the program
44 established under subdivision twenty-one of section eighteen hundred
45 fifty-four of the public authorities law; or

46 (c) a contract with a supplier of such power source providing for
47 deployment and installation of such power source in compliance with the
48 requirements of this section, or other documentation demonstrating the
49 retailer's ability to comply with the requirements of this section,
50 which may include the generator deployment and installation plan of a
51 chain of retail outlets.

52 5. Inspection; recordkeeping; reporting. The commissioner or the
53 commissioner's designee shall be authorized to enter during regular
54 business hours upon a retail outlet subject to the requirements of
55 subdivision two of this section for the purpose of determining compli-
56 ance with the provisions of this section and any rules or regulations

1 promulgated hereunder. All documents required pursuant to subdivisions
2 two and four of this section shall be maintained at the applicable
3 retail outlet and made available to the commissioner or the commission-
4 er's designee upon request. In addition, each retailer of a retail
5 outlet, except for retail outlets granted exemptions under paragraph (e)
6 of subdivision two of this section, shall provide to the department by
7 April first, two thousand fourteen and every two years thereafter writ-
8 ten documentation in a form approved by the department certifying that
9 such retail outlet is in compliance with the requirements of this
10 section, and any other requirement specified by any rules or regulations
11 promulgated hereunder; provided, however, that, for each retail outlet
12 that is part of a chain of retail outlets or to which subparagraph (ii)
13 or (iii) of paragraph (a) or paragraph (b) of subdivision two applies,
14 such written documentation shall be provided to the department within
15 ten days after the date of installation of the prewiring and transfer
16 switch required to be installed under subdivision two of this section
17 and every two years thereafter.

18 6. Rules and regulations; notification of applicability. The commis-
19 sioner shall have the authority, with the assistance of the commissioner
20 of transportation, the commissioner of homeland security and emergency
21 services, the president of the New York state energy research and devel-
22 opment authority, the secretary of state and the chair of the public
23 service commission, to promulgate such rules and regulations as the
24 commissioner shall deem necessary to effectuate the purposes of this
25 section. The commissioner shall by June first, two thousand thirteen:
26 (a) notify by first class mail all existing retail outlets that appear
27 to meet the criteria specified in subdivision two of this section of the
28 requirements of this section and include with such notification any
29 other information deemed necessary by the commissioner, including infor-
30 mation regarding applicability criteria, compliance measures and poten-
31 tial grant assistance; (b) provide a list of all such retail outlets to
32 the governor, the temporary president of the senate and the speaker of
33 the assembly; and (c) post such list on the department's website. If
34 approval of federal mitigation funds or other approved resources for the
35 program established under subdivision twenty of section eighteen hundred
36 fifty-four of the public authorities law occurs after June first, two
37 thousand thirteen, the commissioner shall provide additional notifica-
38 tion of such approval within thirty days. Any retailer of a retail
39 outlet specified on such list shall be subject to the requirements of
40 this section unless he or she provides written documentation to the
41 department by August first, two thousand thirteen proving that such
42 outlet does not qualify, or is eligible for an exemption pursuant to
43 paragraph (e) of subdivision two of this section. The commissioner shall
44 update such list every five years thereafter and notify all new retail
45 outlets that become subject to the requirements of this section;
46 provided, however, that compliance with the requirements of this section
47 is not conditioned on such notification.

48 7. Violations and penalties. Any retailer who violates any provision
49 of this section, or any rule or regulation promulgated hereunder, shall
50 be liable to the people of the state for a civil penalty of up to one
51 thousand five hundred dollars per day for every such violation, to be
52 assessed by the commissioner, after a hearing or opportunity to be heard
53 upon due notice and with the right to representation by counsel. In
54 determining the amount of civil penalty, the commissioner shall take
55 into consideration mitigating factors, such as the availability of gaso-
56 line at the retail outlet, provided that the retailer did not refuse

1 such delivery, and the extent to which the retailer's action or inaction
2 contributed to the violation. Such penalty may be recovered in an
3 action brought by the attorney general at the request and in the name of
4 the commissioner in any court of competent jurisdiction. Such civil
5 penalty may be released or compromised by the commissioner before the
6 matter has been referred to the attorney general. Additionally, after
7 such hearing and a finding that such retailer has violated the
8 provisions of this section, or of any rule or regulation promulgated
9 thereunder, the commissioner may issue and cause to be served upon such
10 person an order enjoining such person from violating such provisions and
11 taking all necessary actions for such person to come into compliance
12 with such provisions. Any such order of the commissioner may be
13 enforced in an action brought by the attorney general at the request and
14 in the name of the commissioner in any court of competent jurisdiction.

