

[Insert Date]

[Name]

[Title]

[Company Name]

[Address 1]

[Address 2]

[City, State Zip Code]

Subject: [TBD]

Dear [Name]:

The Long Island Power Authority hereby confirms that it retained [Company Name] (hereafter referred to as the “EESP”), to provide Energy Efficiency Solution Provider services to the Authority, and its wholly-owned subsidiary, the Long Island Lighting Company d/b/a LIPA (collectively referred to herein as the “Authority”), as described herein.

Unless modified as provided herein, the term of this Agreement (“Agreement” or “Contract” shall begin on the later date of both January 1, 2010 and the date of approval of this Agreement by the Office of the New York State Comptroller, and shall continue for a term of five (5) years, subject to the provisions of Schedule A, Article III of this agreement.

The EESP's engagement shall be subject to the provisions set forth in the Schedules annexed hereto entitled:

- “SCHEDULE A - GENERAL CONDITIONS APPLICABLE TO AUTHORITY EESP AGREEMENTS.”
- “SCHEDULE B – SCOPE OF SERVICES.”
- “SCHEDULE C - INDIVIDUALS AVAILABLE FOR RENDERING CONSULTING SERVICES UNDER THIS CONTRACT.”
- “SCHEDULE D - FEES FOR SERVICES.”

The EESP’s engagement was based, among other things, on representations and warranties and statements made by the EESP in its response to the Authority’s Request for Proposals, dated [RFP date].

The services shall include those defined in Schedule B-1 and such other matters as may be requested from time-to-time by authorized representatives of the Authority, which include the Chairman of the

Authority Board of Trustees, the President and Chief Executive Officer, the General Counsel and Secretary, Vice President of Environmental Affairs and the Chief Financial Officer. *The \_\_\_\_\_ will serve as the Authority's authorized representative, as set forth in Schedule A, Article I, Section 1.5 below. (designate here, or follow section 1.5).*

Original billings should be submitted directly to the Authority's [TBD], 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553.

If the foregoing is acceptable to you, please so indicate by signing all three originals of this Agreement in the space provided below.

Sincerely,

[Procurement Officer]  
[Title]

Enclosure

ACCEPTED BY:  
[Company Name]

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.:

\_\_\_\_\_  
[Name and Title]

On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me personally came \_\_\_\_\_, to me known to be the individual described in the foregoing Agreement as [Title] of [Company Name], who being sworn did acknowledge that he/she executed same on behalf of [Company Name] and that he/she was authorized to execute same on behalf of [Company Name].

\_\_\_\_\_  
Notary Public

APPROVED BY:  
Office of the State Comptroller

APPROVED AS TO FORM:  
Office of the New York State Attorney General

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name:

Title

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Date

Title

---

Date

## **SCHEDULE A**

### **GENERAL CONDITIONS APPLICABLE TO AUTHORITY AGREEMENTS**

#### **ARTICLE I**

##### **RELATION OF EESP TO THE AUTHORITY**

1.1 **SUPERVISION BY THE AUTHORITY.** The services to be performed by EESP under this Agreement shall be subject to the general supervision and direction of the Authority provided that neither the Authority's exercise nor failure to exercise such supervision and direction shall relieve the EESP of any of its obligations or responsibilities for its acts or failure to act in regard to this Agreement.

1.2 **EESP'S PERSONNEL.** The EESP shall designate in writing to the Authority one individual, satisfactory to the Authority, who shall be responsible for coordinating all of the services to be rendered by the EESP and who shall be the Authority's normal point of contact with the EESP on matters relating to such services. Such individual shall be replaced upon the Authority's written request. The designee shall not be replaced by the EESP without the Authority's prior written consent.

1.3 **APPROVAL OF SUBCONTRACTORS.** Except as provided for herein, the EESP shall not employ, contract with or use the services of any subcontractor, special contractors, or other third parties (collectively "Subcontractor") in connection with the performance of its obligations under this Agreement without the prior written consent of the Authority. The EESP shall inform the Authority in writing of the name, service to be rendered, and compensation of the Subcontractor, and of any interest it may have in the Subcontractor. Nothing in this clause shall prohibit or be construed to hinder, prevent or affect creditors, made pursuant to the statutes of the State of New York. The EESP may assign its right to receive payment without the Authority's prior written consent.

1.4 **EESP AS INDEPENDENT CONTRACTOR.** Notwithstanding any other provisions of this Agreement, the EESP's status (and that of any Subcontractor) shall be that of an independent contractor and not that of an agent or employee of the Authority. Accordingly, neither the EESP nor any Subcontractor shall hold itself out as, or claim to be acting in the capacity of, an employee or agent of the Authority.

1.5 **THE AUTHORITY'S REPRESENTATIVE.** To the extent not otherwise designated herein, the Authority will designate in writing to the EESP an individual who will serve as the Authority's Representative and normal point of contact for the EESP in regard to this Agreement and the EESP's services and obligations hereunder. The Authority may from time to time change this designation by written notification to the EESP.

1.6 **APPROVALS OR ACCEPTANCE BY THE AUTHORITY.** Whenever action is to be taken, or approval or acceptance given, by the Authority, such action, approval or acceptance

shall be deemed to have been taken or given only if so taken or given by the Authority's Representative, by the official of the Authority who signed this Agreement on behalf of the Authority, or by another officer or employee of the Authority duly designated by such signing officer to represent the Authority in connection therewith. The Authority shall notify the EESP of the giving or withholding of each such approval or acceptance within a reasonable period of time. The Authority's acceptance or approval of any specifications, drawings, plans, reports or other materials prepared by the EESP hereunder shall in no way relieve the EESP of responsibility for such materials.

1.7 CONFLICT-OF-INTEREST. The EESP represents that:

(a) Members of the engagement team of the EESP who have access to confidential information have not now acquired, and will not acquire, any interest, direct or indirect, present or prospective, in any facilities or utility systems to which the EESP's work may relate or any real estate which may be the subject of the services provided under this Agreement or in the immediate vicinity thereof, and has not employed, and will not knowingly employ, in connection with work to be performed hereunder any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent, or Trustee of the Authority shall be admitted to any share or part hereof or to any benefit to arise herefrom.

(c) No officer, employee, agent, or Trustee of the Authority shall participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested; nor shall any officer, agent, Trustee, or employee of the Authority have any interest, direct or indirect, in this Agreement or the proceedings thereof.

(d) For the term of the Agreement, EESP's representation of, services for and involvement with clients other than the Authority does not involve any conflict of interest with the Authority. The EESP shall not perform any new services for an existing client or engage a new client that would involve a potential conflict of interest with the Authority without receiving from the Authority a prior express written waiver of the conflict.

(e) The EESP shall cause, for the benefit of the Authority, every contract or agreement with any Subcontractor to include the representations contained in subsections (a), (b), (c) and (d) of this Section 1.7, as well as the representation that the Subcontractor does not now have any interest, direct or indirect, present or prospective, in the Project to which the EESP's work relates or the real estate which is the subject of the Project, or in the immediate vicinity thereof, and has not employed, and will not knowingly employ, in connection with work to be performed hereunder any person or entity having any such interest during the term of this Agreement. The EESP will take such action in enforcing such provisions as the Authority may direct, or, at its opinion, assign such rights as it may have to the Authority for enforcement by the Authority.

(f) Other than the compensation specified in this Agreement, the EESP shall not accept any other compensation, including but not limited to finder's fees or other types of consideration or remuneration with regard to the EESP referring or recommending a particular efficiency contractor, subcontractor, manufacturer, supplier or other such contractor concerning any of the projects or services relating to this Agreement.

1.8 NO BROKER. The EESP represents that it has not employed any person, corporation or partnership, to solicit or procure this Agreement, and has not made, and will not make, any payment or agreement for the payment of any commission, percentage, brokerage, or contingent fee, or other compensation to any such person, corporation or partnership in connection with the procurement of this Agreement.

1.9 NOTICE OF DELAYS. The EESP shall promptly give written notice to the Authority Representative of the occurrence of an event or action, the discovery of a condition or the failure of an event or action to occur or a condition to exist as anticipated, which may delay completion of the work (or extend the Completion Date).

## ARTICLE II

### DOCUMENTS AND RECORDS

2.1 OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS. With the exception of software employed by EESP, which is subject to licensing restrictions of the owner of such software (other than EESP), all work product prepared by EESP (or any Subcontractor) on behalf of the Authority, including but not limited to originals and negatives of all plans, drawings, reports, charts, programs, models, specimens, specifications, work papers, photographs and other documents or materials including drafts and reproduction copies thereof, shall be and remain the exclusive property of the Authority, and the Authority shall have the right to publish, transfer, sell, license and use all or any part of EESP's or any Subcontractor's work product without payment of any additional royalty, charge, or other compensation to the EESP. Upon request of the Authority during any stage of the work, EESP shall deliver all such materials to the Authority. Notwithstanding the provisions of this Article II, the Authority and EESP acknowledge that EESP may, from time to time, receive materials from third parties under confidentiality agreements entered into for purposes of performance of services under this Agreement which may restrict the distribution of such materials to representatives of the Authority. Such confidentiality agreements shall be honored by the Authority and EESP.

The EESP agrees that it shall not publish, transfer, sell, license, or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of the work product prepared on behalf of the Authority, including such reports and other documents which are not otherwise available in the public domain, including work papers, without the prior written approval of the Authority, except that the EESP may retain copies of such reports and other documents for EESP's general reference during the engagement period.

2.2 CONFIDENTIAL / TRADE SECRET MATERIALS. Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. If EESP intends to seek an exemption from disclosure of these materials under Freedom of Information Law, EESP must request the exemption in writing, setting forth the reasons for the claimed exemption, at the time of submission or as required to address requests for materials under Freedom of Information Law. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination shall be made in accordance with statutory procedures.

2.3 MAINTENANCE OF RECORDS. The EESP shall, until seven (7) years after completion of its services hereunder or termination of this Agreement by the Authority, establish and maintain and shall require each Subcontractor to establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Agreement (hereinafter, collectively, "the Records") including, but not limited to: (a) complete and correct Records of time spent by EESP (and Subcontractor) in the performance of its obligations under this Agreement; (b) complete and

correct Records related to all activities of EESP and Projects performed in providing EESP services; and (c) complete and correct Records relating to all out-of-pocket expenses incurred under this agreement, including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by EESP (and Subcontractor) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by EESP (and Subcontractor) in performing its obligations hereunder. EESP shall make all such Records available to the Authority or its authorized representatives for review and audit at all such reasonable times as the Authority shall from time to time request. EESP shall submit substantiation of out-of-pocket expenses at the time of submission of EESP invoices in accordance with Article VI of this Agreement.

## ARTICLE III

### TERMINATION

3.1 DEFAULT BY EESP. If any material representation made by the EESP in this Agreement shall prove to be false or misleading in any material respect, or if the EESP shall default in the timely performance of any of its obligations under this Agreement and such default shall continue for a period of three (3) days after written notice from the Authority specifying the occurrence, omission, or failure giving rise to such default, or if, in the opinion of the Authority, by reason of the nature of such default, such default cannot be cured within such three (3) day period, then if the EESP shall not within such period commence with due diligence the curing of such default and thereafter prosecute and complete the curing of such default as promptly as possible, the Authority, in addition to any other remedies of claims it may have with respect to such representation or such default, may terminate this Agreement immediately upon oral or written notice to the EESP. In the event of such termination, the Authority, without waiving any such remedy or claims, will pay the EESP for services satisfactorily performed prior to the effective date of cancellation. Any reports, drawings, or other documents prepared for the Authority prior to the effective date of such cancellation shall be delivered to the Authority by the EESP in accordance with Article II of this Agreement.

3.2 OPTIONAL TERMINATION BY THE AUTHORITY. The Authority at any time, in its sole discretion, may terminate this Agreement, or postpone or delay all or any part of the Agreement, upon written notice to the EESP. In the event of such termination, postponement, or delay, the Authority shall pay the EESP for professional time and out-of-pocket expenses incurred by the EESP to the date notice of such action is received by the EESP. EESP agrees to cause any agreement or contract entered into by EESP with any Subcontractor to provide for an optional termination by EESP similar to the provisions of this Section 3.2.

