

New York State Energy Research and Development Authority

CONDITIONAL GRANT DISBURSEMENT AGREEMENT

South Brooklyn Marine Terminal

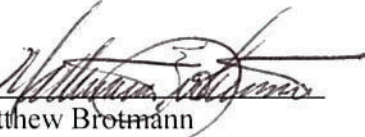
1. Agreement Number: 179784
2. Grant Recipient: SBMT Asset LLC
3. Execution Date: January 14, 2022
4. Proposed Total Amount of Award: \$60 Million Dollars
5. Estimated Project Completion Date: [REDACTED]
6. Commitment Terms and Conditions:

This Agreement consists of this form and incorporates the following documents attached hereto:


- Exhibit A, Statement of Work
- Exhibit A-1, Detailed Project Description
- Exhibit B, General Contract Provisions, Terms and Conditions
- Exhibit C, Standard Terms and Conditions
- Exhibit D, Prompt Payment Policy Statement
- Exhibit E, 2017 Report Content Guide
- Exhibit F, Project Labor Agreement

ACCEPTANCE OF THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNLESS EXECUTED BELOW BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY ("NYSERDA") AND GRANT RECIPIENT AND IS SUBJECT TO THE CONDITIONS PRECEDENT SET FORTH HEREIN.

SBMT ASSET LLC

Signature: 
Name: Matthew Brothmann
Title: Senior Counsel and Assistant Secretary

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Doreen M. Harris
Signature: 
Name: Doreen Harris
Title: President and CEO

Digitally signed by Doreen M. Harris
Date: 2022.01.14 07:45:58 -05'00'

**EXHIBIT A
STATEMENT OF WORK**

**Project Title: South Brooklyn Marine Terminal Port Infrastructure Investment
Plan**

Grant Recipient: SBMT Asset LLC

DEFINITIONS

“Agreement” means this Conditional Grant Disbursement Agreement.

“BBB+ Rated Credit” means a corporation, business trust, partnership, limited liability company or other legal entity that has outstanding senior unguaranteed and unsecured long-term debt that is rated at least BBB+ or better by Standard & Poor’s (S&P) or an equivalent rating with Moody’s Investor Services (Moody’s) or Fitch IBCA (Fitch).

“Business Day(s)” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day begins at 8 a.m. eastern prevailing time and ends at 5:00 p.m. eastern prevailing time.

“BW” means the Beacon Wind Project proposed in response to NYSERDA’s ORECRFP20-1.

“Change in Law” means a change in any applicable law, statute, rule, regulation, decision, writ, order, decree, judgment, permit, or any interpretation thereof, promulgated or issued by a governmental authority following the execution of this Agreement by the Parties.

“Effective Date” means the date on which all conditions precedent set forth in Section 3.01 of Exhibit B of this Agreement have been met.

“Eligible Expenses” shall have the meaning ascribed to such term in Appendix C.2 of ORECRFP20-1.

“Enforcement Event” means (i) the failure of the Grant Recipient to achieve Substantial Completion of the Port Improvements on or before the Outer Limit Date, or (ii) the abandonment of the Port Improvements by the Grant Recipient evidenced in a written statement by the Grant Recipient, other than, in each case of clauses (i) and (ii), as a result of a force majeure event (described in Section 7.01 of Exhibit B of this Agreement) or an Excused Delay.

“Event of Default” means (i) a breach of any material covenant under this Agreement that remains uncured for thirty (30) days following written notice from the non-defaulting party, provided that if the failure is not reasonably capable of being cured within the thirty (30) day cure period, the Party will have an additional one hundred eighty (180) days (but in no

event exceeding the Outer Limit Date) to cure the failure so long as the Party promptly commences and diligently pursues the cure, (ii) a continuing material default under the Sponsor Guarantee that remains uncured following written notice and the expiration of any cure periods, or (iii) on and after the effective date of the NYGB Financing Agreement, the acceleration of the outstanding amounts thereunder by New York Green Bank following the occurrence and continuance of a material event of default thereunder that remains uncured following written notice and the expiration of any cure periods.

“EW2” means the Empire Wind Project, Phase 2 proposed in response to NYSERDA’s ORECRFP20-1.

“Excused Delay” shall mean a delay or suspension of the construction of the Port Improvements caused by (i) an act or omission of NYSERDA, NYCEDC, or SSBMT, including, without limitation, a failure to respond or comply with any time period(s) required of such party to a written request for consent or approval; (ii) one or more properly approved change orders or change directives that individually or in the aggregate results in a material change in the timing to Substantially Complete the Port Improvements; (iii) a Change in Law that results in a delay or suspension of construction of the Port Improvements, if such delay or suspension cannot be overcome or avoided through commercially reasonable efforts of Grant Recipient; or (iv) a delay in obtaining, or inability to obtain, required permits or governmental approvals, except to the extent that such failure is the direct result of the negligence of Grant Recipient.

“Grant Recipient” means SBMT Asset LLC.

“Guarantors” means BBB+ Rated Credit (or such other rating as permitted by the Sponsor Guarantee) entities affiliated with the Grant Recipient.

“Information” shall have the meaning provided for in Section 8.01(e) of Exhibit B of this Agreement.

“Notice” shall mean a notice properly memorialized and delivered in accordance with Section 15.01 of Exhibit B of this Agreement.

“NYCEDC” means the New York City Economic Development Corporation.

“NYGB Financing Agreement” means the loan agreement to be entered into between the New York Green Bank and the Grant Recipient (or an affiliate of Grant Recipient) for a senior term loan facility to finance, in part, the development of sustainable port infrastructure at South Brooklyn Marine Terminal.

“O&M” means operations and maintenance.

“Outer Limit Date” means [REDACTED]

“Party” or “Parties” refer to NYSERDA and Grant Recipient. NYSERDA and Grant Recipient are each referred to herein as a “Party” and are collectively referred to herein as the “Parties.”

“PIIP-A”—the Port Infrastructure Investment Plan-A submitted in response to NYSERDA’s ORECRFP20-1.

“Port Improvements” shall mean the works described in Exhibit A-1 in accordance with the plans and specifications providing therefor as modified from time to time, subject to NYSERDA’s right to review Material Modifications in accordance with this Agreement.

“Prevailing Rates” means, for construction activities occurring in New York, the rate determined under NYS Labor Law Section 220 and, for construction activities that occur outside of New York, the rate determined under the prevailing wage law of the state in which the construction activities at issue occur that would be applicable to a public work.

“Prevailing Wage” shall have the meaning provided for in Exhibit A of this Agreement.

“Process” shall have the meaning provided for in Section 14.03 of Exhibit B of this Agreement.

“Progress Report” shall have the meaning provided for in the “Progress Reports” section of this Exhibit A.

“Project Labor Agreement” or “PLA” means a collective bargaining agreement (including a pre-hire agreement) satisfying the requirements set forth herein and in Exhibit F covering contractors in the construction industry working on the Port Improvements, and a bona fide building and construction trade labor organization representing craft workers on the Port Improvements.

“Project Manager” shall mean NYSERDA’s Director of Contract Management, Cheryl M. Glanton, or such other person who may be designated, in writing, by NYSERDA.

“SBMT” means the South Brooklyn Marine Terminal.

“Sponsor Guarantee” means the Completion Guaranty made by the Guarantors in favor of NYSERDA and its successors and assigns, as amended, restated, supplemented or otherwise modified from time to time.

“SSBMT” means SSBMT, L.P.

“Sublease” means the Agreement of Sublease made on or about the date hereof by and between SSBMT and SBMT Asset LLC (or its affiliate) with respect to the Project Site (as defined below).

“Substantially Completed” and “Substantial Completion” shall mean the completion of the Port Improvements, functionally and legally in a condition for their use and occupancy for all intended purposes as verified by (i) a certificate prepared by the applicable architect or engineer of record delivered to Grant Recipient, its affiliates, its consultants, or its contractors certifying that Substantial Completion has occurred or (ii) other reasonable evidence demonstrating that Substantial Completion has occurred.

“USACE” means the United States Army Corps of Engineers.

“WTG” means wind turbine generators.

“WTG Staging Facility” means the improvements to SBMT as proposed in PIIP-A to the extent necessary to accommodate the simultaneous unloading and loading of two vessels and capable of staging WTGs.

Grant Recipient address information:

Company Name:

Contact Name

Street Address

City, State Zip code

Email/Phone/Fax



The Project Site is:

Site Name: South Brooklyn Marine Terminal

Site Street Address: 2nd Avenue (between 29th and 39th streets and west of 2nd Avenue).