15 Notwithstanding the foregoing, such retailer shall not be in violation
16 of subdivision three of this section if he or she is unable to deploy,
17 install or operate an alternate generated power source because of uncon-
18 trollable circumstances, including but not limited to, restrictions
19 imposed by public safety officers to address an emergency situation or
20 that such retail station is made unsafe or unable to operate due to acts
21 of God, fires, floods, explosions or the safety of personnel needed to
22 operate such retail outlet. Additionally, such retailer shall not be in
23 violation of subdivision three of this section if he or she is a partic-
24 ipant in the program established under subdivision twenty-one of section
25 eighteen hundred fifty-four of the public authorities law and a genera-
26 tor is not provided to the retailer due to the prioritization allowed
27 under such subdivision or through no fault of the retailer.

28 8. This section shall not be construed to require any retailer to
29 maintain set business hours in the event of an energy or fuel supply
30 emergency.

31 9. The provisions of this section shall supersede all local laws or
32 ordinances in the downstate region relating to the installation and
33 deployment of an alternate generated power source or any related elec-
34 trical or other equipment at any retail outlet.

35 10. The requirements of this section shall be contingent on the
36 approval of federal mitigation funds or other approved resources for the
37 program established under subdivision twenty of section eighteen hundred
38 fifty-four of the public authorities law. In the event such approval
39 does not occur as of June first, two thousand thirteen, all deadlines
40 with a date of April first, two thousand fourteen shall be delayed by
41 the amount of time such approval is delayed past June first, two thou-
42 sand thirteen.

43 § 3. Section 1854 of the public authorities law is amended by adding
44 two new subdivisions 20 and 21 to read as follows:

45 20. To administer a program, using funds provided for such purpose, to
46 provide a grant based on standards and guidelines established by the
47 authority for costs as follows:

48 (a) for each retail outlet that is in operation before April first,
49 two thousand fourteen and is subject to the requirements of paragraph
50 (a) of subdivision three of section one hundred ninety-two-h of the
51 agriculture and markets law:

52 (i) no greater than ten thousand dollars required to prewire such
53 retail outlet with an appropriate transfer switch for using an alternate
54 generated power source as defined in section one hundred ninety-two-h of
55 the agriculture and markets law; or

1 (ii) no greater than thirteen thousand dollars required to prewire
 2 such retail outlet with an appropriate transfer switch for using an
 3 alternate generated power source as defined in section one hundred nine-
 4 ty-two-h of the agriculture and markets law and purchase such power
 5 source to be permanently affixed at the site.

6 (b) for each retail outlet that is in operation before April first,
 7 two thousand fourteen and is subject to the requirements of paragraph
 8 (b) of subdivision three of section one hundred ninety-two-h of the
 9 agriculture and markets law, no greater than ten thousand dollars
 10 required to: (i) prewire an existing retail outlet with an appropriate
 11 transfer switch for using an alternate generated power source as defined
 12 in section one hundred ninety-two-h of the agriculture and markets law;
 13 and/or (ii) purchase such power source to be permanently affixed at the
 14 site.

15 (c) to the extent funds are available, for retail outlets that become
 16 operational on or after April first, two thousand fourteen, or to which
 17 subdivision two of section one hundred ninety-two-h of the agriculture
 18 and markets law becomes applicable after the effective date of this
 19 subdivision, which grants shall otherwise be subject to the same
 20 amounts, purposes and restrictions as paragraphs (a) and (b) of this
 21 subdivision.