The Authority also reserves the right to terminate this contract in the event it is found that the certification filed by EESP in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the EESP in accordance with this Section 3.2.

## ARTICLE IV

### PROVISIONS REQUIRED BY LAW

4.1 EESP TO COMPLY WITH LEGAL REQUIREMENTS. The EESP, in performing its obligations and in preparing all documents required under this Agreement, shall comply with all applicable laws and regulations. All provisions required by such laws and regulations to be included in this Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.

4.2 WORKERS' COMPENSATION INSURANCE. The EESP agrees that:

(a) It will secure Workers' Compensation and Disability Insurance and keep insured during the life of this Agreement such employees as are required to be insured by the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Worker's Compensation Law; and

(b) This Agreement shall be voidable at the election of the Authority and of no effect unless the EESP complies with this provision.

4.3 NO ASSIGNMENT WITHOUT CONSENT. The EESP agrees that:

(a) This contract may not be assigned by the EESP or its right, title or interest therein assigned, transferred conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the Authority and any attempts to assign the contract without the Authority's written consent are null and void. The EESP may, however, assign its right to receive payment without the Authority's prior written consent;

(b) If the prohibition of Section 4.3(a) be violated, the Authority may revoke and annul this Agreement and the Authority shall be relieved from any and all liability and obligations thereunder to the EESP and to the person, company, partnership, or corporation to whom such assignment, transfer, or other disposal shall have been made, and the EESP and such assignee or transferee shall forfeit and lose all the money theretofore earned under this Agreement.

4.4 NON-DISCRIMINATION. The EESP, during the performance of this Agreement, specifically agrees that:

(a) The EESP will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training and retraining, including apprenticeship and on-the-job training.

(b) At the request of the Authority, the EESP shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of this Agreement to furnish a written statement that such employment agency, labor union, or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status and that such union or representative will cooperate in the implementation of the EESP's obligations hereunder.

(c) The EESP shall state, in all solicitations or advertisements for employees placed by or on behalf of the EESP in the performance of this Agreement, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status.

(d) The EESP will include provisions (a) – (c) of this Section 4.5 in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with this Agreement.

(e) The EESP shall furnish to the Authority such information and reports regarding its compliance with the above requirements as the Authority may from time to time reasonably request.

(f) The provisions of this clause shall not be binding upon the EESP or any subcontractor in the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from this contract, as expressed by its terms.

(g) The requirements of this clause do not apply to any employment outside the State of New York or application for employment outside the State of New York or solicitations or advertisements therefore, or to any existing programs of affirmative action regarding employment outside the State of New York.

(h) Any disputes regarding this clause shall be resolved as provided in Section 316 of the New York State Executive Law.

4.5 COMPTRROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000, or is amended in any amount that causes the contract to exceed \$50,000, it shall not be valid, effective or binding upon the Authority until it has been approved by the New York State Comptroller and filed in his office.

4.6 NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this contract was awarded based upon the submission of bids or proposals, EESP warrants, under penalty of perjury, that its bid or proposal was arrived at independently and without collusion, consultation, communication, or agreement aimed at restricting competition. EESP further warrants that, at the time EESP submitted its bid or

proposal, an authorized and responsible person executed and delivered to the Authority a non-collusive bidding certification on EESP's behalf.

4.7 MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the EESP hereby stipulates that the EESP either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl Street  
Albany, New York 12245

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

NYS Department of Economic Development  
Minority and Women's Business Development Division  
30 South Pearl Street  
Albany, New York 12245

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, EESPs certify that whenever the total bid amount is greater than \$1 million:

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

(c) The EESP 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 EESP agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The EESP acknowledges 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.

#### 4.9 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROCEDURES.

I. DECLARATION OF POLICY AND STATEMENTS OF GOALS. It is the policy of the Authority to provide Minority and Women-Owned Business Enterprises (M/WBEs) the greatest practicable opportunity to participate in the Authority's contracting activity for the procurement of goods and services. To effectuate this policy, the EESP ("Contractor") shall comply with the provisions of this Schedule A and the provisions of Article 15-A of the New York Executive Law. The EESP will use its best efforts to achieve the below-stated M/WBE Goals set for the Contract, and will cooperate in any efforts of the Authority, or any government agency which may have jurisdiction, to monitor and assist EESP's compliance with the Authority's M/WBE program.

Minority-Owned Business Enterprise (MBE) Subcontracting Goal 3 %

Women-Owned Business Enterprise (WBE) Subcontracting Goal 1.5 %

## II. DEFINITIONS.

- (1) **CERTIFICATION.** The process conducted by the New York State Department of Economic Development, Minority and Women's Business Division to verify that a business enterprise qualifies for New York State Minority or Women-Owned Business Enterprise status. To initiate the certification process, contact one of the offices listed below.

ALBANY OFFICE: (518) 292-5250  
30 South Pearl Street  
Albany, New York 12245

NEW YORK CITY OFFICE: (212) 803-2200  
633 Third Avenue  
New York, New York 10017

- (2) **CERTIFIED BUSINESS.** A business enterprise which has been approved by the Director for status as a MBE or WBE subsequent to verification that the business enterprise is owned, operated, and controlled by Minority Group Members, or women.

- (3) **CONTRACT.**

(a) A written agreement or purchase order instrument, or amendment thereto, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby the Authority is committed to expend or does expend funds in return for labor, services, supplies, equipment materials or any combination of the foregoing, to be performed for, or rendered or furnished to, the Authority; or

(b) A written agreement in excess of one hundred thousand dollars (\$100,000), whereby the Authority is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.

- (4) **EESP.** An individual, a business enterprise including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to an Authority contract, or a bidder in conjunction with the award of an Authority contract or a proposed party to an Authority contract.

- (5) **CONTRACT SCOPE OF WORK.** For purposes of this section, this means:

(a) Specific tasks required by the Contract;

(b) Services or products which must be provided to perform specific tasks required by the Contract; and

- (c) Components of any overhead costs billed to the Authority pursuant to the Contract.
- (6) DAY. A calendar state business day unless otherwise specified.
- (7) DIRECTOR. New York State Department of Economic Development, Minority and Women's Business Division.
- (8) DIRECTORY. The Directory of Certified Businesses, prepared by the Director.
- (9) GOAL. A percentage of participation, which is not a set aside or quota, that represents a target toward which the prime Contractor must aim in expending good faith efforts to subcontract with or otherwise ensure the commercial involvement of minority and women-owned businesses on specific Authority contracts.
- (10) NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT, MINORITY AND WOMEN'S BUSINESS DIVISION. Office in the Executive Department created by Article 15-A of the Executive Law (hereinafter referred to as the "Office").
- (11) MINORITY GROUP MEMBER. A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
  - (a) Black persons having origins in any of the Black African racial groups;
  - (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic Origin, regardless of race;
  - (c) Native American or Alaskan native persons having origins in any of the original peoples of North America;
  - (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.
  - (e) Other groups which the Office may determine to be eligible for M/WBE status.
- (12) MINORITY-OWNED BUSINESS ENTERPRISE. A business enterprise, including a sole proprietorship, partnership or corporation that is:
  - (a) At least fifty-one percent owned by one or more Minority Group Members;
  - (b) An enterprise in which such minority ownership is real, substantial and continuing;

- (c) An enterprise in which such minority ownership has, and exercises the Authority to control independently, the day-to-day business decisions of the enterprise; and
  - (d) An enterprise authorized to do business in New York State and is independently owned and operated.
- (13) **SUBCONTRACT.** An agreement in which a portion of a Contractor's obligation under an Authority contract is under-taken or assumed.
- (14) **WOMEN-OWNED BUSINESS ENTERPRISE.** A business enterprise, including a sole proprietorship, partnership or corporation that is:
- (a) At least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
  - (b) An enterprise in which the ownership interest of such women is real, substantial and continuing;
  - (c) An enterprise in which such women ownership has, and exercises the Authority to control independently, the day-to-day business decisions of the enterprise; and
  - (d) An enterprise authorized to do business in New York State and is independently owned and operated.

### III. BIDDING PROCESS PROCEDURES

- (1) Each bidder shall search for, assess the capabilities of and generally deal with potential M/WBE subcontractors in a fair and responsive manner, allowing them the opportunity to participate in the Contract Scope of Work.
- (2) Each bidder will designate, and make known to the Authority, an M/WBE Officer who will have the responsibility for and authority to effectively administer the M/WBE Program.
- (3) As a part of its proposal, each bidder shall submit its Preliminary Subcontracting Plan, which shall identify the Certified Businesses it will utilize to meet its M/WBE Contract Goals. Approval of any such firm is solely within the discretion of the Authority.

The bidder will also designate an M/WBE Officer who will have the responsibility for, and authority to, effectively administer these procedures. If any bidder believes it may be unable to meet the Goals, the reasons shall be submitted in writing with the form.

- (4) To help prospective bidders with M/WBE participation, they may inspect the current New York State Certification Directory of Minority and Women Owned Businesses, prepared for use by state agencies and contractors in complying with Executive law Article 15-A, (the Directory) at the same location where the Authority's bid document or request for proposals may be obtained or inspected and also at the Authority's office at 333 Earle Ovington Boulevard, Suite 403, Uniondale, NY 11553. In addition, printed or electronic copies of the Directory may be purchased from the New York State Department of Economic Development, Minority and Women's Business Division.
- (5) Firms certified as both MBE and WBE may count toward either the MBE or WBE Goal on a single contract, but not both, regardless of whether either Goal is thus exceeded. The Bidder must choose the Goal to which the participation value is to be applied in the Preliminary Subcontracting Plan.

#### IV. PROCEDURES AFTER CONTRACT AWARD

- (1) Within ten (10) days after contract award the EESP may submit a complete Utilization Plan, which shall include identification of the M/WBEs which the EESP intends to use; the dollar amount of business with each such M/WBE; the Contract Scope of Work which the EESP intends to have performed by such M/WBEs; and the commencement and end dates of such performance. The Authority will review the plan and, within twenty (20) days of its receipt, issue a written acceptance of the plan or comments on deficiencies in the plan.
- (2) The Authority shall consider a partial or total waiver of Goal requirements only upon the submission of a written request for a waiver following EESP's unsuccessful good faith efforts at compliance. (See Section VI, below). Such waiver request may be made simultaneously with the submission of the Utilization Plan.
- (3) The EESP shall include in each Subcontract, in such a manner that the provisions will be binding upon each Subcontractor, all of the provisions herein including those requiring Subcontractors to make a good faith effort to solicit participation by M/WBEs.
- (4) The EESP shall keep records, canceled checks and documents for at least one (1) year following completion of the Contract. These records, and canceled checks, documents or copies thereof will be made available at reasonable times upon written request by the Authority or any other authorized governmental entity.
- (5) The EESP shall submit monthly compliance reports regarding its M/WBE utilization activity. Reports are due on the first business day of each month, beginning thirty (30) days after Contract award.

- (6) The Authority will conduct compliance reviews for determination of the EESP's performance relative to meeting the specified M/WBE Goal which may include review and inspection of documents pertaining to the EESP's efforts towards meeting the Goals and on-site interviews with personnel of EESP and its Subcontractors. The EESP will fully cooperate to assist the Authority in this endeavor.
- (7) The EESP shall not use the requirements of this section to discriminate against any qualified company or group of companies.

V. CONDITIONS FOR SATISFYING M/WBE GOALS. M/WBE participation will be counted toward the total Contract M/WBE Goals subject to the following conditions:

- (1) If the EESP is unable to meet the Goals with Certified Businesses by making all of the good faith efforts defined herein (under section VI), the EESP shall actively solicit uncertified M/WBEs to satisfy the Goals. Uncertified firms will be required to submit an application for certification (to the New York State Department of Economic Development, Minority and Women's Business Division) and will be counted as contributing towards the contract Goals only after they have been certified.
- (2) The EESP must keep records of efforts to utilize certified M/WBE's including:
  - (a) The firm's name, address and telephone number.
  - (b) A description of the information provided to the M/WBE.
  - (c) A written explanation of why an agreement with the M/WBE was not obtained.
- (3) Price alone will not be an acceptable basis for rejecting M/WBE bids if any of the bids are reasonable.
- (4) Geographical limitation in the M/WBE search is not an acceptable reason for not meeting the M/WBE goal when traditionally non-local firms have been generally utilized.
- (5) The Authority reserves the right to reject any firm as counting toward meeting the EESP's M/WBE goal if, in the opinion of the Authority, the facts as to that firm's business and technical organization and practices justify the rejection.