City, State Zip code: Brooklyn, NY 11232

The Project Site is more particularly described as follows: that certain land consisting of approximately 73.68 acres of land identified as a portion of Block 662, Lot 1, and all of Block 662, Lots 130, 136, 137, and 155 on the Tax Map of the Borough of Brooklyn.

BACKGROUND/OBJECTIVES

Grant Recipient intends to work with SSBMT and NYCEDC to make certain upgrades to SBMT set forth under Exhibit A-1, as modified from time to time, to make it suitable to act as a WTG Staging Facility and assembly site and host O&M facilities supporting activities related to the operation and maintenance of offshore wind resources off the East Coast.

ENVIRONMENTAL REVIEW PHASE

Grant Recipient has taken and will continue to take commercially reasonable measures to facilitate, cooperate with, and otherwise provide information for any environmental review of the Port Improvements overseen by an authorized governmental entity or entities pursuant to the New York State Environmental Quality Review Act (“SEQRA”). NYSERDA will provide a prompt notice of the issuance of a final findings statement under SEQRA to Grant Recipient. Notwithstanding anything to the contrary herein, the Total Amount of Award shall not be determined or committed before NYSERDA, in its sole discretion, makes findings pursuant to SEQRA with regard to the Port Improvements described in Exhibit A-1.

PROJECT IMPLEMENTATION PHASE

Financing Plan

Grant Recipient intends to use the total grant money awarded by NYSERDA hereunder and \$66.5 million in financing provided by the New York Green Bank only on Eligible Expenses (as identified in PIIP-A), which is expected to be matched by approximately \$124.8 million in private capital, including a capital contribution of \$68.4 million from affiliates of the Grant Recipient and \$56.5 million from NYCEDC. The Parties recognize that these amounts are subject to change, including due to further refinement of the scope and costs of the Port Improvements and the final findings under the SEQRA process.

Modifications to Port Improvements

Grant Recipient shall provide prior written notice to NYSERDA of all proposed Material Modifications to the Port Improvements and shall inform NYSERDA of all other proposed modifications to the Port Improvements in a timely manner. A proposed modification shall constitute a “Material Modification” for purposes of this Agreement, in each case, requiring NYSERDA approval, if such modification is not a *de minimis* change (as reasonably determined by Grant Recipient) and the proposed modification impacts one or more of the following elements of the Port Improvements:

- height, size, location, or general layout of the Port Improvements;
- materials used for site paving;
- bearing capacity of the upland or any waterside structures;

- dredge prisms;
- dredge depths;
- design lifespan of any of the Port Improvements; and/or
- entrance and egress locations or entrance operations and queues into and out of the site.

NYSERDA shall have thirty (30) days from the date of receipt of written notice of a Material Modification from Grant Recipient to approve, provide comments on, or disapprove of such Material Modification. In the event that NYSERDA fails to comment upon or disapprove such Material Modification within thirty (30) days of the receipt of such notice, NYSERDA shall be deemed to have approved the proposed Material Modification. Grant Recipient will cooperate in good faith and consider NYSERDA's proposed comments or changes to the proposed Material Modifications, provide information reasonably requested by NYSERDA in respect of such modifications, and provide NYSERDA with reasonable access to the site and contractors during normal working hours for the purpose of NYSERDA's consideration of such modifications upon not less than two (2) Business Days advance written notice. NYSERDA will cooperate in good faith with Grant Recipient to reach prompt agreement on any Material Modification and acknowledges that other parties may have approval rights over the same Material Modification. NYSERDA's approval of a proposed modification shall not be unreasonably withheld, conditioned, or delayed. NYSERDA may not withhold, condition, or delay approval based upon Grant Recipient's decision to reject changes recommended by NYSERDA that would (i) have the effect of materially increasing (as reasonably determined by Grant Recipient) the costs of, or delaying completion of, the Port Improvements or (ii) that are opposed by EDC or SSBMT.

Notwithstanding anything to the contrary set forth above, the approval process described above shall not apply to any modifications that Grant Recipient reasonably determines are required by a governmental authority or otherwise required under the terms of the Sublease (excluding for purposes of this sentence where such modification is itself a requirement of a new permit or an amendment to an existing permit). Grant Recipient shall make commercially reasonable efforts to cooperate with, and provide information to, NYSERDA in connection with any Material Modification to ensure continued compliance with SEQRA and applicable law. In the event that Grant Recipient receives notice of any material modifications to the Port Improvements that will require a new permit or an amendment to an existing permit, Grant Recipient will promptly inform NYSERDA, and NYSERDA agrees to participate in any supplemental environmental review that may be required.

Substantial Completion Verification Process

The Parties agree that Grant Recipient will request distribution of the proposed grant proceeds in a single installment payable when the Port Improvements are Substantially Completed. NYSERDA and its advisors shall be permitted reasonable rights to attend and observe the Substantial Completion verification process and shall be provided with copies

of documentation delivered to Grant Recipient from its material consultants and/or material contractors certifying that Substantial Completion has occurred. Substantial Completion shall be deemed achieved when the definition of Substantial Completion has been satisfied.

Following Substantial Completion, NYSERDA shall remit payment of the \$60 million in grant proceeds to Grant Recipient (or an affiliate thereof as directed by Grant Recipient) within thirty (30) days of NYSERDA's receipt of a Proper Invoice, in the manner provided for in this Agreement, including in the Prompt Payment Policy set forth in Exhibit D. Grant Recipient shall provide NYSERDA with a certification of Substantial Completion, or other reasonable evidence that Substantial Completion has occurred, when submitting an invoice to NYSERDA.

In the event NYSERDA fails to disburse the grant proceeds in accordance with the terms of this Agreement, Grant Recipient shall have the right to pursue any remedies available to it in law and equity. For the avoidance of doubt, NYSERDA hereby waives any sovereign immunity from either jurisdiction or enforcement for any claims or proceedings commenced pursuant to this Agreement.

PROGRESS REPORTS

The following sections describe ongoing reporting requirements associated with the progress and completion of the port upgrades. NYSERDA and the Grant Recipient will work together to ensure that commercially sensitive information, trade secrets, and other classes of information that are exempt from disclosure under the New York Freedom of Information Law ("FOIL") contained in the reports described below are appropriately protected from disclosure.

Progress Reports

The Grant Recipient shall submit quarterly Progress Reports to NYSERDA's Project Manager no later than the 15th day of the month immediately following the end of each quarter (or such later date as NYSERDA's Project Manager may agree in its reasonable discretion). The Progress Reports shall include information on the following subjects, with appropriate explanation and discussion:

- a. Name of grant recipient.
- b. Title of the project.
- c. Agreement number.
- d. Reporting period.
- e. Project progress including a summary of progress during the covered period.
- f. Planned work for the next reporting period.
- g. Schedule - percentage completed and projected percentage of completion of performance by calendar quarter - may be presented as a bar chart or milestone chart.

Deliverables: Written Periodic Progress Reports.

Final Report

Within ninety (90) days of Grant Recipient's receipt of the grant proceeds following Substantial Completion, the Grant Recipient shall prepare a draft final report for submission to NYSERDA's Project Manager covering all aspects of the Port Improvements; the report shall include relevant information on the following subjects:

- a. Discussions of the observations and findings and recommendations, if any, from all tasks, and avenues for further improvements, as appropriate;
- b. Discussions of the project results and lessons learned regarding configuration, capabilities, and benefits of the project; and
- c. Environmental, and economic benefits, and implementation scenarios associated with such.

NYSERDA will comment on the draft version within sixty (60) days after receipt of such draft. Within thirty (30) days after receipt of NYSERDA's comments, the Grant Recipient shall prepare a final version of the report. Grant Recipient will consider in good faith NYSERDA's comments to the report, and, if such comments are deemed applicable and acceptable by Grant Recipient, Grant Recipient will incorporate such comments in the final version of the report. Grant Recipient will submit two (2) paper copies and one (1) electronic copy of the final version of the final report.

Deliverables: A draft version of the final report.
A final version of the final report.