22 The authority may offer any funds provided for such purpose and not
 23 expended to retail outlets that are not required to comply with the
 24 requirements of subdivision two of section one hundred ninety-two-h of
 25 the agriculture and markets law but that seek to participate in such
 26 program.

27 21. To administer a program to establish a pool of generators for
 28 retail outlets as defined in section one hundred ninety-two-h of the
 29 agriculture and markets law. The authority may enter into or facilitate
 30 contracts, lease agreements and any other instruments subject to the
 31 provisions of law, with companies providing generators and generator
 32 services to provide for such pool and the deployment and installation of
 33 generators in the pool. Retail outlets that elect to participate in the
 34 program and are subject to the requirements of paragraph (a) of subdivi-
 35 sion three of section one hundred ninety-two-h of the agriculture and
 36 markets law shall be required only to pay the actual cost of generator
 37 rental, deployment and installation in the event that emergency deploy-
 38 ment is required, provided, that a participant must abide by the terms
 39 of any contract or written agreement covering the rental, deployment and
 40 installation of such generator. In the event that an insufficient
 41 number of generators is available to meet required emergency deployment,
 42 the authority in consultation with the commissioner of homeland security
 43 and emergency services shall prioritize such retail outlets as are most
 44 essential to public safety and well-being during the energy or fuel
 45 supply emergency. When generators from such program are deployed, the
 46 authority shall provide public notice on its website, to the media and
 47 through other means practicable of those retail outlets where generators
 48 are deployed.

49 § 4. The New York state energy research and development authority
 50 shall conduct a study evaluating the efficacy of potential alternate
 51 generated power source provisions at retail gasoline outlets that are
 52 located outside of the downstate region as defined in section 192-h of
 53 the agriculture and markets law. In conducting such study, the authori-
 54 ty shall solicit public input and consult with residents of such region,
 55 local elected officials, emergency preparedness and response experts,
 56 retail gasoline outlet owners and operators, members of other affected

1 industries, experts in the field of energy, and other stakeholders. The
2 study shall consider factors including the risk of energy or fuel supply
3 emergency, potential costs and benefits of alternate generated power
4 source provisions at retail gasoline outlets, other impediments to
5 routine operations that may exist at the retail level due to the fuel
6 supply chain, and the locations of critical infrastructure and other
7 strategic assets. The authority shall by December 15, 2013, issue a
8 report providing its findings and recommendations associated with such
9 study to the governor, the temporary president of the senate and the
10 speaker of the assembly.

11 § 5. This act shall take effect immediately.



Portable Emergency Generator Program Application

I. Applicant Information

Name*

First Name

Last Name

Email*

Phone*

Address*

City*

State*

Zip Code*

Business Name (as it appears on federal tax returns)*

Is the business' Taxpayer Identification Number (TIN) a Federal Employer Identification Number (FEIN) or the Social Security Number (SSN) of an owner? *

FEIN

SSN

Business FEIN *

Do not enter any dashes.

If your business uses a personal Social Security Number, you will be contacted with further instructions when your application is reviewed.

II. Gas Station Information

Gas station name *

Address of gas station

City

County

Zip Code

Did this gas station receive a grant to install a transfer switch through the Gas Station Back-Up Power Program? *

Yes

No

III. Emergency Designation Information

Individuals Authorized to Request a Generator

Applicant must provide contact information for those individuals authorized to request a generator be deployed to the gas station.

Authorized Individual 1 *

Phone *

Authorized Individual 2

Phone

Authorized Individual 3

Phone

Individuals Authorized to Receive a Generator

Applicant must provide contact information for those individuals authorized to receive a generator at the gas station.

Authorized Individual 1 *

Phone *

Authorized Individual 2

Phone

Authorized Individual 3

Phone

Please use phone number format: xxx-xxx-xxxx

IV. Gas Station and Generator Operation

Is the gas station normally open 24 hours a day? *

 Yes No

To participate in the program, the gas station must run the generator 24 hours per day.

V. Gas Station Fueling Services

Indicate the number of dispensers and the total storage capacity for each type of fuel. See below for a photograph of a typical fuel dispenser.