VI. EESP'S GOOD-FAITH EFFORTS. To satisfy the M/WBE participation requirements, the EESP agrees to make the following good-faith efforts in a timely manner:

- (1) Submission of a completed, acceptable Utilization Plan as described herein.

- (2) Advertising in appropriate general circulation, trade and minority and women-oriented publications.
- (3) Written solicitations made in a timely manner of certified minority and women-owned business enterprises listed in the Directory.
- (4) Attendance at pre-bid, pre-award, or other meetings, if any, scheduled by the Authority with certified M/WBEs capable of performing the contract scope of work.
- (5) Written notification to M/WBE trade associations located within the region where the contract scope of work will be performed.
- (6) Structuring the Contract Scope of Work for purposes of subcontracting with certified M/WBEs.
- (7) Where certified M/WBEs have expressed an interest to the EESP in performing work that the EESP normally performs with its own forces and the contract scope of work has not been fully performed, the EESP shall consider subcontracting such work or portions of it to meet the M/WBE Goals.

4.10 RECIPROCITY AND SANCTIONS PROVISIONS. EESP is hereby notified that if their principal place of business is located in a state that penalizes New York State vendors, Section 2879(5) of the Public Authorities Law requires that they be denied contracts which they would otherwise obtain. (Contact the NYS Department of Economic Development, Division for Small Business, Procurement Assistance Unit, 30 South Pearl Street-7<sup>th</sup> Floor, Albany New York 12245, for a current list of states subject to this provision.)

4.11 WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the EESP'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, EESP 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.

4.12 INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the EESP agrees, as a material condition of the contract, that neither the EESP nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC app. Sections 2401 et seq.) or regulations thereunder. If such EESP, or any of the aforesaid affiliates of EESP, 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 contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The EESP shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

4.13 SET-OFF RIGHTS. The Authority shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Authority's option to withhold for the purposes of set-off any moneys due to the EESP under this contract up to any amounts due and owing to the Authority with regard to this contract, any other contract with the Authority, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Authority shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the Authority, its representatives, or the State Comptroller.

4.14 LATE PAYMENT. Timeliness of payment and any interest to be paid to the EESP for late payment shall be governed by Section 2880 of the Public Authorities Law.

4.15 PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The EESP certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the EESP to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the EESP will indicate and certify in the submitted proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the proposal may not be considered responsive. Proof of qualification for exemption will be the responsibility of the EESP to meet with the Authority's approval.

4.16 PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the Authority shall not purchase any apparel from any EESP unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) the EESP will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the Authority), if

known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the EESP.

- 4.17 NONPUBLIC PERSONAL INFORMATION. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.

## ARTICLE V

### OTHER STANDARD PROVISIONS

5.1 NO WAIVER. No failure by the Authority to insist upon the strict performance of any term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach, shall constitute a waiver of any such breach or such term or condition. No term or condition of this Agreement to be performed or complied with by EESP, and no breach thereof, shall be waived, altered, or modified except by a written instrument executed by the Authority. No waiver of any breach shall affect or alter this Agreement but each and every term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

5.2 WARRANTY. EESP represents that it is fully experienced, properly qualified, equipped, and organized to perform the services stipulated under this Agreement. EESP warrants that it will perform the services under this agreement with the degree of professional skill, sound practices and judgment that are exercised with respect to the required services. Pursuant to this end, EESP agrees to perform the services using its expertise and warrants that such work shall be accurate, shall be free from errors or omissions, and shall conform in all respects with the requirements set forth in this Agreement. If it is determined by the Authority that the EESP's services fail to conform to these warranties or the requirements of this Agreement, EESP agrees that it will at its own expense correct any deficiencies that result from EESP's failure to perform in accordance with the foregoing standards and this Agreement. Notification of EESP by the Authority for the identified deficiencies shall be provided in writing within twelve (12) months of completion of the engagement covered by this Agreement.

5.3 ASSIGNMENT BY THE AUTHORITY. The Authority may transfer and assign any and all of its rights and obligations under this Agreement, including transferring and assigning its rights to the EESP's performance of any portion of the services provided for herein, together with the Authority's obligations and rights pertaining to such portion of services, to any partnership, firm, corporation, governmental agency, or department or other entity which the Authority determines has undertaken or will undertake any part of the Agreement. The Authority shall give the EESP written notice of any such transfer and assignment. Such transfer and assignment shall relieve the Authority of all further liability or obligations hereunder.

5.4 CONFIDENTIALITY. EESP hereby agrees that all data, recommendations, reports, and other materials developed in the course of this agreement are strictly confidential between EESP and the Authority and EESP may not at any time reveal or disclose such data, recommendations, or reports in whole or in part to any third party without first obtaining permission from the Authority. Notwithstanding the preceding sentence, EESP shall cooperate fully with such third parties as the Authority may designate by written request.

Such cooperation shall include making available to such parties, data, information, and reports used or developed by EESP in connection with this agreement.

The Authority may be required to disclose to EESP certain Customer information during the performance of the Project that may be private and confidential ("Confidential Customer Information"). EESP recognizes that the Confidential Customer Information constitutes special, unique and valuable property of the Authority, that the Authority desires to maintain and ensure the confidentiality of the Confidential Information, and that the Authority and its Customers shall be irreparably harmed if the Confidential Customer Information is made public. Accordingly, all such Confidential Customer Information provided EESP, shall be kept confidential.

**5.5 EESP TO OBTAIN PERMITS, ETC.** Except as otherwise instructed in writing by the Authority, the EESP shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations, and filings required to be obtained by the Authority or the EESP in connection with this Agreement.

**5.6 INDEMNIFICATION.** In addition to any liability or obligation of the EESP to the Authority that may exist under this Agreement, or by statute or otherwise, EESP shall indemnify, defend and hold the Authority, and its agents, trustees, directors, officers, employees, affiliates, subcontractors, successors and assigns harmless from and against any and all losses, claims, demands, suits, actions, proceedings, costs, damages, judgments, liens, interest, penalties or expenses of whatever form or nature, including, without limitation, attorneys' fees and other costs of legal defense and of investigating any proceeding commenced or threatened, whether direct or indirect, as a result of, arising out of, or relating to the negligent acts, errors, or omissions, whether active or passive, by the EESP, its directors, officers, agents, or employees in performing the services under this Agreement for which EESP is determined to be legally liable.

The EESP agrees that this Section 5.6 shall survive the expiration or earlier termination of this Agreement, and that EESP's obligations under this Section 5.6 shall not be limited by any specifications herein of required insurance coverage.

**5.6.1** The Authority shall indemnify, and hold EESP, and its agents, directors, officers, and employees harmless from and against any and all losses, claims, demands, suits, actions, proceedings, costs, damages, judgments, liens, interest, penalties or expenses, including, but not limited to, reasonable attorney's fees resulting from the negligent acts, errors, or omissions by the Authority, its trustees, directors, officers, agents or employees for which the Authority is determined to be legally liable. Losses, claims, demands, suits, actions, proceedings, costs, damages, judgments, liens, interest, penalties or expenses of whatever form or nature resulting from the negligent acts, errors, or omissions, whether active or passive, by EESP, its directors, officers, agents, employees, or by others are excluded from the Authority's obligation pursuant to this paragraph.

**5.6.2** The Authority shall also indemnify EESP for EESP's costs, expenses, and attorney's fees incurred in the course of defending actions brought by third parties pertaining to

services provided to the Authority under this Agreement only to the extent that such actions arise from the negligent acts, errors, or omissions of the Authority.

5.6.3 Nothing in this Agreement shall be construed to create a duty to any standard of care with reference to, or any liability to, any person not a party to, this Agreement.

5.6.4 Neither the Authority nor EESP shall be liable for incidental or consequential damages.

5.7 CONFLICTING TERMS. The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any part of the Agreement.

5.8 GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the laws of the state of New York, except where the Federal Supremacy Clause requires otherwise.

5.9 RELEASE AND DISCHARGE. Simultaneously with request for final payment hereunder, EESP shall execute and deliver to the Authority an instrument releasing the Authority of and from any and all claims, demands, and liabilities whatsoever of every name and nature both at law and in equity arising from, growing out of, or in any way connected with this Agreement; provided that such instrument shall not release the Authority from its obligations to indemnify EESP pursuant to Sections 5.6. A copy of such release is annexed hereto and made a part hereof.

5.10 ENTIRE AGREEMENT/AMENDMENT. This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties hereto.

5.11 CONTINGENT FEES. EESP hereby certifies and agrees that (a) EESP has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any Authority contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto; and (b) EESP will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by the Authority.

## **ARTICLE VI**

### **BILLING POLICY**

6.1 REIMBURSEMENT. The EESP is required to submit detailed documentation in support of EESP's request for reimbursement. The Authority shall pay the EESP within sixty (60) Days of receipt of any invoice, any undisputed amounts owed to the EESP. Payment of a performance award will be made in accordance with Schedule D-1 of this Agreement. All invoices and their accompanying documentation must be forwarded to:

*[TBD]*

Long Island Power Authority  
333 Earle Ovington Blvd., Suite 403  
Uniondale, New York 11553

6.2 INVOICES. Invoices should be submitted no more than monthly, and must be made on the EESP's own invoice forms or letterhead. All invoices must include the Authority's contract and Project numbers, if any. EESP should also include its federal identification number with the first invoice.

The EESP shall include in its invoice to the Authority each Month, a report detailing its progress towards meeting the EESP Goals set forth in Schedule B-2. The EESP shall provide within its monthly report to LIPA its expenditures in meeting the EESP Goals. The EESP shall also provide in its monthly report the actual expenditures, including the Customer Rebate Budget and its time-and-materials charges, and Contract Savings achieved for the year and a projection of its anticipated expenditures and Contract Savings for the balance of the Calendar Year.

6.3 OVERTIME. The Authority expects that all work on its behalf will be performed during the normal working day. Overtime (including secretarial overtime) will not be paid unless warranted by extraordinary circumstance evidenced by the Authority's prior written approval.

6.4 TRAVEL TIME. Out-of-town travel may be required to perform work in accordance with this Agreement. When such travel time does occur on the Authority's behalf, the Authority will compensate for time in transit, when and only to the extent that work is done for the Authority during such time in transit. EESP must demonstrate to the Authority's satisfaction, any such claim for reimbursement. Time away from home or the office which is not spent performing consulting services for the Authority will not be compensated.

6.5 TRAVEL, FOOD, LODGING. All reasonable travel, food, and lodging expenses associated with the provision of service hereunder, excluding automobile mileage, shall be billed at cost. Automobile mileage shall be billed in accordance with current rates as stipulated in the U.S. Federal Acquisition Regulations.

6.6 PRINTING, XEROXING, ETC.

(a) Internal printing or xeroxing resulting from the Authority activities shall be charged at \$0.10 per copy, except for routine photocopying for news releases, media alerts and copy drafts which are included in the retainer,.

(b) Outside printing shall be reimbursed at cost.

6.7 TELEPHONE, TELEFAX, ETC. Local telephone calls and faxes are included in the retainer. All other calls and telefaxes made on behalf of the Authority are reimbursable, and only at cost as evidenced by a receipt.

6.8 POSTAGE, EXPEDITED MAIL, ETC. Only postage (including charges for expedited service and courier services) to the Authority or made on behalf of the Authority is reimbursable, and only at cost as evidenced by a receipt.

6.9 EQUIPMENT, SUPPLIES. Where the Agreement allows reimbursement for equipment and supplies, insurance or similar items, the EESP must supply the following detailed documentation:

(a) Receipts of supplier's invoices for costs of commodities, equipment and supplies, insurance and other items. Invoices must show quantity, description and price (less applicable discounts and purchasing agent's commission).

(b) Title to all equipment paid for by the Authority pursuant to this Agreement is vested in the Authority. The Authority has the option of claiming any or all of such equipment.

6.10 OTHER MISCELLANEOUS EXPENSES. All other expenses not specifically mentioned herein are not reimbursable and should be considered part of EESP's overhead cost.