PREVAILING WAGE

Although the Port Improvements are not a public work covered by NYS Article 8, unless otherwise provided in a PLA covering the construction of the Port Improvements, all laborers, workmen and mechanics (within the meaning of those terms under NYS Labor Law Article 8) constructing the Port Improvements must be paid wages and benefits in an amount not less than the Prevailing Rates that would be applicable in the area where the Port Improvements construction activities occur. For construction activities occurring in New York, the Prevailing Rates shall be determined under NYS Labor Law Section 220. For construction activities that occur outside of New York, the Prevailing Rates shall be determined under the prevailing wage law of the state in which the Port Improvements construction activities occur that would be applicable to a public work. For the avoidance of doubt, a laborer, workman, or mechanic will not be deemed to be based at a port due solely to his or her short-lived or incidental presence at, or transit through, the port (or state in which the port is located). Unless provided otherwise in any negotiated PLA, it is generally expected that covered construction, for the purpose of this Section, will include United States-based offsite fabrication traditionally performed on-site by construction craft

when that fabrication produces items specifically designed for construction of the Port Improvements, fabrication occurs off-site for the convenience of the contractor, and the fabrication is part of a single integrated construction process. This requirement applies: (1) to all laborers, workmen and mechanics performing construction activities, whether direct employees of the Grant Recipient or of Grant Recipient's subcontractor(s), and (2) regardless of whether or not such employment was claimed as an Economic Benefit in PIIP-A.

PROJECT LABOR AGREEMENT

(a) Grant Recipient shall, no later than March 1, 2023 present to NYSERDA a plan outlining its intentions with respect to the negotiation of a PLA to cover construction of the Port Improvements. NYSERDA should be kept reasonably apprised of negotiations as they proceed, and NYSERDA shall have the right to have one or more representatives attend negotiation sessions as it determines is in its best interests. A final form of PLA, agreed to by Grant Recipient and the trades, consistent with the description in Exhibit F to this Agreement shall be presented to NYSERDA for review and approval no later than three (3) months prior to the commencement of construction activities on the Port Improvements (unless extended by NYSERDA, which request for extension shall not be unreasonably withheld, conditioned, or delayed); *provided* for the avoidance of doubt, that the failure to provide such final form of PLA within the above-referenced three (3) months period shall not result in a default or require a delay in the commencement of construction activities on the Port Improvements.

(b) In the event Grant Recipient and the trades have not agreed to a final form of PLA three (3) months prior to the start of construction activities on the Port Improvements, NYSERDA may appoint a mediator of its own choosing who shall endeavor to assist the parties in their negotiations: (i) at any time upon mutual agreement of Grant Recipient and the trades; or (ii) at the request of either Grant Recipient or the trades at any point more than one hundred eighty (180) days after the commencement of negotiations. In the event that mediation does not result in a final form of PLA agreed to by the Grant Recipient and the trades within three (3) months of the date that the mediator is appointed, NYSERDA shall determine whether the time for negotiations should be extended. In the event that NYSERDA decides not to extend the time for negotiation, NYSERDA may determine that, notwithstanding good faith efforts by Grant Recipient, satisfactory completion of PLA negotiations is no longer practicable.

(c) NYSERDA's review of any agreed-upon final form of the PLA will be based on the specific terms of the negotiated PLA and will take into account the best interests of NYSERDA with respect to the Port Improvements, and the public it serves, and will include consideration of project viability, the cost-effectiveness of the PLA, and the need for timely completion of the Port Improvements. NYSERDA will complete and provide the results of such review to Grant Recipient within thirty (30) days or the final form of the PLA as presented shall be deemed approved. If NYSERDA disapproves the final form of PLA, NYSERDA will identify changes to the final form of each PLA that would render it

approvable, and Grant Recipient will promptly resume negotiations with the trades. No more than sixty (60) days after such disapproval, so long as Grant Recipient and the trades have negotiated in good faith during that period, NYSERDA will render a determination under PLA section of this Agreement regarding whether satisfactory completion of PLA negotiations is no longer practicable.

EXHIBIT A-1

The South Brooklyn Marine Terminal (“SBMT”) is an approximately 76-acre site located between 29th and 39th Streets and west of 2nd Avenue in the Sunset Park neighborhood of Brooklyn. The site is directly adjacent to the large-scale commercial development of Industry City and falls within a M3-1 zoning district.

In general, Grant Recipient’s planned upgrades to the portion of the site that will function as a staging area are as follows:

- Reinstating the bulkheads and strengthening the adjacent quay areas to accommodate efficient vessel to shore transfer of heavy cargo by heavy duty cranes to new laydown areas;
- Increasing the usable quayside length to allow for higher vessel traffic and to accommodate multiple vessels during peak activity periods;
- Dredging the seabed around SBMT to permit access and dedicated berthing by the high capacity, specialized vessels typically used in offshore wind facility installation and commissioning activities;
- Establishing dedicated areas for buildings, material transport, storage and maintenance with topography and pavement solutions providing enough bearing capacity for flexible operations with minimized downtime;
- Upgrading onsite utilities like electrical power, water, sewage, storm water management, lighting and site security to meet requirements from public agencies as well as end-users; and
- Demolishing and rehabilitating existing structures on the site to free up waterfronts and space for new activities.



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EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I
Definitions

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

(a) General Definitions:

Agreement: This Conditional Grant Disbursement Agreement, including the Exhibits thereto, between NYSERDA and Grant Recipient, as amended, restated, supplemented or otherwise modified from time to time.

Alternative Investment: The term “Alternative Investment” shall have the meaning ascribed to it in the Sponsor Guarantee.

Budget: The project budget necessary to achieve Substantial Completion with respect to the Port Improvements as set forth in Exhibit A-1 hereto.

Contract Information: Reports and documentation produced by Grant Recipient the performance of this Agreement that are delivered to NYSERDA by Grant Recipient, including the Final Report delivered by Grant Recipient pursuant to Exhibit A, Statement of Work, if applicable.

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

Proprietary Information: Recorded information regardless of form or characteristic, produced or developed outside the scope of this Agreement and without NYSERDA financial support, provided that such information is not generally known or available from other sources without obligation concerning their confidentiality; has not been made available by the owner to others without obligation concerning its confidentiality; and is not already available to NYSERDA without obligation concerning its confidentiality.

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

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

Subcontract: An agreement for the performance or supply of goods or services relating to the construction of the Port Improvements by a Subcontractor, including any purchase order for the procurement of permanent equipment or expendable supplies in connection therewith.

Subcontractor: A person who supplies goods or performs services under a Subcontract directly for or on behalf of the Grant Recipient (or an affiliate of Grant Recipient), including Grant Recipient's general contractor and other contractors and design professionals, but not including any employees of the Grant Recipient or the Subcontractors.

Article II
Performance of Work

Section 2.01 Manner of Performance. The Grant Recipient shall perform or contract with a Subcontractor to perform or supply good or services with respect to the Port Improvements in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described in the Budget and Statement of Work. NYSERDA shall have no obligation to furnish personnel or procure materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform or supply goods or services in respect of the Port Improvements in accordance with this Agreement.

Section 2.02 Title to Equipment and Property. NYSERDA shall not have title to any equipment or property purchased with funds made available in accordance with this Agreement.

Article III
Deliverables

Section 3.01 Conditions Precedent. Except the provisions of Section 3.01 and 3.02 of Exhibit B of this Agreement, which shall be effective upon the date of the execution of this Agreement by the Parties, the provisions of this Agreement shall not become effective unless and until each of the following conditions precedent are satisfied or waived in writing by both Parties:

- (a) The execution and delivery by the Grant Recipient and the Guarantors of the Sponsor Guarantee.
- (b) The issuance by NYSERDA of a findings statement under SEQRA finding that the disbursement of the proposed grant funding is approvable.
- (c) Delivery by the Grant Recipient of the Budget and schedule for the Port Improvements reasonably satisfactory to NYSERDA (such satisfaction not to be

unreasonably withheld, conditioned or delayed); provided that any Port Improvement Budget and schedule that is in material compliance with the budget and schedule included in PIIP-A shall be deemed to satisfy this condition.

(d) The execution of this Grant Agreement by the parties hereto.

Section 3.02 Failure to Satisfy Conditions Precedent. Except for the provisions of Section 3.01 and 3.02 of Exhibit B of this Agreement, this Agreement shall be null and void and of no force or effect unless and until each of the conditions precedent in Section 3.01 are satisfied or otherwise waived in accordance with Section 3.01.

Section 3.03 Deliverables. All deliverables are intended to be provided in accordance with the Exhibit A, Statement of Work.

Article IV
Payment

Section 4.01 Payments and Invoicing: Upon Substantial Completion, Grant Recipient will submit an invoice to NYSERDA requesting payment of the grant proceeds. Grant Recipient shall also provide NYSERDA with a copy of the certification of Substantial Completion, or other reasonable evidence that Substantial Completion has occurred, when submitting an invoice to NYSERDA. Within thirty (30) days of the receipt of the invoice from Grant Recipient, NYSERDA shall remit payment of the grant proceeds in the manner provided for, in all material respects, in the Prompt Payment Policy set forth in Exhibit D. Documentation shall be submitted electronically via email to the assigned Project Manager or, if this project is managed through NYSERDA's Salesforce application, via NYSERDA's Salesforce Grant Recipient Portal with the Grant Recipient's log-in credentials.