Note: A single dispenser can fuel two vehicles at the same time.

Enter the number of dispensers that only pump GASOLINE: *

Enter the number of dispensers that only pump DIESEL fuel: *

Enter the number of dispensers able to pump both GASOLINE and DIESEL fuel: *

GASOLINE storage capacity (gallons): *

Enter the name of the company that supplies your GASOLINE:

DIESEL storage capacity (gallons): *

Can the gas station dispense a type of fuel other than gasoline or diesel? *

Yes

No

If yes, indicate the type of OTHER fuel provided at station: *

Compressed Natural Gas

Kerosene

Propane

E85

Enter the number of dispensers for OTHER FUEL: *

Compressed natural gas fill speed: *

Slow Fill

Fast Fill

Kerosene storage capacity (gallons) *

Propane storage capacity (gallons) *

E85 storage capacity (gallons) *

VI. Gas Station Community Services

Does the gas station have a convenience store? *

Yes

No

Approximate size of convenience store in square feet. *

Which additional service(s) will be powered by the emergency generator: *

Retail food preparation/kitchen/refrigeration

Other retail refrigeration

ATM

Other:

VII. Certificate of Insurance

In order to participate in this program, a certificate of insurance for at least \$1,000,000 in liability coverage that lists "NYSERDA and the State of New York" as additional insured is required. Please scan and attach a copy of the Certificate of Insurance. The file can be attached using the "Select File" button below.

Scanned Certificate of Insurance

No file chosen

File uploads may not work on some mobile devices.

ATTACHMENT C

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

SAMPLE AGREEMENT

1. Agreement Number: [XXXXXX]
2. Participant: [BUSINESS NAME, INC.]
3. Project Contact: [BUSINESS OWNER'S NAME]
4. Effective Date: [TODAY'S DATE]
5. Project Period: [March 31, 2017]
6. Commitment Terms and Conditions:

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, Terms and Conditions;
- Exhibit C, Standard Terms for All NYSERDA Agreements;
- Exhibit D, Form of Portable Emergency Generator Program Gas Station Site Survey;
and
- Exhibit E, Form of Portable Emergency Generator Request Form.

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

[BUSINESS NAME, INC.]

NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

By _____

By _____

Name _____

Title _____

**EXHIBIT A
STATEMENT OF WORK**

Fuel NY
Portable Emergency Generator Program

This Agreement defines the roles and responsibilities of the gas station owner and his/her Authorized Representatives, as defined below, (the “Participant”) and NYSERDA with respect to the deployment of a PEG to the gas station identified above (“Station”).

SITE LOCATION:

Under the terms of this Agreement, should the State of New York declare an energy or fuel supply emergency (“Declared Emergency”), a portable emergency generator (“PEG”) may be deployed at NYSERDA’s discretion to the following location:

Gas Station Number: _____
Gas Station Name: _____
Gas Station Address: _____

DESCRIPTION OF RESPONSIBILITIES:

The Participant’s responsibilities shall be as defined in each of the items below.

I. ADMINISTRATION

The Station shall be responsible for working with the Deployment Team, as defined below, to develop the Exhibit D Form of Portable Emergency Generator Gas Station Site Survey. The Station shall also be responsible for working with NYSERDA to develop the Exhibit E Form of Portable Emergency Generator Request Form. The Station shall be responsible for ensuring the Exhibit D Form of Portable Emergency Generator Deployment Program Gas Station Site Survey is up to date and accurate.

Authorized Representatives

The Participant shall maintain the list of authorized representatives allowed to request and receive a PEG (“Authorized Representative”), as listed in Exhibit D Form of Portable Emergency Generator Program Gas Station Site Survey. The Participant must provide contact information for those Authorized Representatives to request and receive a generator for the Station during a Declared Emergency. Requests may only be made by the authorized representatives identified therein. In addition, an Authorized Representative(s) is expected to be present at the time of the deployment and is responsible for ensuring the site conditions are consistent with the Exhibit D Form of Portable Emergency Generator Deployment Program Gas Station Site Survey. By identifying the individuals herein, the Participant is attesting that the identified individuals are duly Authorized Representatives for the purpose of this Program and that the individuals have been trained to understand the process and requirements of the Program.