6.11 NON-REIMBURSABLES.

- (a) Flight insurance.
- (b) Valet Services (except five or more consecutive days).
- (c) Personal expenses of any type.
- (d) Expenses paid for the Authority employees.
- (e) Travel to any Authority office to "deliver vouchers or pick up check."

## 6.12 GENERAL.

- (a) All receipts must be legible. Illegible receipts will not be reimbursed.
- (b) Whenever possible original receipts should be presented for reimbursement.

(c) The Authority is a corporate municipal instrumentality and as such is exempt from all sales and usage taxes within New York State. A copy of the Authority's certificate of tax exemption may be obtained by writing to the Authority.

At any time or times until three years after completion of EESP's services or earlier termination of this Agreement by the Authority, the Authority may have the vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher which are found by the Authority on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments, or increased for underpayments, as the case may be.

## ARTICLE VII

### INSURANCE

7.1 EESP'S INSURANCE. EESP shall maintain in effect at its own expense employer's liability insurance as follows: one million dollars (\$1,000,000) of comprehensive general liability insurance (bodily injury and property damage), five-hundred thousand dollars (\$500,000) of comprehensive automobile liability insurance (bodily injury and property damage) with respect to EESP's employees and vehicles assigned to the prosecution of work under this Agreement. If EESP does not maintain comprehensive automobile liability insurance on behalf of its employees, EESP may provide the Authority with proof that EESP's employees who are assigned to the prosecution of work under this Agreement maintain such comprehensive automobile liability insurance individually. EESP shall also maintain at its own expense one million dollars (\$1,000,000) of professional liability insurance.

7.1.1 EESP shall obtain and thereafter maintain in effect, if available, such additional insurance as may be requested in writing by the Authority, the cost of which will be reimbursed by the Authority.

7.2 SUBCONTRACTOR'S INSURANCE. EESP shall require each of its Subcontractors to carry the following insurance to the extent stated.

7.2.1 Comprehensive General Liability and Property Damage Insurance in an amount not less than five-hundred thousand dollars (\$1,000,000) combined single limit for both Bodily Injury and Property Damage.

7.2.2 Automobile Liability and Property Damage Insurance in an amount not less than two-hundred and fifty thousand dollars (\$1,000,000) combined single limit for both Bodily Injury and Property Damage.

7.3 CERTIFICATES OF INSURANCE. Certificates of Insurance for all of the aforementioned coverage shall be provided to the Authority upon execution of this Agreement.

## ARTICLE VIII

### MISCELLANEOUS

8.1 SUCCESSORS IN INTEREST. This Agreement shall be binding on, and inure to the benefit of, each party's successors in interest, including their heirs, legatees, assignees, and legal representatives.

8.2 SEVERAL OBLIGATIONS. Except where specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either party. Each party shall be individually and severally liable for its own obligations under this Agreement.

8.3 ATTORNEY'S FEES. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the prevailing party shall be entitled to any reasonable attorney's fees and disbursements, in addition to any other relief to which that party may be entitled. This provision shall be construed as applicable to the entire Agreement.

8.4 SEVERABILITY. If any of the provisions of this Agreement are found or deemed by a court of competent jurisdiction to be invalid or unenforceable, they shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable.

8.5 NOTICES.

(a) Any notice, demand, information, invoice, report, or item otherwise required, authorized, or provided for in this Agreement, unless otherwise specified herein, shall be deemed properly given if delivered in person or sent by United States Mail, First Class postage prepaid:

To EESP:

*[Name]*  
*[Title]*  
*[Company Name]*  
*[Address 1]*  
*[Address 2]*  
*[City, State Zip Code]*

To the Authority:                    *[TBD]*  
Long Island Power Authority  
333 Earle Ovington Blvd., Suite 403  
Uniondale, New York 11553

(b) All notices shall be deemed effective upon receipt by the party to whom such notice is given.

8.6 SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), EESP hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon EESP's actual receipt of process or upon the Authority's receipt of the return thereof by the United States Postal Service as refused or undeliverable. EESP must promptly notify the Authority, in writing, of each and every change of address to which service of process can be made. Service by the Authority to the last known address shall be sufficient. EESP will have thirty (30) calendar days after service hereunder is complete in which to respond.

8.7 CONTRACTOR CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW SECTION 139-j.

Contractor (EESP) certifies and affirms that it understands and agrees to comply with the procedures of the Authority relative to permissible contacts as required by the State Finance Law § 139-j (3) and § 139-j (6)(b).

## **SCHEDULE B-1**

### **SCOPE OF WORK**

The EESP shall provide services to facilitate the implementation of energy efficiency measures providing Contract Electric Energy and Electric Demand Savings (“EEMs”) at a facility or location within LIPA’s existing and potential LIPA major account customers, other large commercial and industrial (“C&I”) customers, and municipal customers (individually “Customer” or collectively “Customers”) during the term of this Agreement, as follows:

#### **Start-Up Period:**

Beginning immediately, the EESP shall accompany current Major Account Executives to gain familiarity with Customers as directed by the Authority and will work with Authority staff as appropriate to understand past practices. The EESP will work both within the Authority’s organization and directly with Customers in outreach efforts to test systems and to develop protocols and procedures to be used for program implementation. The EESP will also begin implementation of EESP Services to become familiar with Customer base and operational systems, particularly the Authority’s data tracking and contact management system.

#### **Compliance With Applicable Laws**

The EESP shall use commercially reasonable efforts to ensure that all services provided by the EESP and all proposed energy efficiency measures to provide the amount of Electric Energy Savings and Electric Demand savings achieved by Customers resulting from the EESP Services and verified by LIPA pursuant to the terms and conditions of this Agreement (“Contract Savings”) under this Agreement are in accordance with all applicable laws, regulations and orders of Governmental Authorities with jurisdiction over Projects, including all environmental requirements, in accordance with Prudent Industry Practices.

#### **Contract Savings Schedule**

The EESP shall recruit Customers and implement all EEMs at a Customer facility or location providing Contract Savings Projects as required which will provide the Contract Savings as specified in Schedule B-2. The minimum Contract Savings to be achieved are [80%] of the specified savings Goals set forth in Schedule B-2.

#### **EESP Budget**

The Authority will establish an EESP Budget that will be the maximum amount the EESP will be paid by the Authority for each Calendar Year and will be computed using the time-and-material rates set forth in Schedule D-1 (“EESP Budget”); provided that, if the EESP earns a Performance Award, such award will be in addition to the EESP Budget. The initial Calendar Year’s EESP Budget shall be as established in Schedule D-1. For all years, the EESP Budget shall not exceed the yearly Not-To-Exceed Cap set forth in Schedule D-1.

#### **Modifications to Scope of Work**

From time to time, the Parties may agree to modify the EESP Budget, the EESP’s Scope of Work set forth herein and/or EESP Goals set forth in Schedule B-2. No modifications shall be binding on either Party unless agreed to in writing by the Parties and approved by the Office of the New York State Comptroller.

### **Program Incentive Value Modification**

For the purposes of calculating new Performance Awards in the event of a Program Goals Modification, the Performance Awards shall increase in direct proportion to the percent increase in the following applicable metrics: Cumulative Electric Demand Savings, Cumulative Electric Energy Savings, and Annual Electric Energy Savings. The updated, higher value of the metric, divided by the base value of the metric, times the base Performance Award value applicable for the metric as currently set forth in Table D-1 in Schedule D-2 shall be the new Performance Awards.

### **Contract Tasks**

The EESP will be a vital part of the Energy Efficiency team of in-house staff and contractors. The EESP will meet periodically with members of the Energy Efficiency team and other Authority staff to promote effective collaboration with all parts of the Energy Efficiency implementation team. The EESP is also expected to work collaboratively with other subcontractors under the Authority's direction, using the Authority's data tracking/contact management system to inform other subcontractors of opportunities within their scopes of work as those opportunities arise, and to respond to requests for assistance in a timely and professional manner. The EESP acknowledges and agrees to provide written notice to each customer that review or inspection and approval of the design, construction, operation or maintenance of the Project or EEMs by the Authority or its employees, manager, agents, consultants, etc. shall not constitute any representation as to the economic or technical feasibility, operational capability, or reliability of the Project or EEMs and that each respective contractor is solely responsible for the economic and technical feasibility, operational capability, and reliability of each contractor's Projects and EEMs, and that the Authority provide no warranties in connection with Projects and EEMs.

### **Task 1 – Account Management of the Authority's Customers**

The EESP will be responsible for pursuing and promoting the implementation of Electric Energy Savings and Electric Demand Savings opportunities at the facilities of existing and new Customers. Working with the Authority, the EESP will develop a strategy for reaching out to Customers. This strategy will include: closely coordinating with existing Major Account Executives in Customer outreach, and determining how to accommodate and evaluate incoming calls for assistance from Customers in advance of scheduled outreach.

The Major Account Executives provide account management services to the Authority and/or National Grid's largest customers within specific market segments to retain existing revenues, adds new revenues from additional traditional and non-traditional products and services, and provides excellent customer service. The Major Account Executives serve as the Authority and/or National Grid's single point of contact for electric and/or gas service, on a 24 x 7 basis, and act as the customer's advocate to resolve business and service issues involving other company departments. The Major Account Executives are the primary contacts with the Customer with regard to electric and/or gas construction Projects, including customer coordination of all phases of each Project with technical, operating, and customer support areas.

These activities are accomplished through development of strategic relationships with senior level management of these large and important Customers. By working with the Customers, the Major Account Executives identify and package solutions to benefit the Customer, using program and service offerings from the Authority and/or National Grid.

The Major Account Executive is typically assigned a vertical market segment, currently including:

- Nassau County Government and Universities
- Suffolk County Government and Universities
- School Districts
- Water Districts
- Manufacturing
- Healthcare
- Federal, State and Public Services
- Retail Food-Related
- Retail Non-Food-Related
- Business Services
- Real Estate Developers

For each Customer, the EESP will develop and implement an account management plan that will be reviewed and approved by the Authority on a timely basis (“Account Management Plan”). Each Account Management Plan will establish a process and timeline for conducting outreach to all levels of the Customer’s organization (e.g., Facility Manager, Owner, Chief Financial Officer, and Chief Executive Officer), visiting all facilities and identifying efficiency opportunities, supporting capital planning activities, and annually communicating the results of the Customer’s relationship with the program’s management. Unless the Authority chooses to exercise the Natural Gas option identified as Task 9 in this Scope of Work, the EESP’s activity, including the development of Account Management plans, with Customers will be limited to electric efficiency measures. The EESP should be positioned to take advantage of any customer opportunity immediately after the start of the Term through customer outreach, identifying, quantifying, and promoting energy and demand savings to any planned or underway Project, except for those Projects for which the Authority has already issued a pre-approval letter.

### **Task 2 – Account Management of Architecture and Engineering, and Design-Build Firms**

The EESP will be responsible for pursuing and promoting the integration of energy and demand saving design strategies, services, and technologies into Customer construction Projects designed by architecture and engineering firms (“A&Es”). Toward this objective, the EESP will develop a strategy to identify and reach out to all significant major A&Es and design-build firms that are involved in Customer construction Projects on Long Island, and/or are located on Long Island or within the greater New York City metropolitan area. It is not expected that relationships will need to be developed outside of the areas described. This strategy will include closely coordinating with existing MAEs, staging outreach to each A&E, and determining how to accommodate incoming calls for assistance from Customers in advance of scheduled outreach. The EESP’s rendition of this Task 2 will likely be in coordination with a separate Market Channel Coordinator contractor to also be retained by the Authority.

For each A&E firm, the EESP will develop and implement an Account Management Plan. Each Account Management Plan will establish a process and timeline for conducting outreach and training to all members of the A&E, and for receiving information about Projects at increasingly early Project stages. At its option, the Authority may develop a training curriculum about design strategies and options, including the C&I New Construction Initiative, and provide this curriculum, as well as the availability of trainers, to the EESP. This curriculum would be based

upon the Authority's High Performance Design Guide (which promotes design practices that achieve high-performance buildings) and Commissioning Guide, both of which are available from the Authority upon request.

### **Task 3 – Offer Direct Services to Customers and A&Es**

The EESP will be expected to overcome barriers to the implementation of energy and demand savings Project opportunities.