Section 4.02 Final Payment. NYSERDA's payment of the grant proceeds in full pursuant to Section 4.01 shall constitute the final payment pursuant to this Agreement.

Section 4.03 Release of Claims. The Substantial Completion and acceptance by the Grant Recipient of final payment shall release NYSERDA, Grant Recipient, and Grant Recipient's affiliates from all claims and liability that a Party, its representatives, or assigns might otherwise have relating to this Agreement except the reporting requirements as expressly set forth herein.

Section 4.04 Maintenance of Records. Unless otherwise addressed by separate provision(s) within this Agreement governing the destruction of certain project data, the Grant Recipient shall keep, maintain, and preserve throughout the term of the Agreement and for a period of two (2) years after Substantial Completion, full and detailed books, accounts, and records pertaining to this Agreement, including, if applicable, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, Grant Recipient's performance under this Agreement.

Section 4.05 Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Grant Recipient shall be the amount appearing on page one of this Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Grant Recipient in the performance and completion of the Port Improvements.

Section 4.06 Audit. NYSERDA shall have the right, at its sole cost and expense, from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.04 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Grant Recipient where they are then being kept, maintained and preserved pursuant to Section 4.04 hereof.

Article V

Assignments, Subcontracts and Performance; Limitation on Debt

Section 5.01 General Restrictions. Except as specifically provided otherwise in this Article, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of a Party's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of the other Party shall be void and of no effect; provided however that NYSERDA's consent shall not be required to assign or otherwise transfer this Agreement or any rights, obligations, or responsibilities thereunder to an affiliate of Grant Recipient. No assignment or transfer of this Agreement by a Party shall operate to release such Party from any of its obligations under this Agreement unless such assignee or transferee (i) agrees in writing to assume all of the Party's obligations under this Agreement and, (ii) except in the case of assignment by NYSERDA or to an affiliate of Grant Recipient, provides contract security to replace that previously provided by Grant Recipient. If assignee or transferee satisfies (i) and (ii) of this section, a Party (or its successors or assigns) will execute a release of the other Party from its obligations under this Agreement at such Party's request.

Section 5.02 Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Grant Recipient may enter into contracts and Subcontracts for the performance of services with respect to the Port Improvements and for the purchase of goods, materials or equipment necessary or incidental thereto.

Section 5.03 Performance. The Grant Recipient shall make best efforts to avoid taking any action, and shall take all commercially reasonable steps to prevent its Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement.

Section 5.04 Limitation on Debt. Grant Recipient shall not incur, assume or permit to exist any indebtedness for borrowed money (or act as a guarantor of any such indebtedness) whether secured or unsecured before Substantial Completion, or otherwise encumber the assets constituting the Port Improvements before Substantial Completion, in

each case, without the prior written consent of NYSERDA, such consent not to be unreasonably withheld, provided that no such consent shall be required if the financing agreements under which Grant Recipient incurs or guarantees such indebtedness provide that (i) if the exercise by lender (or any trustee or agent on behalf of such lender) of a remedy thereunder would result in the cessation of the completion of the Port Improvements or the foreclosure and sale of the existing Port Improvements, such lender (or such trustee or agent) shall not exercise such remedy without first providing NYSERDA not less than thirty (30) days (which period of time shall be in addition to the cure period provided to Grant Recipient thereunder) in which to cure the applicable default(s) and (ii) in the case of any default under such financing agreements, Grant Recipient shall have the right to prepay the outstanding amounts thereunder to cure any such defaults, after which any related lien or other security interest shall be released. In the event that NYSERDA elects to cure a default of the type described in clause (i) of this Section 5.04, Grant Recipient shall cooperate with NYSERDA so that NYSERDA may use the funds available to it under Section 3 of the Sponsor Guarantee to cure any such default and pursue Substantial Completion. Any lien, mortgage or other encumbrance or security provided by Grant Recipient under any financing which complies with this Section 5.04 (i) and (ii) (the indebtedness under any such financing, “Qualifying Debt”) shall be a “Permitted Lien” hereunder. Grant Recipient further agrees that it shall deliver a copy of any such Qualifying Debt documentation within three (3) Business Days of execution thereof and shall promptly deliver to NYSERDA copies of any notice of default received by Grant Recipient in connection therewith. Grant Recipient agrees to cooperate with NYSERDA to determine how to prevent the exercise of any such remedy which may result in termination of the work to complete the Port Improvements. NYSERDA agrees and acknowledges that the terms of this Section 5.04 shall not apply (A) to any indebtedness incurred by Grant Recipient (in whole or in part) in respect of the substation site, any portion of the Port Improvements necessary or useful for the operation of the substation, any related access easements located at SBMT or to any pledge, leasehold mortgage or other lien or security interest provided to any lender (or any trustee or agent of any such lender) in respect of any of the foregoing, (B) to any pledge of revenue to be received by Grant Recipient after Substantial Completion or to the pledge of any agreement under which Grant Recipient may receive such revenue, (C) to any obligations, contingent or otherwise, as an account party or applicant under or in respect of bankers’ acceptances, letters of credit, surety bonds, warehouse receipt or similar facilities entered into by Grant Recipient in the ordinary course of business, (D) to any unsecured indebtedness owed by Grant Recipient to any affiliate or equity holder or to any indebtedness reflecting non-cash intercompany allocations of overhead and other parent-level costs or (E) to the NYGB Financing Agreement and any indebtedness incurred or collateral provided thereunder, and, in each case of the foregoing clauses (A) – (E), replacements or refinancings of any such indebtedness. NYSERDA and Grant Recipient also agree that, if the Guarantors are not otherwise in material breach of their obligations under the Sponsor Guarantee, upon the deployment of capital toward, or the release of funds in respect of, an Alternative Investment, in each case, in accordance with Section 3 of the Sponsor Guarantee, the terms of this Section 5.04 shall no longer apply.

Article VI
Schedule

Section 6.01 Schedule. The construction of the Port Improvements shall be performed in material compliance with the schedule delivered to NYSERDA as modified by the Grant Recipient from time to time. Grant Recipient shall deliver the Progress Reports and final report in accordance with the requirements of Exhibit A of this Agreement.

Article VII
Force Majeure

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

Article VIII
Rights in Information; Confidentiality

Section 8.01 Rights in Contract and Proprietary Information.

- (a) All Contract Information shall be the property of NYSERDA.
- (b) All Proprietary Information shall be the property of Grant Recipient.
- (c) The use, public performance, reproduction, distribution, or modification of any materials used by Grant Recipient in the performance of this Agreement does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy. The Grant Recipient shall be responsible for obtaining and paying for any necessary licenses to use any third-party content.
- (d) The Grant Recipient agrees that to the extent it receives or is given any (i) information from NYSERDA or a NYSERDA contractor or subcontractor, the Grant Recipient shall treat such data in accordance with any restrictive legend contained thereon or instructions given by NYSERDA, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Grant Recipient acknowledges that in the performance of its obligations under this Agreement, Grant Recipient may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. Grant Recipient agrees not to disclose any such information without the consent of NYSERDA, except as required by law or the order of a court of competent jurisdiction.

(e) In conjunction with Grant Recipient's performance of the Project, NYSERDA or other entities may furnish Grant Recipient with certain information concerning the Port Improvements that is collected and stored by, or on behalf of, NYSERDA and is either non-public, confidential or proprietary in nature as classified per the policies and procedures outlined in the New York State Information Security Controls Standard,¹ identified in writing as such by Project Manager when provided to Grant Recipient (the "Information"). The Information will be kept confidential and will not, without NYSERDA's prior written consent, be disclosed by you, your agents, employees, directors, officers, contractors, affiliates or professional advisors, in any manner whatsoever, in whole or in part (except, in each case, (i) as required by law, regulation, subpoena, or by order of a court of competent jurisdiction or other legal process, (ii) as requested by any regulatory authority, ratings agency or stock exchange, and (iii) in connection with any litigation or dispute or the exercise of any remedy hereunder involving Grant Recipient, its affiliates, any Guarantor and NYSERDA; in which case Grant Recipient will promptly notify NYSERDA of its intent or requirement to disclose such Information unless such notice is otherwise prohibited by law or court order; provided that failure to notify NYSERDA shall not give rise to any liability to Grant Recipient or its affiliates), and will not be used by Grant Recipient, Grant Recipient's agents, employees, directors, officers, contractors, affiliates or professional advisors other than in connection with the Port Improvements. Grant Recipient agrees to transmit the Information only to Grant Recipient's agents, employees, directors, officers, contractors, affiliates and professional advisors who need to know the Information for that purpose and who are informed by Grant Recipient of the confidential nature of the Information and who either (i) will agree in writing to be bound by the terms and conditions of this Section 8.01(e) of this Agreement, or (ii) are bound by internal procedures maintained by the Grant Recipient or such other person as are reasonably calculated to maintain the confidentiality of the Information in accordance with this Section 8.01). Notwithstanding the foregoing provisions of this Section 8.01(e), (i) the foregoing obligation of confidentiality shall not apply to any Information that was known to Grant Recipient or any of its affiliates prior to the time it received such Information, other than as a result of the disclosure thereof by a person who, to the knowledge or reasonable belief of Grant Recipient, was prohibited from disclosing it by any duty of confidentiality arising (under this Agreement or otherwise) by contract or law, and (ii) the foregoing obligation of confidentiality shall not apply to any Information that becomes part of the public domain independently of any act of Grant Recipient not permitted hereunder or when identical or substantially similar information is received by Grant Recipient, without restriction as to its disclosure or use, from a person who was not prohibited from disclosing it by any duty of confidentiality arising (under this Agreement or otherwise) by contract or law.