II. PEG Delivery

The Participant may call the NYSERDA Hot Line after a Declared Emergency has been declared for the county in which the Station is located and the Station is experiencing a grid-supplied power outage. Only an Authorized Representative, as listed in the Exhibit D Form of Portable Emergency Generator Deployment Program Gas Station Site Survey and Exhibit E Form of Portable Emergency Generator Request Form, may call the PEG Deployment Hotline and request a PEG. Note that requesting a PEG does not guarantee deployment to the Station. The Deployment Team, led by NYSERDA, will select which Stations will receive a PEG. The Deployment Team is comprised of the PEG provider, the Implementation Contractor and NYSERDA staff. PEGs will be deployed to Stations that are most essential to public safety and well-being during the energy or fuel supply emergency.

Upon delivery of the PEG to the Station, an Authorized Representative of the Participant, as listed in Exhibit D Form of Portable Emergency Generator Deployment Program Gas Station Site Survey, shall sign the Portable Emergency Generator Delivery Form which authorizes the Deployment Team to deliver, connect, and activate the PEG. Only a member of the Deployment Team is allowed to activate the PEG. The rental period shall commence at the time the PEG is activated. The Portable Emergency Generator Delivery Form shall also document the condition of the PEG and the ancillary equipment at the time of delivery.

The Participant shall take full responsibility for the security of the PEG after it has been delivered to the Station.

Failure to have an Authorized Representative on site at the time of delivery will result in no delivery of the PEG and be considered a breach of this Agreement.

In addition, the Participant shall provide a dedicated area for placement of the PEG. This location must conform to Exhibit D Form of Portable Emergency Generator Program Gas Station Site Survey. Failure to have this area clear for PEG placement will be considered a breach of this Agreement.

III. PEG Deployment Period

The PEG shall be operational 24-hours per day during the deployment period. The deployment period is from the time the PEG is delivered to the Station until the Station notifies the Deployment Team that the PEG is no longer needed or the Deployment Team determines that the PEG is no longer needed at the Station, whichever occurs first. Once the PEG is activated, the Participant shall neither deactivate, attempt to repair, disconnect, nor tamper with the PEG for any reason other than in the case of a potential loss of life or safety emergency. If the PEG shows signs of malfunction or shut-down for any reason, including lack of fuel, the Participant shall call the PEG Deployment Hotline to report the problem. NYSERDA may then dispatch a Team member to remedy the problem, which may include repair, removal, replacement of the PEG, and delivery of fuel.

The Participant shall be responsible for loss or damage to the PEG and ancillary materials and equipment during the entire time the products are in the possession of the Station, including but not limited to damage resulting from failure to comply with the Agreement and Exhibits, and/or theft.

At the time of refueling, the Participant, or a Station employee, shall sign for receipt and delivery of fuel. The amount of fuel delivered will be metered and recorded in the fuel delivery document for billing purposes. The Participant shall pay for all fuel dispensed into the PEG during the rental period.

IV. PEG Removal

When grid-supplied power has been restored, NYSERDA will notify the Participant of its schedule to dispatch a Deployment Team member to retrieve the PEG. The Participant's Authorized Representative shall sign the Portable Emergency Generator Removal Form at the time of the PEG's removal. The Portable Emergency Generator Removal Form will also document the condition of the PEG and the ancillary equipment at the time of removal. Any damage or missing ancillary equipment will be documented and costs associated with repair or replacement shall be the responsibility of the Participant.

An on-site Authorized Representative shall be required to inspect the PEG with the Team member to document any damage sustained during the rental period and to review the checklist of materials and ancillary equipment that were provided to ensure that all are returned. Failure to have an authorized individual on site at the time of removal may result in a breach of this Agreement, where the Participant may be subject to additional rental fees being incurred.

NYSERDA reserves the right, for any reason, to stop deployment services at any time without notice.