The EESP is expected to be able to provide:

- Design assistance to develop new Project specifications that promote energy and demand efficient technologies, equipment, or designs (e.g., LEED buildings, Energy Star);
- At the request of a Customer, coordinate services to assist consumer, design professionals, vendors and contractors in overcoming various transaction barriers, including:
  - Support in the development of requests for bids or proposals
  - Facilitation of meetings or facility tours
  - Assistance in reviewing proposals and providing input
  - Assistance in filling out program application materials
- Assistance in developing applications for financing mechanisms for Projects, whether lease, purchases or loans.
- Technical and design assistance on Projects, including verification of cost estimates, as well as energy and demand savings for but not limited to:
  - Lighting applications (i.e., fixtures and controls);
  - HVAC systems – equipment and controls – for standard space conditioning requirements (e.g., supply temperatures and humidity levels required for commercial or institutional buildings);
  - Building envelope improvements, including improved glazing, roof and wall insulation, and improved air sealing;
  - High performance integrated design benefits (e.g., demonstrate the interactive cost, energy, and demand benefits of building envelope, lighting, and HVAC design improvements);
  - Typical pump and fan systems and controls for light industrial applications;
  - Compressed air opportunities; and

- Services to support Projects that benefit a customer and fall outside of the initiative parameters, such as power factor correction, waste reduction, or water efficiency.

The EESP shall follow the guidelines of the following components of the Authority's Commercial Construction Program:

- Technical Assistance Studies
- LEED Component
- Commissioning
- Audit Component

It is expected that when the EESP needs technical assistance to support a Project that lies outside of its own expertise (e.g., to address industrial process systems), the EESP will retain separate technical assistance providers from specific disciplines to work on Projects or portions of Projects. Respondents are responsible for providing the names, experience profile, and time-and-material rates for potential outside technical assistance resources, as well as their in-house technical assistance resources in their proposals. The EESP Contract will require the Authority's prior written approval for any subcontracting work and applicable time-and-material rates that are not specifically provided for in the proposal.

#### **Task 4 – Acquire Cost-Effective Energy and Demand Savings for the Authority**

##### *Ensure Cost-Effectiveness of Recommended Options*

For any Project in which the EESP is involved, it will use the Authority's Project Cost-Effectiveness Screening Tool to verify the societal cost-effectiveness of the Project. The tool compares the cost of the Project (either full cost or incremental cost) with Project benefits (e.g., electricity savings, fossil fuel impacts, operations and maintenance impacts) and avoided costs. The tool determines the eligibility of a Project and calculates incentives based upon financial performance criteria discussed with the customer. The Authority will train the EESP and any of its subcontractors on the use of the tool, which is a Microsoft Excel workbook.<sup>1</sup>

##### *Selling Energy Efficiency Projects While Offering Comprehensive Packages to Customers*

The EESP will also be expected to determine financial incentives offered to Customers. The Project Cost-Effectiveness Screening Tool will be used to support this effort, as it will indicate the incentive levels necessary to meet a range of financial criteria and financing structures that customers might need to invest in a Project. The EESP will be expected to include all quantifiable Project costs and benefits, including natural gas or other thermal energy, water, operation and maintenance, and other resources.

The Authority will expect the EESP, in the course of customer interactions, to highlight the non-energy benefits, demonstrate the cash flow benefits, and present different financing scenarios (i.e., use of differing amounts of the Customer Rebate Budget). This means that

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<sup>1</sup> The Authority determines eligibility for rebates on a societal cost test basis. Rebate amounts are limited to total electric benefits.

the EESP is not expected to provide “standard” or “consistent” financial incentives across a wide range of Projects. Financial incentives are to be established to meet the financial criteria needed by Customers to implement Projects, while meeting the specified comprehensiveness, and energy and demand metrics within the EESPs contracted budget.

The Authority also expects the EESP to do call screening of potential leads which may include developing a streamlined process to prioritize and address smaller customer-initiated Projects. The streamlined process might not include direct site visits to customers, but could involve providing technical assistance and a Project package solely through in-house services.

#### *Pursuing Non-Energy Efficiency Resources*

The launch of the Authority’s Energy Efficiency Program takes place during a time when energy efficiency, demand response, distributed generation, renewable energy, and other energy resource options are being evaluated based on their economic and environmental benefits. As a consequence, a number of parallel activities may overlay the launch of the Authority’s Energy Efficiency Program, or begin in the future. The EESP will be expected to take advantage of these other activities to leverage energy and demand savings – for example, for a customer considering renewable energy, helping it to minimize energy consumption to make the most of the planned renewable energy system output.

#### *Ensuring Measurement & Verification of Claimed Energy and Demand Savings*

The Authority will establish Measurement & Verification (“M&V”) requirements for both the C&I New Construction and C&I Existing Facility initiatives, and will hire an M&V contractor to implement these requirements. The EESP will be responsible for notifying the M&V contractor who will then schedule all services required to document claimed energy, demand, and other savings. Failure to notify the M&V contractor will result in the elimination of the non-measured and non-verified savings from the EESP’s Cumulative Performance Award based on Cumulative Electric Demand Savings, Cumulative Electric Energy Savings, and Annual Electric Demand Savings. The Authority will use measurement and verification requirements consistent with the International Performance Measurement and Verification Protocols.

### **Task 5 – Implement and Maintain Support Systems**

#### *In-House Call Center*

The EESP may have calls from Customers, contractors or vendors working with these Customers, or A&Es directed to their office(s) from The Authority’s call center. After an initial screening to determine the need for additional information, the call center will transfer calls directly to the EESP. The EESP will provide a process and call center to take these calls in person, either by the EESP’s representative assigned to that Customer or A&E, or by in-house EESPs who would help the Customer directly. It is the EESP’s responsibility to address the Customer’s needs and to coordinate its activities with other Authority representatives as needed.

#### *Use of Energy Efficiency Data Tracking/Contact Management System*

The Authority will provide to the EESP access to the data tracking/contact management system. The EESP will be required to use this system in the course of all implementation tasks including: taking notes during phone calls, writing site visit summaries, entering information about efficiency Projects or recommended efficiency “measures”, sending requests for measurement and verification services, and uploading information and checking requests at the end of completed Projects. The Authority will train the EESP on the use of the system, and the EESP will not use any parallel data tracking systems for later integration without the express written permission of the Authority, however this does not preclude the EESP from using its own internal Project management software in addition to the Authority designated systems. All customer information is confidential and the property of the Authority, and may only be shared with third parties in accordance with said provision. Lastly, the Authority expects all data entry activity to be completed the day of its occurrence.

## **Task 6 – Reporting**

The EESP will ensure that all data entry tasks are completed in a timely fashion that support the development of monthly, quarterly, and annual reports. In addition, the EESP will provide Monthly Summaries and an Annual Report to the Authority to document its performance as set forth below.

### *Monthly Summaries*

The EESP will prepare and submit a written monthly summary to the Authority within 7 business days of the end of each month during the contract term (“Monthly Summary”). Each Monthly Summary needs to include as a minimum: (1) actual expenditures for administrative, information technology, and service delivery costs compared to the year-to-date and annual component of the approved five-year budgets; (2) actual customer incentive payments that have been paid as the result of verified completed Projects compared to the year-to-date and annual component of the five year budget; (3) customer incentive payments expected to be paid in the future as evidenced by a signed incentive contract for energy efficiency measures including a year end forecast compared to annual budget; (4) report of progress made towards achieving savings targets, and other agreed-upon indicators of performance; (5) a summary of activity highlights for the month; (6) the cost effectiveness of Projects evaluated during the month computed using the Project Cost-Effectiveness Screening Tool compared to the cost effectiveness of the completed Projects; and (7) a summary of any significant changes or anticipated changes in implementation strategies and services.

### *Annual Reports*

The EESP will prepare and submit a written annual report to the Authority within thirty days following the end of each calendar year during the contract term (“Annual Report”). Each Annual Report needs to include: (1) actual expenditures broken down by all expenditure categories as set forth in this Contract, compared to the annual component of the approved five-year budget; (2) LIPA committed customer incentive payments as evidenced by a signed contracts/rebate applications that specify that future incentive payments will be made to an energy efficiency Customer for EEMs; (3) a summary of

progress and highlights for the year, including any significant changes in strategies or services and indirect savings acquisition activities (e.g. O&M savings, oil savings, gas savings, water use reductions); (4) report of progress toward achieving savings targets, and other agreed-upon indicators of performance as outlined in the Attachment C; (5) the annual savings achieved, with adequate supporting data to meet the Authority's requirements; and (6) the cost effectiveness of proposed Projects, as they are reviewed during the year, computed using the Project Cost-Effectiveness Screening Tool compared to the cost effectiveness of the completed Projects.

## **Task 7 – Administrative Requirements**

The EESP is responsible for providing all necessary administrative and support functions required to perform this Scope of Work. Such functions include: (1) budgeting; (2) financial management; (3) contract management; (4) internal information technology, data collection, and data management systems; (5) quality assurance and quality control; and (5) preparation and submission of required reports.

### *Budgeting*

The EESP must monitor and manage the overall annual EESP budget for its operation for each year of the contract term. This detailed budget will be based upon EESP's cost proposal and will include all components of the time-and-materials required for the delivery of energy efficiency services. Although the Authority will make the final determination of the disposition of any unspent budget amounts, the EESP will annually provide to the Authority its proposed treatment of any unspent budget amounts. Additionally, the EESP will be responsible for monitoring and managing its rebate activity against the Authority designated Customer Rebate Budget.

### *Financial Management*

The EESP will develop, implement and maintain the necessary budgeting, invoicing, expenditure approval, payroll, and financial accounting systems to review, approve, and track budgets, invoices and payments to subcontractors, employees, and, in some cases, Customers. However, the Authority, and/or its agent, will process rebates to Customers. It must maintain financial and accounting records consistent with the requirements of the EESP Contract and with Generally Accepted Accounting Principles. The EESP shall provide information and documentation required for independent audits.

Consistent with the specific terms of the Contract, the EESP will prepare and submit detailed documentation and invoices for administrative, management, and program costs to the Authority for review in order to receive payment. All invoicing data along with proper supporting documentation must be kept by the EESP for the period of time specified in the Contract and made available to the Authority upon request.

### *Contract Management*

The EESP will solicit, hire and/or contract with all necessary staff and contractors to effectively perform the Scope of Work.

The EESP will maintain the administrative capability to manage these resources and ensure the completion of each task and sub-task effectively. The EESP will develop and implement procedures to assign, monitor, review, and approve completed work, and to ensure EESPs are compensated in a timely manner. The Authority reserves the right to review and approve all of the EESP's policies and procedures.

#### *Internal Information Technology, Data Collection, and Data Management Systems*

The EESP shall keep records of administrative and financial data compatible with Siebel and consistent with the requirements outlined in this Scope of Work. This includes systems to track general Project management, invoicing, payroll and subcontractor payments, and to produce the necessary reports for monitoring these duties. As the EESP will have access to confidential Customer information, the EESP will be responsible for managing such information both with its own staff and with its subcontractors in accordance with applicable provisions of the EESP Contract to ensure confidentiality is maintained.

#### *Use of Energy Efficiency Data Tracking/Contact Management System (Siebel)*

The Authority and its Agent, National Grid, utilize Siebel CRM (the "System") to manage all workflow and data tracking for their portfolio of energy efficiency programs. This System captures all program-related data, including but not limited to, contract information, program goals and budgets, marketing plans and campaign data, program applications and associated documents and details, audits and consults, installed customer assets, leads and sales data, impacts and evaluation data, and provides a comprehensive audit trail.

As a part of any proposal submittal, Respondents must demonstrate their ability to interact with, and submit all required Program-related data into the System. This can be achieved either through the use of a browser-enabled Siebel partner portal or through a data interface between the respondent's source system and the System at the Authority's discretion (see Siebel Data Requirements). Respondents must demonstrate their ability to submit all audit findings and the status of all program-related activities according to guidelines and data formats as stated by the Authority concurrent with the commencement of the contract period.

The Authority will provide the EESP with, access to and training on, the Siebel system.

#### *Quality Assurance and Quality Control*

Develop and maintain quality assurance standards and tracking and monitoring mechanisms, ensuring that both employees and subcontractors apply the quality assurance standards and methods set forth by the EESP. The quality assurance standards will be submitted to the Authority for review and approval.