Grant Recipient shall conform to requirements of the New York State Information Technology Services (ITS) Information Security Policy (NYS-P03-002²) and any amendments thereto, to maintain the security of and to prevent unauthorized access to Information that is maintained in electronic form on your systems. Such measures shall

¹ <https://its.ny.gov/document/information-security-controls-standard>

² https://its.ny.gov/sites/default/files/documents/nys-p03-002_information_security_0.pdf

include:

- a. Access Control on Servers, Systems, Apps, Databases, i.e., role-based permissions, authentication, authorization, and password policy;
- b. Network Security, i.e., isolation of Information, secure V-LANS, Firewalls;
- c. Patch Management, i.e., formal patch cycles and maintenance process;
- d. Malware Prevention, i.e., anti-virus, anti-spyware, vulnerability assessments, penetration testing, audits;
- e. Encryption of Information in transit and Information in storage on desktops, backups, and removable media;
- f. Change Control to ensure that new and modified system software are authorized, tested, and implemented accurately;
- g. Security Event Logging/Monitoring that provides real time alerting of security events
- h. IDS, WS, Website Monitoring of websites for compromise indicators which indicates website defacements, compromises or inappropriate content (Application/Host/Network IDS and IPS);
- i. Web Application scanning that is performed on code and application in compliance with Open Web Application Security project (OWASP) and SANS (SysAdmin, Audit, Network, and Security) Institute standards.

At the termination of this Agreement, Grant Recipient will return to NYSERDA all the Information and/or certify to NYSERDA that the Information was destroyed. Grant Recipient will, for a period of two (2) years following expiration of this Agreement, comply with any further reasonable requests of NYSERDA concerning the return or destruction of the Information.

(f) If, in the course of performance of the Agreement, Grant Recipient or Subcontractors (if any) encounter any information in NYSERDA's Salesforce or other database platforms that a reasonable person would identify as unrelated to the Agreement or otherwise inadvertently produced to Grant Recipient or Subcontractors, Grant Recipient shall notify NYSERDA immediately and neither Grant Recipient nor Subcontractor shall use such inadvertently produced information for its own use. Any Grant Recipient access to NYSERDA information shall be used solely for NYSERDA-related matters. This shall include, but not be limited to, access to the Salesforce CRM.

(g) Grant Recipient 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. FOIL provides 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.” If the Agreement specifically requires submission of information that Grant Recipient, its affiliates, or its Subcontractors consider to be proprietary and/or confidential trade secret information, Grant Recipient shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Grant Recipient represents that the information has actual or potential specific commercial or competitive value to the competitors of Grant Recipient or its affiliates. To the extent that NYSERDA receives a request for disclosure of information that Grant Recipient has identified as confidential or proprietary, NYSERDA shall address such requests in accordance with the requirements of FOIL, including the exemptions from disclosure provided thereunder.

Article IX
Warranties and Guarantees

Section 9.01 Warranties and Guarantees. The Grant Recipient warrants and guarantees that:

(a) all written information provided, and all representations made as a part of the PIIP-A or application, if any, submitted to NYSERDA in order to obtain this Agreement were, to the best of Grant Recipient's knowledge, complete, true and accurate in all material respects, taken as a whole, when provided or made;

(b) as of the Effective Date, it is financially and technically qualified to enter into this Agreement and the transactions contemplated hereby, and is qualified to do business and is in good standing in all jurisdictions necessary for Grant Recipient to perform its obligations under this Agreement, except where the failure to be so qualified could not reasonably be expected to have a materially adverse effect on Grant Recipient or the ability to Substantially Complete the Port Improvements;

(c) it is familiar with and will comply in all material respects with all applicable general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(d) the design, supervision and workmanship furnished with respect to performance of the Port Improvements shall be in accordance with currently accepted industry standards and engineering practices;

(e) as of the Effective Date, neither the Grant Recipient nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Port Improvements or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(f) to the best of Grant Recipient's knowledge, there are no existing undisclosed or threatened in writing legal actions, claims, or encumbrances, or liabilities as of the Effective Date that may adversely affect the Port Improvements or NYSERDA's rights hereunder;

(g) it has no actual knowledge that any information or document or statement furnished by the Grant Recipient in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the ability to Substantially Complete the Port Improvements;

(h) all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate in all material respects;

(i) Grant Recipient shall at all times during the Agreement term remain Responsible, and Grant Recipient agrees, if reasonably requested by NYSERDA, to present reasonable evidence of the same;

(j) Grant Recipient represents that there is and shall be no actual or potential conflict of interest that could prevent the Grant Recipient's performance of this Agreement in accordance with applicable law and the terms hereof. If Grant Recipient knows of, or learns of, any actual or potential conflict of interest concerning its performance of this Agreement, Grant Recipient shall notify NYSERDA;

(k) Grant Recipient (i) is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (ii) has or will have all requisite corporate power, and has or will have all material governmental permits necessary to execute and deliver this Agreement; and (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary, except where failure to be so qualified could not reasonably be expected to have a material adverse effect on Grant Recipient; and

(l) that the execution, delivery and performance by Grant Recipient of and under this Agreement will not: (i) violate any applicable law or any provision of the limited liability company agreement or other governing documents of Grant Recipient; (ii) violate, conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default or an event of default under any material indenture, agreement, mortgage, deed of trust, note, lease, contract or other instrument to which Grant Recipient is a party or by which it or any of its property is bound; or (iii) result in the creation or imposition of any lien upon any property or assets of Grant Recipient, in the case of each of clauses (i)-(iii) except to the extent as would not result in a material adverse effect on Grant Recipient.

Article X
Indemnification

Section 10.01 Indemnification. The Grant Recipient shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all third party 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 Grant Recipient's or its Subcontractors' gross negligence or willful misconduct in its performance of this Agreement. The obligations of the Grant Recipient under this Article shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage. For the avoidance of doubt and notwithstanding anything to the contrary herein or otherwise, Grant Recipient's liability shall not exceed the aggregate amount of grant proceeds disbursed to it hereunder.

Article XI
Insurance

Section 11.01 Maintenance of Insurance; Policy Provisions. The Grant Recipient 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 11.02 hereof.

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

(a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and

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

Section 11.03 Delivery of Policies; Insurance Certificates. Prior to commencing construction of the Port Improvements, the Grant Recipient shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof.

Article XII
Termination and Remedies

Section 12.01 Termination. This Agreement may be terminated (each, a “Termination Event”):

(a) at any time by either NYSERDA or Grant Recipient if: (1) an Event of Default occurs (and following the expiration of any applicable cure period), (2) the Party seeking to terminate this Agreement hereunder is the non-defaulting Party, and (3) the non-defaulting Party has not waived such Event of Default in writing;

(b) at any time by the mutual written consent of Grant Recipient and NYSERDA;

(c) by NYSERDA, if any written information, document or written statement furnished by the Grant Recipient, taken as a whole with such other written information, documents and written statements furnished by the Grant Recipient, in connection with this Agreement or the documents submitted by Grant Recipient to NYSERDA under ORECRFP20-1 are found to have contained any untrue statement of a material fact or have omitted a material fact at the time that such document or statement was furnished by Grant

Recipient, making such information, document or written statement misleading in light of the circumstances under which they were made or furnished;

(d) by NYSERDA in the event it is found that the certification filed by the Grant Recipient in accordance with State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete at the time of submission if such misrepresentation or omission is not cured within thirty (30) days after the receipt of notice from NYSERDA;

(e) as permitted by Section 14.02 of this Agreement; or

(f) an Enforcement Event has occurred and is continuing.