V. Maintenance of Program Participation

The Participant shall notify NYSERDA of any changes required to this Agreement. Changes may only be made to the data and information included in Exhibit D Form of Portable Emergency Generator Program Gas Station Site Survey. Such changes may include updates to personnel names and contact information, on-site equipment modifications, changes to PEG placement location, or other Site Plan updates. The modified Exhibit D Form of Portable Emergency Generator Program Gas Station Site Survey will then be attached to the Agreement. All other changes to the Agreement shall be evidenced by a fully executed modification to the Agreement.

Responsibility Summary

A summary of the responsibilities described above for each participant in this Agreement is listed below:

Participant Responsibility Summary:

1. Initiate a call to the PEG Deployment Hotline in the event of a Declared Emergency and a grid supplied power outage at the Station;
2. Provide a clear, accessible, suitable, and defined location for placement of a PEG as shown on the Exhibit D Portable Emergency Generator Deployment Program Gas Station Site Survey;
3. Have an authorized individual at the Station to sign for delivery of the PEG;
4. Call PEG Deployment Hotline for PEG repairs and refueling;
5. Ensure security of the PEG and ancillary equipment throughout the duration of the rental period;
6. Notify NYSERDA after grid supplied power has been restored.
7. Have an authorized individual at the Station to sign for removal of the PEG;
8. Promptly pay the required fees for PEG usage;
9. Notify NYSERDA of required changes to Exhibit D Portable Emergency Generator Program Gas Station Site Survey; and
10. Agreement renewal.

NYSERDA Team Responsibility Summary:

1. Deliver a PEG to selected Stations requesting an emergency generator;
2. Connect the PEG to the Station's electrical system and activate it;
3. Maintain PEG during the rental period, including refueling;
4. Disconnect and retrieve the PEG after the Participant has notified the Team that grid-supplied power has been restored Maintain records of PEG delivery, refueling, damage, theft, and pick-up;
5. Bill the Participant within 45-days of PEG removal;
6. Update Exhibit D Portable Emergency Generator Program Gas Station Site Survey when required; and
7. Send Agreement renewal request.

EXHIBIT B -TERMS & CONDITIONS

1. Project Period

This Agreement will only cover the Project Period as defined on page 1 of this Agreement.

2. Amounts Payable

The Participant shall be charged for weekly use of a portable emergency generator (PEG) and for all fuel dispensed into the PEG during the Deployment Period. The Deployment Period is initiated upon PEG delivery as defined by the date and time stamp on Portable Emergency Generator Delivery Form and cease when an Authorized Representative notifies NYSERDA that the PEG is no longer needed. The Rental Fee is \$1,500 for any portion of a week, from one (1) calendar day to seven (7) calendar days.

3. Payment Procedure:

Within 45 business days of the date the PEG is disconnected and retrieved by the Deployment Team (as defined in Exhibit A, Statement of Work), the Participant will be billed by mail for the costs incurred. Payment in full is required within thirty (30) days of the date of the invoice. Payment may be made via Automated Clearing House (ACH), federal wire, or check and shall be submitted to:

New York State Energy Research and Development Authority
17 Columbia Circle
Albany, New York 12203

Attn: Controller's Officer

If the invoiced costs are not paid in full within thirty (30) days of the date of the invoice, Section 18 of the State Finance Law authorizes NYSERDA to collect, in addition to the stated invoice amount, the greater of: (a) interest on the amount due accruing from five (5) days after the Invoice Date, computed at the underpayment rate charged by the Commissioner of Taxation and Finance pursuant to subsection (e) of section 1096 of the State Tax Law less four percentage points; or (b) a late payment charge of \$10.00 dollars. In addition, NYSERDA is also authorized to charge a collection fee, not to exceed 22% of the invoice amount, to cover the cost of processing, handling and collecting the invoice amount if not paid within 95 days of the invoice date.

If the invoiced costs are not paid in full within thirty (30) days of the date of the invoice, NYSERDA is authorized to refer the account to a private collection agency or the New York State Attorney General for collection. Further, Section 171-f of the State Tax Law authorizes NYSERDA to certify past-due legally enforceable debt to the New York State Department of Taxation and Finance for collection by offset of tax overpayments or other payments due from the State. Section 19 of the State Finance law allows NYSERDA to charge a \$20.00 fee for dishonored checks.