#### *Project Documentation*

The EESP will be responsible for maintaining complete, accurate and comprehensive Project files capable of supporting and documenting all Project activity including but not limited incentive calculation, baseline assumptions, forecasted savings, and proposed versus actual Project installed. The EESP will be required to provide the Authority with

a copy of each complete file upon submission of request for Project incentive payment.

### **Task 8 – Supporting other Authority /Energy Efficiency Activities**

The EESP will be responsible for collecting, maintaining and providing information sufficient for the purpose of assessing its own effectiveness as well as the performance of its subcontractors. This information will be collected during the course of normal workflow for the EESP and its subcontractors, and will be provided to the Authority through the data tracking and contact management system. Data activities shall be collected and stored electronically in a consistent format including but not limited to the following categories:

- Customer/Client Data;
- Customer Usage Data;
- Measures and Services Data;
- Market Actor Data;
- Utility Account Data; and
- Other Data for Market Assessment and Evaluation Purposes.

The collected information will be used to create the Monthly Summaries and Annual Reports set forth above.

It is not anticipated that the EESP will conduct formal "process" evaluation activities; these will be undertaken by another Authority contractor.

The EESP will provide the data and information necessary to support resource planning and evaluation activities to refine the strategies and approaches in the C&I Existing Facility and C&I New Construction Initiatives, and efforts by Evaluation contractors to assess these initiatives.

The EESP will cooperate actively in the identification and prioritization of information needs, the exchange of information, and the timing of work products with the subcontractors as necessary to effectuate strategic planning, multi-year program planning and budgeting, market assessment, and program evaluation.

## **Task 9 – Optional Gas Efficiency Services**

During the term of the Contract, the Authority may choose to add Task 9 described herein to the Scope of Work at its sole and exclusive option. In the event that the Authority decides to add Task 9 to the Scope of Work, the EESP would identify stand-alone gas efficiency savings opportunities for a specified portion of the Customers and would provide the following added services:

- Complete assessment of gas combustion equipment. Measures include central heating, water heating, and combined heat and power applications.
- Complete assessment of measures that may not pass cost effectiveness screening from a purely electric standpoint including insulation, glazing, roofing, and other shell measures.

Natural gas and electric measures are not mutually exclusive. Thus, in the course of assessing the energy efficiency potential for electric measures, gas savings are an expected outcome (e.g., insulation in new construction will produce both electric and natural gas savings). This task describes those measures which produce the majority of their savings from natural gas and would therefore be excluded from being considered in Tasks 1-8 described above. This task is not an incremental or linear extension of services, but a marginal increase in the amount of technical assistance applied to an individual Project.

If the Authority chooses to opt for the Optional Gas Efficiency Services in this Task 9, the EESP will provide such optional services at the proposed pricing submitted by the EESP with its proposal in response to the Authority's Request for Proposals and included in the Pricing Datasheet set forth in Appendix B of the RFP, which requested pricing both with and without these optional services. These services do not impact, achieve or affect the Electric Savings Goals set forth in Table 1 of Schedule B-2, and therefore, have no bearing on achievement of the Performance Awards discussed in Schedule D-2.

## **Other EESP Responsibilities**

In addition to completing the tasks set forth above, the EESP will also have the following responsibilities:

- Solicit, select, hire and oversee employees and subcontractors to ensure energy efficiency services are delivered, and develop methods for managing the performance and compensation of service providers, to achieve the requirements of the Scope of Work.
- Adhere to M&V and Commissioning ("Cx") protocols established for the C&I Existing Facilities and C&I New Construction Initiatives.
- Develop customer service standards for review and approval by the Authority to ensure Customer satisfaction during service delivery, and to document and resolve both Customer complaints and compliments.
- Coordinate its efforts with other Energy Efficiency Program contractors, including Program Development and Implementation Support, Market Channel Coordinator, InfoLine, Measurement and Verification, Technical Assistance, Marketing, and Evaluation.
- Develop, implement and maintain the necessary budgeting, invoicing, expenditure approval, payroll, and financial accounting systems to review, approve, and track budgets, invoices and payments to subcontractors, program implementers, employees, and, in some cases, customers.

Due to the nature of the EESP's responsibilities, it is important that its employees and key subcontractors be readily accessible. Therefore, the EESP shall meet the following requirements:

- (a) Office Facilities. The EESP shall maintain at all times during the term an office within LIPA's Service Area, including Nassau or Suffolk County, or the Rockaways located in Queens County.
- (b) Availability of Representatives. Representatives of the EESP shall be available at the EESP's office(s) during the Authority's normal business hours between the hours of 9:00 am to 5:00 pm (Eastern Time), on Monday through Friday (except for holidays) for communication with the Authority.
- (c) Emergency Telephone Number. The EESP shall maintain an emergency telephone number(s) for use during other than normal business hours and shall make such numbers available to the Authority.



## SCHEDULE B-2

### EESP Savings Goals

The EESP savings goals and estimated Customer Rebate Budgets from 2010 through 2014 are as follows:

Table 1 –EESP Goals and Associated Estimated Customer Rebate Budgets

Category	2010	2011	2012	2013	2014
Annual Electric Demand Savings (Coincident MW)	7.11	9.47	12.64	16.26	18.53
Annual Electric Energy Savings (MWh)	29,673	41,795	55,553	71,496	79,026
Cumulative Electric Demand Savings (Coincident MW)			29.2		34.8
Cumulative Electric Energy Savings (MWh)			127,021		150,522
Customer Rebate Budget (000)	\$7,030	\$9,838	\$13,211	\$17,275	\$19,736

## SCHEDULE B-3

### Approved Measures and Agreed Measurement and Verification Methodology

All Projects must be submitted for Measurement and Verification (“M&V”). The specific M&V standards, procedures, and methodology that shall be used for the purposes of verifying the Contract Savings shall be that of the IPMVP. For the purposes of this agreement, the April 2007 revision of the IPMVP attached hereto, shall be utilized in the Measurement and Verification of Contract Savings:

The EESP shall utilize the M&V procedures set forth in the International Performance Measurement & Verification Protocol (“IPMVP”) to determine Electric Energy Savings and Electric Demand Savings. The EESP shall input initial efficiency measure data in the Siebel System with the expected Electric Energy Savings and Electric Demand Savings. Upon such entry, the Authority’s designated M&V contractor shall review the EESP’s estimate of such measures and either concur with the estimated savings or provide a revised estimate of such savings pursuant to the standards set forth in the IPMVP. The EESP may accept such revision or meet and confer with the Authority’s designated M&V contractor to resolve any differences that may exist between the M&V contractor’s estimate of the Contract Savings and the EESP’s estimate of Contract Savings

Upon implementation of the efficiency measure, the M&V contractor shall audit and determine whether all measures as set forth by the EESP have been installed. In the event the M&V contractor finds that all measures as specified by the EESP in its project proposal have been installed and verifies the estimated savings, the M&V contractor will certify the Contract Savings. In the event that the M&V contractor finds that there are any discrepancies between the actual installation and what had previously been set forth by the EESP, the M&V contractor will provide written notice to the EESP of such discrepancy. The EESP will have an opportunity to correct and cause the efficiency measures to be installed as initially contemplated. In the event that the EESP is unable or unwilling to make such correction, the M&V contractor will provide a revised estimate of the Contract Savings. The EESP may accept such revision or meet and confer with the M&V contractor to revise any differences that may exist between the M&V contractor’s estimate of Contract Savings and the EESP’s estimate of Contract Savings.

In the event the EESP is unable to resolve differences between its estimated Contract Savings and that which had been estimated by the M&V contractor, the estimate of the Contract Savings by the M&V contractor shall prevail and shall be used to evaluate the EESP’s performance.

LIPA shall not be required to make any payment to the EESP with regards to any Contract Savings resulting from a project for which the M&V contractor finds a discrepancy other than with regard to any estimates accepted or provided by the M&V contractor and LIPA. LIPA shall not be required to make any payment to the EESP with regard to estimated Contract Savings where the M&V contractor has indicated that it has not been granted access to sufficiently measure and verify the savings estimates.

*[The IPMVP Vol. 1 April 2007 version of the IPMVP will be attached in the final contract for convenience of reference. The document is available for review on the Authority’s RFP website located at [www.lipower.org](http://www.lipower.org)]*

In the event that New York State, through the EEPS proceedings, adopts other standards, the Authority may be required to follow such guidelines as they differ from the IPMVP and apply

such guidelines, including with regard to determining Contract Savings in connection with this Agreement.

## **SCHEDULE C**

### **INDIVIDUALS AVAILABLE FOR RENDERING EESP SERVICES**

Commencing upon the Effective Date and continuing during the Term, unless terminated by the Authority, the Authority shall pay the EESP Time-and-Materials Charges for all hours each Month at the Time-and-Materials Rates set forth as consideration for performing the EESP Services detailed in Schedule B-1; provided that such time-and-materials charges, based upon the rates provided in Schedule D-1, for a Calendar Year shall not exceed the annual EESP Budget.

The following individuals may provide EESP services under this Agreement. When necessary, EESP may utilize other personnel although this Schedule C sets forth those persons primarily responsible, in accordance with Article I of Schedule A of this Agreement.

Individuals

Position Title

1.

## **SCHEDULE D-1**

### **FEES FOR SERVICES**

The Authority shall compensate the EESP for work performed in accordance with the Scope of Services described in Schedule B-1 of this Agreement as follows:

Following the Services Start Date and throughout the Term, unless terminated earlier by the Authority, the Authority shall make monthly payments to the EESP consisting of an amount equal to the sum of: (i) the Time-and-Materials Charges calculated in accordance with this Schedule D-1 and (ii) the Performance Incentive calculated in accordance with Schedule D-2.

#### **[EESP TIME-AND-MATERIALS CHARGES]**

**[Insert Not-To-Exceed Cap]**

**SCHEDULE D-2**  
**PERFORMANCE INCENTIVE MECHANISM**

**I. Overview**

The Performance Incentive Mechanism is designed to reward the EESP for achieving the Authority's objectives, and successfully delivering the strategies and initiatives described in Appendix 1. The Performance Incentive Mechanism described in this Appendix 5 is designed to reward such performance based on results achieved by the EESP as measured by the following five indicators (jointly "Program Performance Indicators"):

1. "Cumulative Electric Demand Savings" (measured in Coincident MW);
2. "Cumulative Electric Energy Savings" (measured in MWh);
3. "Cumulative Depth of Savings" (measured as total Electric Energy Savings as a percent of total participating Customer energy consumption);
4. "Annual Electric Demand Savings" (measured in Coincident MW); and
5. "Unused Customer Rebate Budget" (measured as authorized customer rebate funds not expended).

The performance reward for the three cumulative Program Performance Indicators is referred to as "Cumulative Performance Awards"; the performance reward for the one annual Program Performance Indicator is referred to as the "Annual Performance Award"; the performance reward for the one Customer Rebate Budget Program Performance Indicator is referred to as the "Unused Customer Rebate Budget Performance Award"; and the performance award for all five Program Performance Indicators is referred to as the "Total Performance Reward".

Eligibility for the Cumulative Performance Awards and the Unused Customer Rebate Budget Performance Award will be determined for two separate periods during the EESP's five year contract term. The "First Period" covers January 1, 2010 through December 31, 2012. The "Second Period" covers January 1, 2013 through December 31, 2014 (jointly First Period and Second Period are hereafter referred to as "Periods"). As shown in Table D-1 below, for the First Period, the EESP can earn \$1,600,000 in Total Performance Award. For the Second Period, the EESP can earn an additional \$1,800,000 in Total Performance Award. It is possible to achieve a Performance Award beyond the levels shown in Table D-1 for performance superior to the 100% Target Level on any of the five Program Performance Indicators (except for the Annual Performance Award) up to a total cap of \$2,400,000 for the First Period and \$2,800,000 for the Second Period as discussed in more detail in Section V below.