Section 12.02 Remedies. NYSERDA's sole and exclusive remedy for an Enforcement Event shall be as expressly set forth in Sponsor Guarantee. NYSERDA's sole and exclusive remedy for any other Termination Event described in clauses (a) – (e) of Section 12.01 shall be the termination of this Agreement and the termination of NYSERDA's obligation to disburse the grant proceeds pursuant to this Agreement. Except as set forth in this Section 12.02, NYSERDA waives any and all additional remedies to which it may be entitled, including for the avoidance of doubt, any remedies available at law or equity.

Article XIII Independent Contractor

Section 13.01 Independent Contractor. (a) This Agreement is intended to create, and creates, a contractual relationship and is not intended to create, and does not create, any agency, partnership, joint venture, or any similar relationship between the Parties. It is understood and agreed that the personnel furnished by Grant Recipient to perform the Port Improvements shall be Grant Recipient's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's contractors, employee(s), or agent(s), and shall remain the employees of Grant Recipient, except to the extent required by section 414(n) of the Internal Revenue Code.

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

(b) Nothing in this Agreement shall be deemed to render this Agreement a “public work agreement” or the Port Improvements a “public work” for purposes of Article 8 and Article 9 of the New York State Labor Law or any other provision thereof.

Article XIV
Compliance with Certain Laws

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

Section 14.02 All Legal Provisions Deemed Included. It is the intent and understanding of the Grant Recipient and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement on the effective date of this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon a written request of either NYSERDA or the Grant Recipient, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions. In the event that NYSERDA or Grant Recipient requests that this Agreement be amended to reflect a Change in Law that occurs after the effective date of this Agreement, NYSERDA and Grant Recipient will negotiate in good faith to amend this Agreement to comply with applicable law. In the event that parties are unable to reach Agreement within sixty (60) days of the date of receipt of a Party’s request to amend the Agreement to take into account a Change in Law, or such other period as mutually agreed to by the Parties, either Party may terminate this Agreement in accordance with Section 12.01 of this Agreement.

Section 14.03 Permits and Approvals. The Grant Recipient shall be responsible to obtain all applicable permits and regulatory approvals that may be required in order to develop and/or operate the WTG Staging Facility over the duration of this Agreement. The NYSERDA award in no way replaces or modifies the necessity or applicability of any permit or approval process, including SEQRA. NYSERDA’s obligations to make payments to Grant Recipient are conditional on the acquisition by Grant Recipient of all such permits and approvals. Upon request by NYSERDA, Grant Recipient shall demonstrate such acquisition and/or provide copies of all permits and approvals acquired. Grant Recipient shall provide prompt Notice to NYSERDA of the initiation of any criminal or regulatory investigation, hearing, proceeding, or review process (“Process”) by any federal or State entity regarding any actual or alleged violation of any permit or approval obtained or applied for with respect to the WTG Staging Facility and/or the site, as well as of any modification, penalty and/or fine that may be imposed or occur as a result of such a Process or violation, in either case which actual or alleged violation, modification, penalty and or fine, if true or imposed, would substantially impair Grant Recipient’s performance of its obligations under this Agreement.

Section 14.04 Other Legal Requirements. The references to particular laws of the State of New York in this Article, in Exhibit C and elsewhere in this Agreement are not

intended to be exclusive and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of the Grant Recipient to comply with all legal requirements.

Section 14.05 Sexual Harassment Policy. The Grant Recipient and all Subcontractors must have a written sexual harassment prevention policy addressing sexual harassment in the workplace and must provide annual sexual harassment training to all employees.

Article XV
Notices, Entire Agreement, Amendment, Counterparts

Section 15.01 Notices.

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

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

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

a. NYSERDA

17 Columbia Circle
Albany, New York 12203
Attention: Office of the General Counsel
Email: ceslegal@nyserda.ny.gov

Name: [REDACTED]
Title: [REDACTED]
Address: [REDACTED]
E-Mail Address: [REDACTED]

with a copy to (which shall not constitute notice):

[REDACTED]

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

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

Section 15.02 Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Grant Recipient and supersedes all prior agreements and understandings relating to the subject matter hereof. Except for no-cost time extensions, which may be signed by NYSERDA and require no counter-signature by the Grant Recipient, and except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

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

Article XVI Publicity

Section 16.01 Publicity.

(a) The Grant Recipient shall collaborate with NYSERDA's Director of Communications (or its designee) to prepare any press release and to plan for any news conference concerning the Port Improvements. In addition, the Grant Recipient shall notify NYSERDA's Director of Communications (or its designee) regarding any media interview in which the Port Improvements are referred to or discussed.

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

(c) Commercial promotional materials or advertisements produced by the Grant Recipient shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Grant Recipient within thirty (30) days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Grant Recipient within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to one hundred and eighty (180) days. If NYSERDA and the Grant Recipient do not agree on the wording of such credit in connection with such materials, the Grant Recipient may use such materials, but agrees not to include such credit.

EXHIBIT C

REVISED 12/19

**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 to the extent applicable:

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Grant Recipient will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Grant Recipient 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, Grant Recipient 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. Grant Recipient 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 Grant Recipient'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, Grant Recipient and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the

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

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

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Grant Recipient agrees, as a material condition of the Agreement, that neither the Grant Recipient 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 U.S.C. App. Sections 2401 et seq.) or regulations thereunder. If such Grant Recipient, or any of the aforesaid affiliates of Grant Recipient, 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 Grant Recipient 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 Grant Recipient under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Grant Recipient 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, Grant Recipient 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 Grant Recipient considers a proprietary and/or confidential trade secret, Grant Recipient shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Grant Recipient represents that the information has actual or potential specific commercial or competitive value to the competitors of Grant Recipient or its affiliates. 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/about/foil2.html>) and NYSERDA’s Regulations, Part 501 <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx> .

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. As a condition to NYSERDA’s obligation to pay any invoices submitted by Grant Recipient pursuant to this Agreement, Grant Recipient shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Grant Recipient has both such numbers. Where the Grant Recipient does not have such number or numbers, the Grant Recipient must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by Grant Recipient to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

8. CONFLICTING TERMS. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit C, the terms of this Exhibit C shall control.

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

10. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA's written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Grant Recipient or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Grant Recipient'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 Grant Recipient 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 Grant Recipient knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Grant Recipient and its principals. The Grant Recipient or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Grant Recipient which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

13. PERMITS. It is the responsibility of the Grant Recipient to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Grant Recipient certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State

Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.

15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
Division for Small Business
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5884
<http://www.esd.ny.gov>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Grant Recipients certify that whenever the total amount is greater than \$1 million:

(a) The Grant Recipient has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Grant Recipient has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Grant Recipient agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective

bargaining contracts or agreements. The Grant Recipient agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Grant Recipient acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

16. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Grant Recipient shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

18. PROCUREMENT LOBBYING. To the extent this Agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the Grant Recipient certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, NYSERDA may terminate the agreement by providing written notification to the Grant Recipient in accordance with the terms of the agreement.

19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Grant Recipients that have entered into agreements in an amount exceeding \$100,000 for the purchase of goods and services:

- a) Before such agreement can take effect, the Grant Recipient must have on file with the New York State Department of Taxation and Finance a Grant Recipient Certification form (ST-220-TD).
- b) Prior to entering into such an agreement, the Grant Recipient is required to provide NYSERDA with a completed Grant Recipient Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Grant Recipient is required to provide NYSERDA with a completed Form ST-220-CA.

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

NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Grant Recipient in accordance with Tax Law Section 5-a was false when made.

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law (See <https://ogs.ny.gov/iran-divestment-act-2012>).

21. COMPLIANCE WITH NEW YORK STATE DIESEL EMISSION REDUCTION ACT (DERA) OF 2006. Grant Recipient shall comply with and, if applicable to this Agreement, provide proof of compliance with the New York State Diesel Emission Reduction Act of 2006 (“DERA”), Environmental Conservation Law (ECL) Section 19-0323, and the NYS Department of Environmental Conservation (DEC) Law implementing regulations under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel Fuel (ULSD) and Best Available Retrofit Technology (“BART”). Compliance includes, but is not limited to, the development of a heavy-duty diesel vehicle (HDDV), maintaining documentation associated with BART evaluations, submitting to and receiving DEC approval of a technology or useful-life waiver, and maintaining records where BART-applicable vehicles are primarily located or garaged. DEC regulation under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Technology for Heavy Duty Vehicles can be found at: <https://www.dec.ny.gov/regs/2492.html>.

22. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Grant Recipient acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, regardless of whether the original of said contract is in existence.

EXHIBIT D

NYSERDA PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability. (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.³

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

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

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

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

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

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

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

(f) "Proper Invoice" means a written request for Payment that is submitted by a Grant Recipient 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

³ This is only a summary; the full text of Part 504 can be accessed at: <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

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

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

(a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

(ii) if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Grant Recipient has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

(h) "Set-off" means the reduction by NYSERDA of a payment due a Grant Recipient by an amount equal to the amount of an unpaid legally enforceable debt owed by the Grant Recipient to NYSERDA.

504.3. Prompt Payment Schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYSERDA of an amount properly due and owing under this Agreement shall be no later than thirty (30) calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

504.4. Payment Procedures.

(a) Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Grant Recipient to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Grant Recipient within fifteen (15) calendar days after Receipt of an Invoice of:

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; or
- (3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.

(d) If NYSERDA fails to notify a Grant Recipient of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Grant Recipient. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

504.5. Exceptions and Extension of Payment Due Date. NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Grant Recipient is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so

elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(d) If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSERDA.

504.6. Interest Eligibility and Computation. If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Grant Recipient on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

504.7. Sources of Funds to Pay Interest. Any interest payable by NYSERDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.

504.8. Incorporation of Prompt Payment Policy Statement into Contracts. The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

504.9. Notice of Objection. Grant Recipient may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working

days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Grant Recipient either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

504.10. Judicial Review. Any determination made by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

504.11. Court Action or Other Legal Processes.

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Grant Recipient pursuant to this Exhibit shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by NYSERDA after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

Exhibit E

New York State Energy Research and Development Authority (NYSERDA)

2017 Report Content Guide

Revised 8/26/16

(Replaces the 2016 NYSERDA Report Content Guide)

Table of Contents

1 Purpose	2
2 Required Elements	2
2.1 Copyright for Intellectual Property.....	5
2.2 Proprietary or Confidential Information	6
2.3 Americans with Disabilities Act (ADA) Accessibility Compliance	6
3 Formatting	7
4 Submitting a Report to NYSERDA	7
5 Contacts	8
6 Required Elements Checklist	8

This Report Content Guide should be used in conjunction with the following documents, which are available at nysesda.ny.gov/Doing-Business-with-NYSERDA:

- 2017 NYSERDA Report Formatting Guide
- 2017 NYSERDA Marketing’s Template for Reports (including example)

1 Purpose

This document explains how to prepare and submit a report to the New York State Energy Research and Development Authority (NYSERDA). It includes details on the elements of the report, specifications for formatting and accessibility, and information on electronic submission. Please follow these instructions unless your NYSERDA contract specifies otherwise.

NYSERDA will publish the finished report deliverable online and/or in print unless the NYSERDA Project Manager approves special circumstances. Please direct questions about technical content and submission deadlines to your NYSERDA Project Manager. For questions related to formatting and electronic submission of the report, contact Diane Welch in NYSERDA Marketing at 518-862-1090, ext. 3276 or diane.welch@nysesda.ny.gov.

2 Required Elements

Section 6 includes a checklist of the required elements. This section contains details about the items that are required in all reports (unless noted as optional). Items should appear and be paginated in the following sequence:

- Title page (no page number):
 - Include title of report, draft or final, prepared for NYSERDA, NYSERDA Project Manager (name and title), prepared by name of organization, individuals and affiliation, report number (NYSERDA will provide during editing), contract number and date report submitted.
- Notice (small Roman numerals for page numbers i.e., ii):

Notice

This report was prepared by [Insert Preparer's Name] in the course of performing work contracted for and sponsored by the New York State Energy Research and Development Authority (hereafter “NYSERDA”). The opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York, and reference to any specific product, service, process, or method does not constitute an implied or expressed recommendation or endorsement of it. Further, NYSERDA, the State of New York, and the contractor make no warranties or representations, expressed or implied, as to the fitness for particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or accuracy of any processes, methods, or other information contained, described, disclosed, or referred to in this report.

NYSERDA, the State of New York, and the contractor make no representation that the use of any product, apparatus, process, method, or other information will not infringe privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of information contained, described, disclosed, or referred to in this report.

NYSERDA makes every effort to provide accurate information about copyright owners and related matters in the reports we publish. Grant Recipients are responsible for determining and satisfying copyright or other use restrictions regarding the content of reports that they write, in compliance with NYSERDA's policies and federal law. If you are the copyright owner and believe a NYSERDA report has not properly attributed your work to you or has used it without permission, please email print@nyserda.ny.gov.

Information contained in this document, such as web page addresses, are current at the time of publication.

NYSERDA makes every effort to provide accurate information about copyright owners and related matters in the reports we publish. Grant Recipients are responsible for determining and satisfying copyright or other use restrictions regarding the content of the reports that they write, in compliance with NYSERDA's policies and federal law. If you are the copyright owner and believe a NYSERDA report has not properly attributed your work to you or has used it without permission, please email print@nyserda.ny.gov.

Information contained in this document, such as web page addresses, are current at the time of publication.

- Abstract and Keywords (optional; small Roman numerals for page numbers):
 - The Abstract is a brief, approximately 200-word description of project objectives, investigative methods used, and research conclusions or applications. This information will be used when NYSERDA registers the report with the New York State Library and the Library of Congress. A list of keywords that describe the project and identify the major research concept should be submitted with the report. Four to six precise descriptors are generally sufficient and will be used for indexing, registering and distributing the report.
- Acknowledgments (optional; small Roman numerals for page numbers):

- If included, the Acknowledgments page precedes the Table of Contents and is generally no longer than two paragraphs in length.
- Table of Contents (small Roman numerals for page numbers):
 - The Table of Contents should list front matter material (except the Table of Contents) and titles and section numbers for heading levels one through four. Additional levels should not be used in the report. If the heading styles are applied in Word, the list can be automatically generated.
- List of Figures (small Roman numerals for page numbers).
 - If the report contains three or more figures, they should be listed using the style of the Table of Contents. (If the figure titles in text have the caption function applied in Word, the list can be automatically generated.)
- List of Tables (small Roman numerals for page numbers).
 - If the report contains three or more tables, they should be listed using the style of the Table of Contents. (If the figure titles in text have the caption function applied in Word, the list can be automatically generated.)
- Acronyms and Abbreviations List (small Roman numerals for page numbers):
 - All acronyms and abbreviations should be spelled out and followed by the acronym or abbreviation in parentheses on first use.
 - First reference to NYSERDA in text should be “the New York State Energy Research and Development Authority (NYSERDA).” Subsequent references should read simply “NYSERDA.”
 - When referring to New York State, use “New York State” on first use and abbreviate “the State” for subsequent uses.
 - Use a one- or two-column layout for the list, but do not use a table.
- Executive Summary or Summary (optional; ES-1 or S-1 etc. for page numbers of Executive Summary and Summary, respectively):
 - An Executive Summary is two pages in length maximum. A Summary is a shorter version of the report and varies in length but less than 10 percent of the main report is a good guideline.
- Main Text (sequentially numbered pages i.e., 1, 2, 3 etc. preferred, but chapter-page numbering is acceptable).
- Figures and tables with sequential numbering (Figure 1, Figure 2, etc. preferred but sequential chapter-number are acceptable), callouts in text (i.e., Figure 1 shows...) and Alternative Text to comply with ADA Accessibility are required.

Refer to ADA guidelines for the best way to represent data with reference to colors. Preferences for tables are listed in this document.

- Figures and tables at the back of the document are preferred for documents that NYSERDA will be formatting; figures and tables placed in-line with text near callout is acceptable. Do not use wrap text.
- References Cited and Bibliography information (as needed; continue sequential page numbering):
 - References Cited vs. Bibliography: References Cited has specific references called out in text to document sources of specific information, and a bibliography is a list of sources used to compile a document but does not have callouts for specific facts in the text.
 - Endnote style for reference citations is preferred but footnotes are acceptable.
 - Format of reference callout in text for footnote or endnote is the author-date callout in text (i.e., Wood and Stone 2010).
 - Full reference citations listed alphabetically by the last name of the first author.
 - Citation format is based on Chapter 15 (Documentation II: Author-Date References) of The Chicago Manual of Style (16th edition).
 - Use the following format to refer to reports published by NYSERDA:
New York State Energy Research and Development Authority (NYSERDA).
Year of publication. “Title of Report,” NYSERDA Report Number xx-yy.
Prepared by organization, company or individual names and city/state location (optional). nyserdera.ny.gov/publications
- Appendices (optional; A-1 etc. for Appendix A, B-1 etc. for Appendix B page numbering):
 - In NYSERDA reports, Appendices should be called appendices and not Attachments. Attachments are used to append a document to an appendix. (Attachments may have different definitions in emails and legal documents.)
- Alternative text that describes figures and tables to meet Accessibility requirements. (A separate Word file is fine—see Section 2.2 for more details).