4. Permits:

It is the responsibility of the Participant to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permission of every nature necessary to perform the Project. Copies of all final approved permits, licenses, easements, waivers

and permissions must be submitted with the Exhibit D Portable Emergency Generator Deployment Program Gas Station Site Survey.

5. Inspections, Follow-up Visits and On-Site Monitoring

A. Participant agrees that NYSERDA, or its designee, may make periodic visits to the Participant's retail gasoline outlet prior to and during PEG deployment. Generally, the purpose of the follow-up visit(s) is to evaluate PEG deployment and determine any issues.

6. Indemnification

Each Party shall protect, indemnify and hold harmless the other Party and its members, officers, and employees from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against the other Party, its members, officers, or employees to the extent that such Claims arise out of or were caused by the negligence, gross negligence, or willful misconduct of the indemnifying Party or from any breach of the Agreement by the indemnifying Party. The obligations of the Parties under this section shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

7. Insurance

A. Maintenance of Insurance; Policy Provisions. The Participant, 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:

- (1) except policies in evidence of insurance required under Section B(2) below, name or be endorsed to cover NYSERDA, the State of New York and the Participant as additional insureds;
- (2) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (3) be reasonably satisfactory to NYSERDA in all other respects.

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

- (1) 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
- (2) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

C. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Participant shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Section hereof. In the event any policy furnished or carried pursuant to this Section will expire on a date prior to approval of the Payment Request Form by NYSERDA, the Participant, 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 Participant 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 Participant shall deliver to NYSERDA a certified copy of each policy.

8. No Warranties

- A. NYSERDA does not endorse, guarantee, or warrant any particular manufacturer or product, and NYSERDA provides no warranties, expressed or implied, for any product or services. The Participant's reliance on warranties is limited to any warranties that may arise from, or be provided by contractors, vendors, etc.
- B. The Participant acknowledges that neither NYSERDA nor any of its consultants are responsible for assuring that the design, engineering and construction of the Project is proper or complies with any particular laws, codes, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved by the Project or the adequacy or safety of such measures.

9. Limit of Services

NYSERDA reserves the right, for any reason, to stop deployment services at any time without notice.

10. Release by the Participant

The submission by the Participant of payment shall release NYSERDA from any and all claims and liability the Participant, its representatives, and assigns might otherwise have relating to this Agreement.

11. Title to Equipment

Title to all of the equipment provided under this Agreement shall vest with the NYSERDA Deployment Contractor.

12. Compliance with Certain Laws

Participants will be required to meet any additional Federal requirements imposed by the agencies providing grant funds for this project.

13. Audit

The Participant shall keep, maintain, and preserve for a period of five (5) years after receipt of the grants, full and detailed books, accounts, and records pertaining to the performance of this Agreement. NYSERDA shall have the right from time to time and at all reasonable times during this period to inspect and audit any and all books, accounts and records at the office or offices of the Participant where they are then being kept, maintained and preserved. Any payment made under this Agreement shall be subject to retroactive reduction for amounts included therein that are found by NYSERDA on the basis of any audit of the Participant by an agency of the United States, State of New York or NYSERDA not to constitute an allowable change or cost hereafter.

14. Entire Agreement

This Agreement (the Application, Exhibit A Statement of Work, Exhibit B Terms and Conditions, Exhibit C Standard Terms and Conditions for All NYSERDA Agreements, Exhibit D Form of Portable Emergency Generator Deployment Program Gas Station Site Survey, Exhibit E Form of Portable Emergency Generator Request Form) is the entire agreement between the parties and supersedes all other communications and representations.

EXHIBIT C

REVISED 5/12

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

1. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Participant 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, Participant 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 Participant considers a proprietary and/or confidential trade secret, Participant shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Participant represents that the information has actual or potential specific commercial or competitive value to the competitors of Participant. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.ny.gov/coog/foil2.html>) and NYSERDA’s Regulations, Part 501 (<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.aspx>).