**Table D-1 Performance Awards for Achieving at 100% Target Levels**

Line Number	Program Performance Indicator	Performance Award First Period (2010-2012)			Performance Award Second Period (2013-2014)	
		2010	2011	2012	2013	2014
1	Cumulative Electric Demand Savings	\$448,000			\$504,000	
2	Cumulative Electric Energy Savings	\$416,000			\$468,000	
3	Cumulative Depth of Savings	\$416,000			\$468,000	
4		2010	2011	2012	2013	2014
5	Annual Electric Demand Savings	\$96,000	\$96,000	\$128,000	\$144,000	\$216,000
6	Unused Customer Rebate Budget	\$0			\$0	
7	<b>Total Performance Award</b>	<b>\$1,600,000</b>			<b>\$1,800,000</b>	

Section III of this Attachment discusses the avoided cost projections, costing periods, and line loss factors to be applied to this contract. Section IV of this Attachment outlines the schedule and processes for documenting and verifying achievement of performance indicators. As discussed in that section, the EESP shall submit claims for Performance Awards and the Authority will verify the EESP’s claims. Finally, Section V sets forth some examples of how the Total Performance Award is calculated.

Payment of any earned Performance Awards for the period January 1, 2010 through December 31, 2012 is expected to be made in June, 2013. Payment of any earned Performance Awards for the period January 1, 2013 through December 31, 2014 is expected to be made in June, 2015.

**Cumulative Performance Awards**

As noted above, the Performance Incentive Mechanism is comprised of three cumulative benchmarks, or indicators, which determine the total amount of the potential Performance Award the EESP would be eligible to earn over the contract term, assuming the EESP satisfies all the requirements of the performance mechanism as described herein. The total Cumulative Performance Award in each period is subject to the EESP’s ability to satisfy the three 100% Target Levels summarized below in Tables C-2 and C-3.

1. Cumulative Electric Demand Savings: This benchmark represents the MW sum of verified coincident Electrical Demand Savings<sup>2</sup> achieved through completed Projects, net of free-ridership and spillover estimates, calculated at the generation

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<sup>2</sup> While a specific efficiency Project may reduce the customer’s electric demand, its impact on the Authority system peak is a function of the “coincidence” in timing of that efficiency measure’s demand savings with the occurrence of the Authority’s system peak. Following the Energy Efficiency Program designs, the EESP will adjust estimated demand savings by specified “coincidence factors.” For example, commercial lighting Projects typically have coincident demand savings of 70 to 75 percent of the Project’s estimated demand savings.

level (i.e., including line losses)<sup>3</sup>, and deducting any demand savings for efficiency measures whose measure life has expired over the period being measured.

2. **Cumulative Electric Energy Savings:** This benchmark represents the MWh sum of verified Electrical Energy Savings achieved through completed Projects, net of free-ridership and spillover estimates,<sup>4</sup> calculated at the generation level (i.e., including line losses),<sup>5</sup> and deducting any Electric Energy Savings for efficiency measures whose measure life has expired.<sup>6</sup>

**Table D-2 Cumulative Electric Demand Savings and Cumulative Electric Energy Savings 100% Target Levels**

<b>Cumulative Program Performance Indicator</b>	<b>100% Target Level (To be Achieved between January 1, 2010 and December 31, 2012)</b>	<b>100% Target Level (To be Achieved between January 1, 2013 and December 31, 2014)</b>
Cumulative Electric Demand Savings (Coincident MW)	29.2	34.8
Cumulative Electric Energy Savings (MWh)	127,021	150,522

3. **Cumulative Depth of Savings:** the Authority expects the EESP to consider and implement cost-effective energy efficiency measures across the full spectrum of electric end-uses. This benchmark represents the average amount of Electric Demand Savings and Electric Energy Savings achieved at each participating Customer’s site. In order to promote greater depth of savings across its service territory, the Authority will make available this Depth of Savings incentive, which shall be determined by calculating the amount of Electric Energy Savings as a percent of total participating Customer energy consumption (MWh) across all Customer sites over the term of the contract.<sup>7</sup>

**Table D-3 Cumulative Depth of Savings 100% Target Level**

<sup>3</sup> Because of line losses, energy efficiency provides savings greater at the generation level than at the customer meter. Claimed efficiency savings are increased by a “line loss factor.”

<sup>4</sup> Energy savings claimed in efficiency programs are adjusted by a free-ridership factor. “Free-rider” factors reduce claimed savings by an estimate of completed Projects that would have been completed in the absence of any services provided by the EESP (e.g., financial incentives, technical assistance).

<sup>5</sup> Because of line losses, energy efficiency provides savings greater at the generation level than at the customer meter. Claimed efficiency savings are increased by a “line loss factor.”

<sup>6</sup> The calculation of Cumulative Electric Energy Savings deducts any Electric Energy Savings that have expired due to a short measure life. For example, if retro-commissioning offers Electric Energy Savings for only a three-year period, then a retro-commissioning Project that provides savings in 2010 will not contribute to the Cumulative Electric Energy Savings goal in 2014.

<sup>7</sup> The Depth of Savings is measured by dividing the EESP’s cumulative annual MWh savings (at meter) attained at Customers’ facilities by the Customers’ total average annual energy consumption. The average annual energy consumption will be calculated as the rolling three-year average for each participating Customer, before the implementation of the efficiency measures and less any recognized savings from measures implemented by the EESP prior to the new installation.

<b>Cumulative Program Performance Indicator</b>	<b>100% Target Level (To be Achieved between January 1, 2010 and December 31, 2012)</b>	<b>100% Target Level (To Be Achieved between January 1, 2013 and December 31, 2014)</b>
Depth of savings	15.0%	15.0%

### **Annual Performance Award**

For achieving Annual Electric Demand Savings at the 100% Target Levels set forth in Table D-4 below, the EESP may earn the Annual Performance Award shown on line 5 in Table D-1.

**Table D-4 Annual Electric Demand Savings**

<b>Program Performance Indicator</b>	<b>100% Target Levels</b>				
	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Annual Electric Demand Savings (Coincident MW)	7.11	9.47	12.64	16.26	18.53

The EESP qualifies for the Annual Performance Award in any year that the 100% Target Level in MW is achieved. Although calculated on an annual basis, the Annual Performance Award is only granted at the end of each Period, in conjunction with the Cumulative Performance Awards.

### **Customer Rebate Budget**

To accomplish its objectives as embodied in the five Program Performance Indicators, the EESP will have the Customer Rebate Budget. This budget does not include the EESP Budget.

Table D-5 presents the estimated Customer Rebate Budget expected to be available to the EESP for the Term. A discussion of how the EESP may receive an Unused Customer Rebate Budget Performance award for spending less than the Customer Rebate Budget is discussed in Section IIE below.

**Table D-5 Estimated Customer Rebate Budget**

<b>Program Performance Indicator</b>	<b>100% Target Levels</b>				
	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Customer Rebate Budget</b>	\$7,030,000	\$9,838,000	\$13,211,000	\$17,275,000	\$19,736,000

## **II. Description of Program Performance Indicators**

The EESP is eligible to earn a Performance Award for achieving at or near the 100% Target Level on each of the five Program Performance Indicators. This section provides a more detailed description of each of the five Program Performance Indicators, their weights as a percentage of the Total Performance Award at the 100% Target Level, their individual 100% Target Levels, their minimum thresholds, the scaling between their thresholds and their 100% Target Levels, and Performance Awards for achievements superior to meeting the 100% Target Levels. The threshold and scaling for each indicator are summarized in Table D-6.

The EESP must achieve the Threshold Levels shown for all three Cumulative Program Performance Indicators, to be eligible for the Cumulative Performance Award. The EESP must also achieve the 100% Target Level for Annual Electric Demand Savings, as shown in Table D-4, in each year to be eligible for the Annual Performance Award for that year. Finally, the EESP must achieve the 100% Target Levels for all three Cumulative Program Performance Indicators and spend less than the Customer Rebate Budget to be eligible for the Unused Customer Rebate Budget Performance Award. All achievements by the EESP are subject to it providing adequate documentation of results and verification by the Authority as set forth herein.

**Table D-6 Threshold Levels and Percent of Performance Award Upon Achievement of Threshold Levels by Cumulative Program Performance Indicator**

<b>Cumulative Program Performance Indicator</b>	<b>Threshold Level</b>	<b>% of Performance Award Upon Achievement of Threshold Level</b>
Cumulative Electric Demand Savings	80%	25%
Cumulative Electric Energy Savings	80%	25%
Cumulative Depth of Savings	80%	25%

**A. Cumulative Electric Demand Savings**

The purpose of the Cumulative Electric Demand Savings incentive is to provide the EESP with the appropriate financial incentives to achieve significant summer peak demand reductions through energy-efficiency measures and Projects.

**1. Performance Award and Weighting**

The overall weight for this performance indicator is 28% of the EESP’s Total Performance Award at the 100% Target Level ( $\$1,600,000 * 0.28 = \$448,000$ ) for the First Period and ( $\$1,800,000 * 0.28 = \$504,000$ ) for the Second Period.

**2. 100% Target Level**

For the First Period, the 100% Target Level for this indicator (also known as the “Cumulative Electric Demand Savings Target”) is 29.2 MW (at generation and net of free riders). The Cumulative Electric Demand Savings Target measures the sum of coincident summer demand reduction achieved by implementation of all applicable strategies and initiatives during the First Period.

For the Second Period, the Cumulative Electric Demand Savings Target is 34.8 MW (at generation and net of free riders) which is an incremental savings beyond that achieved by December 31, 2012. The Cumulative Electric Demand Savings Target

measures the sum of coincident summer demand reduction achieved by implementing all applicable strategies and initiatives during the Second Period.

During the Term, the Cumulative Electric Demand Savings Targets will be adjusted to reflect changes in the Energy Efficiency Program Budget that occur, such that, if the Authority reduces or increases the Energy Efficiency Program Budget, the Cumulative Electric Demand Savings Targets and Performance Award corresponding to such targets will also be reduced or increased by a proportional amount. Any savings already achieved at the time of any such funding change will be considered at the original 100% Target Levels and Performance Awards for that portion based upon amounts set forth in this Appendix. All savings achieved after such increase or decrease in the Energy Efficiency Program Budget will be considered based on the revised Cumulative Electric Demand Savings Targets and revised Performance Award corresponding to such targets.

**3. Threshold and Scaling Up to Cumulative Electric Demand Savings Targets**

The EESP shall be eligible to receive a Performance Award if the EESP is able to achieve the minimum Threshold Levels noted above on all three Cumulative Program Performance Indicators while spending less than the EESP Budget Amount.<sup>8</sup> The Threshold Level is set at 80% of the Cumulative Electric Demand Savings Target. Thus, the Cumulative Electric Demand Savings Threshold Level is 23.36 MW (29.2 MW \* 80%) for the First Period, and 27.8 MW for the Second period (34.8 MW \* 80%).

If the EESP is able to meet or exceed the minimum Threshold Level for Cumulative Electric Demand Savings, the EESP shall be eligible to earn a performance award of \$112,000 (25% of the \$448,000 it would earn if it achieved 100% of its Cumulative Demand Savings Target) for the First Period and \$126,000 for the Second Period. If the EESP achieves more than 80% of the Cumulative Electric Demand Savings Target, the corresponding Performance Award shall be increased at a fixed rate per MW of savings achieved in excess of the Cumulative Electric Demand Savings Threshold Level in each Period, if the EESP is able to do so while also spending less than the EESP Budget Amount. For the period starting January 1, 2010 and ending December 31, 2012, the EESP would be paid \$57,534 per MW for all verified Cumulative Electric Demand Savings above the Cumulative Electric Demand Savings Threshold Target of 23.36 MW to the 100% target level of 29.2 MW, and \$38,341 per MW for all savings above the 100% target level. For the period starting January 1, 2013 and ending December 31, 2014, the EESP would be paid \$54,000 per MW for all verified Cumulative Electric Demand Savings above the Cumulative Electric Demand Savings Threshold Target of 27.8 MW to the 100% target level of 34.8 MW, and \$36,222 per MW for all savings above the 100% target level. Payments of Performance Awards beyond the amounts set forth in line 1 of Table D-1 are subject to the cap discussed in Section V below.

**4. Summary of Cumulative Electric Demand Savings Performance Award**

The EESP's Cumulative Electric Demand Savings Performance Award would be:

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<sup>8</sup> Terms of this EESP Performance Award, as documented by the EESP and agreed to by the Authority, are further outlined in Section IV below.