2.1 Copyright for Intellectual Property

All material borrowed or adapted from other sources should be properly identified (i.e., document, source, date, and page). The contractor must obtain and submit to NYSERDA

the copyright owner’s written permission to use any illustrations, photographs, tables, figures, or substantial amounts of text from any other publication.

For each figure and table, the contractor must also provide a source line that gives the original source and any language stating permission to reprint that should be published with each respective table or figure.

2.2 Proprietary or Confidential Information

Propriety or confidential information must be clearly labeled in the report submission as “proprietary” or “confidential.” To the extent possible, the information should be contained within one section or appendix that can be easily removed prior to publishing. Consult your NYSERDA Project Manager with any questions.

2.3 Americans with Disabilities Act (ADA) Accessibility Compliance

As a State Authority, NYSERDA is obligated to ensure that all documents published on NYSERDA’s website are accessible, pursuant to Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220 August 7, 1998).

To meet the needs of persons with visual or mobility disabilities, reports must be in a format that allows for conversion of written words of an electronic document into speech, thus allowing the person with a disability to hear the text. The formatting of these documents is critical to the success of the conversion from text to speech. Screen reading software will read the document as one long series of paragraphs with no differentiation for new topics unless properly formatted with Heading Styles. (Imagine reading a textbook with no difference in text from one paragraph to the next.)

Reports submitted to NYSERDA must meet the following requirements:

- Use numbered headings in the document up to Level 4 (i.e., 1.1.1.1).
- Pick one of the formatting options outlined in Section 3 of this document.
- Provide short titles for all tables, images, and figures.
- Provide Alternative Text (also known as alt-text) that describes the visual elements of each image and figure—and does not just repeat the title or caption. Include alt text for any tables that are inserted as images.
 - Write out links in documents that will be printed. Write the sentence so that the URL is not at the end and followed by a period. See the last bulleted item for an example (“Visit...”).
 - Avoid linking to “click here” or including extremely long URLs. For web-only documents, use contextual links, such as linking NYSERDA’s website to “NYSERDA” instead of putting a long URL in text.

- Visit nyserdera.ny.gov/Doing-Business-with-NYSERDA for more information about how to make a document accessible.

3 Formatting

Grant Recipients have two options for the format of a submitted document:

Option 1—NYSERDA does the formatting

- Grant Recipient emails to NYSEDA Project Manager a Word file of all report components with all text in Times New Roman 10 pt font.
- File should include outline level numbering with each section head (1 is Level 1 Heading, 1.1 is Level 2 Heading, 1.1.1 is Level 3 Heading, 1.1.1.1 is Level 4 Heading), not to exceed Level 4.
- Each figure and table should have a call-out in the main text (i.e., Figure 1 shows... or According to Figure 1,... or (Figure 1) at the end of a sentence).
- Figures and tables along with their titles and sources (and captions if necessary) should be grouped together at the back of the file or supplied in a separate file. Grant Recipient can request inline or back-of-report placement of figures.
- NYSEDA will format the document according to the 2017 NYSEDA Marketing's Template for Reports.

Option 2—Grant Recipient does the formatting

- Visit nyserdera.ny.gov/Doing-Business-with-NYSERDA to download:
 - Report template (2017 NYSEDA Marketing's Template for Reports).
 - Details about report formatting (2017 NYSEDA Report Formatting Guide).
- Apply each of the Word Styles in the template to the elements of the document as appropriate, such as apply Heading 1 to all first-level headings, Body Text to all body text and References to reference materials. Place figures and captions after each respective call-out OR in order at the back of the report. Do not hyperlink websites.

4 Submitting a Report to NYSEDA

No print drafts of the report are required. An electronic Word version of the draft report should be emailed to the NYSEDA Project Manager. Contact the Project Manager regarding how to transfer large files. The contractor is responsible for satisfactorily addressing comments from NYSEDA and other stakeholders. When making corrections, the contractor must ensure that technical content is not compromised. After

editorial corrections have been made, the contractor must email to the Project Manager a Word version of the final report. NYSERDA will consider high-resolution image submissions for report covers.

5 Contacts

- The NYSERDA Project Manager should be the contractor's primary point of contact.
- For additional questions, contact Diane Welch in NYSERDA Marketing at diane.welch@nyserda.ny.gov or 518-862-1090 x3276.
- Grant Recipients can also email print@nyserda.ny.gov or call 518-862-1090 and ask for Marketing.

6 Required Elements Checklist

The following elements should be included in reports, unless noted as optional, along with the style of page numbers is listed in parentheses:

- Title page (no page number).
- Notice (small Roman numeral page numbers, i.e., ii).
- Abstract
- Keywords (optional; small Roman numerals).
- Acknowledgments (optional; small Roman numerals).
- Table of Contents (small Roman numerals).
- List of Figures (small Roman numerals).
- List of Tables (small Roman numerals).
- Acronyms and Abbreviations List (small Roman numerals).
- Executive Summary or Summary (optional; ES-1 or S-1 etc).
- Main Text (pages sequentially numbered i.e., 1, 2, 3 etc.).
- Figures and tables with sequential numbering (Figure 1, Figure 2, etc.), callouts in text (i.e., Figure 1 shows...), and Alt Text for ADA Accessibility.
 - Figures and tables at the back of the document are preferred for documents that NYSERDA will be formatting; figures and tables placed in-line with text after first callout are acceptable. Do not wrap text.
- References Cited and Bibliography information.
- Appendices (optional; page numbering is A-1 etc. for Appendix A, B-1 etc. for Appendix B).

- Copyright information for intellectual property (i.e., images, figures, tables or large pieces of text that have been previously published)—include written permission from the copyright holder at the end of the document and use appropriate language in the captions of the images, figures and tables such as “Reprinted with permission from [publisher’s name].”
- Alternative text that describes each image and figure (include Alt text for tables that are included as images) —and does not just repeat the title or caption. (See Section 2.3 for more information.) The text should be listed at the end of the document or provided in a separate file.

Exhibit F

PROJECT LABOR AGREEMENT REQUIREMENTS

Grant Recipient shall present a PLA to NYSERDA for review and approval pursuant to this Grant Agreement that should address:

1. Provisions that appropriately limit applicability of the PLA to United States-based (including Federal waters) covered work on the Port Improvements (and not extending to any other work performed by contractors and subcontractors, or to the work of their affiliated entities), ensuring that Port Improvements contractors or subcontractors are not required to become a signatory to any other labor agreement, and appropriately providing for the supremacy of the PLA over any potentially conflicting labor agreements that might otherwise apply to contractors and subcontractors. The PLA must apply to all covered construction and all contractors and subcontractors, of whatever tier, performing construction work on the Port Improvements (subject to appropriate exceptions), and the PLA should be available to all contractors and subcontractors, of whatever tier, regardless of their union affiliation;
2. Provisions for appropriate union recognition and security (limited to Port Improvements work) and the referral of skilled craft workers, including provisions for staffing in the event qualified referrals are not reasonably available and for the reasonable use of a number of core employees by contractors and subcontractors (regardless of union affiliation and referral practices that might otherwise exist);
3. Comprehensive labor harmony provisions to ensure against schedule disruption as a result of worksite disputes or other labor disputes of any kind;
4. Comprehensive provisions for the resolution of workplace disputes through third party resolution, including provisions for the resolution of jurisdictional disputes (without disruption to the schedule of the Port Improvements), and appropriate provisions for labor management cooperation;
5. Appropriate provisions to allow the cost-effective and efficient coordination of multiple trades and contractors and subcontractors (notwithstanding any local labor agreements that might otherwise be applicable to contractors and subcontractors), as well as other appropriate management rights (such as appropriate provisions respecting specialty work and/or workers; adequately ensuring the contractors' or subcontractors' choice of materials, techniques, methods, technology or design, or, regardless of source or location; use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices; the

installation or use of materials, supplies or equipment regardless of their source (including as may be required by a vendor and/or to ensure warranty coverage); and to perform off-site work, subject to any restrictions imposed by law);

6. Appropriate provisions promoting minority- or women-owned business enterprise (“MWBE”) employment and service-disabled veteran owned business (“SDVOB”) employment, as well as the employment of low-income workers in New York;
7. Appropriate provisions for the use of apprentices; and
8. Appropriate provisions for rules governing worksite access and conduct.