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

3. 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.

4. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Participant hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Participant's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Participant 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. Participant will have thirty (30) calendar days after service hereunder is complete in which to respond. |

**EXHIBIT D FORM OF
PORTABLE EMERGENCY GENERATOR
PROGRAM GAS STATION SITE SURVEY**



GAS STATION NAME:			
FUEL PROVIDER/BRAND:			
GAS STATION NUMBER:		COUNTY:	
ADDRESS:		CITY:	
STATE:		ZIP:	
LATITUDE:		LONGITUDE:	
NAME OF UTILITY PROVIDING POWER TO GAS STATION:			
PERSONNEL AUTHORIZED TO REQUEST PEG:			
NAME:		PHONE:	
PERSONNEL AUTHORIZED TO SIGN FOR RECEIPT OF PEG:			
NAME:		PHONE:	
MANUAL TRANSFER SWITCH AMPERAGE RATING:		MANUAL TRANSFER SWITCH CONNECTOR TYPE:	
MAX VOLTAGE:		EMERGENCY GENERATOR DROP-OFF LOCATION:	
# OF PHASES:			
GENERATOR PLACEMENT SITE OBSTRUCTIONS: (gate, fence, plants, etc.)		GENERATOR KW RATING REQUIRED AT 75% LOAD:	
LINEAR FEET FROM TRAILERED GENERATOR TO TRANSFER SWITCH:		LENGTH OF CABLE REQUIRED TO COMPLETE CONNECTION (GARNER):	
DATE OF SURVEY:		BY:	
APPROVALS:	ARCADIS: <input type="checkbox"/>	BY:	DATE:
	GARNER: <input type="checkbox"/>	BY:	DATE:
COMMENTS: (generator placement specifics, transfer switch access requirements, cable placement location, safety concerns, parallel feeds, etc.)			

**EXHIBIT D FORM OF
PORTABLE EMERGENCY GENERATOR
DEPLOYMENT PROGRAM GAS STATION SITE SURVEY**

GAS STATION NAME

GAS STATION NUMBER

AREA STREET MAP

BUILDING FRONT

PEG DROP-OFF LOCATION

TRANSFER SWITCH

**EXHIBIT D FORM OF
PORTABLE EMERGENCY GENERATOR
PROGRAM GAS STATION SITE SURVEY**



GAS STATION NAME

GAS STATION NUMBER

SITE PLAN

**EXHIBIT E
FORM OF
PORTABLE EMERGENCY GENERATOR REQUEST FORM**

Station Information:

Gas Station Number: _____

Gas Station Name: _____

Gas Station Address: _____

Authorized Individual(s) to Request a PEG: _____

Authorized Individual(s) to Receive a PEG: _____

What do I do if I have lost power at my Gas Station?

- 1) Call the NYSERDA Hot Line number to request a PEG: **1-800-XXX-XXXX**

- 2) Be prepared to answer the following questions:
 - What is your Gas Station Number?
 - Are you an Authorized Individual to request a PEG as listed above?
 - Will there be an Authorized Individual to receive a PEG at the gas station?
 - Was a declared energy and/or fuel supply emergency has been issued for where your gas station is located?
 - Is the Station property clear of any hazards (i.e., flooding, downed trees, etc.)?
 - Is the PEG drop off location (per the Site Plan) clear for delivery, allowing for the safe connection to the transfer switch?
 - What was the date the fuel tanks were last refueled?

- 3) NOT ALL STATIONS RECEIVE A PEG. If your gas station is selected to receive a PEG, the Authorized Individual who requested the PEG will be notified of the approximate time it will be delivered and connected.

- 4) A PEG cannot be safely delivered if any of the following occur at the time of delivery:
 - An Authorized Individual is not present to confirm receipt of the PEG.
 - The PEG drop off location (per the Site Plan) is obstructed.

What do I do if the PEG malfunctions, shuts down, runs out of fuel or power has been restored to my Gas Station?

- 1) Call the Garner Emergency number: **1-800-424-1716**