- \$0 if verified Cumulative Electric Demand Savings are less than the Threshold Levels of 23.36 MW by December 31, 2012, and 27.8 MW by December 31, 2014.
- \$112,000 for achieving Cumulative Electric Demand Savings at the Threshold Level of 23.36 MW. For each additional MW of verifiable Cumulative Electric Demand Savings above the minimum threshold savings level of 23.36 MW achieved during the First Period, the EESP shall be eligible for an additional financial performance award equal to \$57,534 per verified MW (assuming that EESP meets the Threshold Levels on all three Cumulative Program Performance Indicators) to the 100% target level of 29.2 MW, and \$38,341 per MW for savings above the 100% target level.
- \$126,000 for achieving Cumulative Electric Demand Savings at the Threshold Level of 27.8 MW. For each additional MW of verifiable Cumulative Electric Demand Savings above the minimum threshold savings level of 27.8 MW achieved during the Second Period, the EESP shall be eligible for an additional financial performance award equal to \$54,000 per verified MW (assuming that EESP meets the Threshold Levels on all three Cumulative Program Performance Indicators) to the 100% target level of 34.8 MW, and \$36,222 per MW for savings above the 100% target level..

**B. Cumulative Electric Energy Savings**

The purpose of the Cumulative Electric Energy Savings incentive is to provide the EESP with the appropriate financial incentives to achieve significant energy savings through energy-efficiency measures and Projects.

**1. Performance Award and Weighting**

The overall weight for this performance indicator is 26% of the EESP's Total Performance Award at the 100% Target Level ( $\$1,600,000 * 0.26 = \$416,000$  for the First Period and  $\$1,800,000 * 0.26 = \$468,000$  for the Second Period).

**2. 100% Target Level**

For the First Period, the 100% Target Level for this indicator (also known as the "Cumulative Electric Energy Savings Target") is 127,021 MWh (at generation and net of free riders). The Cumulative Electric Energy Savings Target measures the sum of energy savings achieved by implementation of all applicable strategies and initiatives during the First Period.

For the Second Period, the Cumulative Electric Energy Savings Target is 150,522 MWh (at generation and net of free riders) which is an incremental savings beyond that achieved by December 31, 2012. The Cumulative Electric Energy Savings Target measures the sum of annual energy savings achieved by implementation of all applicable strategies and initiatives during the Second Period.

During the contract term, the Cumulative Electric Energy Savings Targets will be adjusted to reflect changes in the Energy Efficiency Program Budget that occur, such that, if the Authority reduces or increases the Energy Efficiency Program Budget, the Cumulative Electric Energy Savings Targets and Performance Award corresponding to such targets will also be reduced or increased by a proportional amount. Any savings already achieved at the time of any such funding change will be considered at the original 100% Target Levels and Performance Awards for that portion based upon amounts set forth in this Appendix. All savings achieved after such increase or decrease in the Energy Efficiency Program Budget will be considered based on the

revised Cumulative Electric Energy Savings Targets and revised Performance Award corresponding to such targets.

**3. Threshold and Scaling Up to Cumulative Electric Energy Savings Targets**

The EESP shall be eligible to receive a Performance Award for maximizing Cumulative Electric Energy Savings if the EESP is able to achieve the minimum Threshold Levels, as noted above in Table D-2, on all three Cumulative Program Performance Indicators. The minimum Threshold Level is set at 80% of the Cumulative Electric Energy Savings Target. Thus, the minimum Threshold Level is 101,617 MWh (127,021 MWh \* 80%) for the First Period, and 120,418 MWh for the Second period (150,552 \* 80%).

If the EESP is able to meet, or exceed, the minimum Threshold Level for Cumulative Electric Energy Savings, the EESP shall be eligible to earn a performance award of \$104,000 (25% of the amount it would earn if it achieved 100% of its Cumulative Electric Energy Savings Target) for the First Period, and \$117,000 for the Second Period. If the EESP achieves more than 80% of the Cumulative Electric Energy Savings Target, the corresponding Performance Award shall be increased at a fixed rate per MWh of savings achieved in excess of the Cumulative Electric Energy Savings Threshold Level in each Period. For the period ending December 31, 2012, the EESP would be paid \$12.28 per MWh for all verified Cumulative Electric Energy Savings above the Cumulative Electric Energy Savings Threshold Target of 101,617 MWh to the 100% target level of 127,021 MWh, and \$8.19 per MWh thereafter. For the period ending December 31, 2014, the EESP would be paid \$11.65 per MWh for all verified Cumulative Electric Energy Savings above the Cumulative Electric Energy Savings Threshold Target of 120,418 MWh to the 100% target level of 150,552 MWh, and \$7.77 per MWh thereafter. Payments of Performance Awards beyond the amounts set forth in line 2 of Table D-1 are subject to the cap discussed in Section V below.

**4. Summary of Cumulative Electric Energy Savings Performance Awards**

- \$0 if verified Cumulative Electric Energy Savings are less than the Threshold Levels of 101,617 MWh by December 31, 2012 period, and 120,418 MWh by December 31, 2014.
- \$104,000 for achieving Cumulative Electric Energy Savings at the Threshold Level of 101,617 MWh. For each additional MWh of verifiable Cumulative Electric Energy Savings above the minimum threshold savings level of 101,617 MWh achieved during the First Period, the EESP shall be eligible for an additional financial performance award equal to \$12.28 per verified MWh to the 100% target level of 127,021 MWh (assuming that EESP meets the Threshold Levels on all three Cumulative Program Performance Indicators), and \$8.18 per verified MWh thereafter.
- \$117,000 for achieving Cumulative Electric Energy Savings at the Threshold Level of 120,418 MWh. For each additional MWh of verifiable Cumulative Electric Energy Savings above the minimum threshold savings level of 120,418 MWh achieved during the Second Period, the EESP shall be eligible for an additional financial performance award equal to \$11.65 per verified MWh to the 100% target level of 150,552 MWh, and \$7.77 per verified MWh thereafter (assuming that EESP meets the Threshold Levels on all three Cumulative Program Performance Indicators).

## **C. Cumulative Depth of Savings**

The Cumulative Depth of Savings incentive mechanism provides for additional financial awards if the EESP is able to implement energy efficiency measures that reduce, on average, each participating Customer's electricity consumption by no less than 15%. This incentive is designed to encourage the EESP to achieve a depth of energy savings across a comprehensive range of end uses at each Customer location, in addition to meeting Cumulative Electric Demand Savings and Cumulative Electric Energy Savings.

### **1. Performance Award and Weighting**

The overall weight for this performance indicator is 26% of the EESP's Total Performance Award at the 100% Target Level ( $\$1,600,000 * .26 = \$416,000$  for the First Period and  $\$1,800,000 * .26 = \$468,000$  for the Second Period).

### **2. 100% Target Level**

For both the First Period and the Second Period, the 100% Target Level for this indicator (also known as the "Cumulative Depth of Savings Target") is to achieve an average energy reduction of 15% for all participating Customers.<sup>9</sup> The Cumulative Depth of Savings Target measures the depth of demand and energy reductions across all Customer sites during the two periods set forth above.

During the contract term, the Cumulative Depth of Savings Targets will not be adjusted for any increases or decreases that occur in the Energy Efficiency Program Budget.

### **3. Threshold and Scaling Up to Cumulative Depth of Savings Targets**

The EESP shall be eligible to receive a Performance Award for this indicator only if EESP meets the Threshold Levels on all three Cumulative Program Performance Indicators. The Threshold Level is set at 80% of the Cumulative Depth of Savings Target. Thus, the Threshold Level is ( $15% * .8 = 12%$ ) for the First Period and the Second Period.

If the EESP achieves the above Threshold Levels, it can earn \$104,000 (25% of the amount it would earn if it achieved 100% of its Cumulative Depth of Savings Target) for the First Period and \$117,000 for the Second Period. If the EESP achieves more than 80% of the Cumulative Depth of Savings Target, the corresponding Performance Award shall be increased at a fixed rate per percentage point of savings achieved in excess of the Cumulative Depth of Savings Threshold Level in each Period. For the period ending December 31, 2012, the EESP would be paid \$104,000 for each 1% of all verified Cumulative Depth of Savings above the Cumulative Depth of Savings Target of 12% to the 100% target level of 15%, and \$69,334 for each 1% above 15%.

For the period ending December 31, 2014, the EESP would be paid \$117,000 for each 1% of all verified Cumulative Depth of Savings above the Cumulative Depth of Savings Target of 12% to the 100% target level of 15%, and \$78,000 for each 1% above 15%. Payments of Performance Awards beyond the amounts set forth in line 3 of Table D-1 are subject to the cap discussed in Section V below.

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<sup>9</sup> The base line for the computation is 2008 and all data is weather normalized.

**4. Summary of Cumulative Depth of Savings Performance Award**

- \$0 if verified Cumulative Depth of Savings are less than 12% by December 31, 2012 and 12% by December 31, 2014.
- \$104,000 for achieving Cumulative Depth of Savings of 12% plus \$104,000 for each 1% of verified Cumulative Depth of Savings above 12% to the 100% target level of 15% and \$69,334 for each 1% above 15% by December 31, 2012 (assuming that EESP meets the Threshold Levels on all three Cumulative Program Performance Indicators).
- \$117,000 for achieving Cumulative Depth of Savings of 12% plus \$117,000 per percent for verified Depth of Savings above 12% to the 100% target level of 15% and \$78,000 for each 1% above 15% by December 31, 2012 (assuming that EESP meets the Threshold Levels on all three Cumulative Program Performance Indicators).

**D. Annual Electric Demand Savings**

The Annual Electric Demand Savings incentive provides for additional financial awards for measures and programs that result in significant annual summer peak demand reductions.

**1. Performance Award**

In any year that the EESP achieves the Annual Performance Target Levels, an Annual Performance Award will be accrued for payment. Payment of the Annual Performance Award will be made at the end of each Period, as described in Section IV-1 below. The amount of the annual award is as follows:

**D-7 Annual Electric Demand Savings and Performance Awards**

	100% Target Levels				
	2010	2011	2012	2013	2014
Annual Electric Demand Savings (Incremental Annual MW)	7.11	9.47	12.64	16.26	18.53
Performance Award	\$96,000	\$96,000	\$128,000	\$144,000	\$216,000

**2. 100% Target Level**

The Annual Electric Demand Savings Target is designed to measure savings that are achieved by the EESP from all applicable strategies and initiatives in each year of the program. The amount of the 100% annual incremental Demand Savings target for each year of the program for this indicator is included in Table D-7, above.

During the Term, the Annual Electric Demand Savings Target will be adjusted to reflect changes in the Energy Efficiency Program Budget that occur, such that, if the Authority reduces or increases the Energy Efficiency Program Budget, the Annual Electric Demand Savings Targets and Performance Award corresponding to such targets will also be reduced or increased by a proportional amount. Any savings already achieved at the time of any such funding change will be considered at the

original 100% Target Levels and Performance Awards for that portion based upon amounts set forth in this Appendix. All savings achieved after such increase or decrease in the Energy Efficiency Program Budget will be considered based on the revised Annual Electric Demand Savings Targets and revised Performance Award corresponding to such targets.

**3. Threshold and Scaling**

There is no scaling of the Annual Electric Demand Savings. If the Annual Electric Demand Savings Target is met, the corresponding Performance Award shown in Table D-7 shall be made. The EESP shall not be eligible for a Performance Award beyond the amounts shown in Table D-7 for verified Annual Electric Demand Savings above the Annual Electric Demand Savings Targets.

**4. Summary of Annual Electric Demand Savings Performance Awards**

- \$0 if verified Annual Electric Demand Savings are less than the Annual Electric Demand Savings Targets (100% Target Levels) shown for each year in Table D-7.
- \$96,000 for achieving 7.11 MW or more of Annual Electric Demand Savings for 2010.
- \$96,000 for achieving 9.47 MW or more of Annual Electric Demand Savings for 2011.
- \$128,000 for achieving 12.64 MW or more of Annual Electric Demand Savings for 2012.
- \$144,000 for achieving 16.26 MW or more of Annual Electric Demand Savings for 2013.
- \$216,000 for achieving 18.53 MW or more of Annual Electric Demand Savings for 2014.

Eligibility for each Annual Electric Demand Savings Performance Award shall be based on the EESP's performance only for that year and the EESP may receive Annual Electric Demand Savings Performance Awards for more than one year.

**E. Unused Customer Rebate Budget**

The Unused Customer Rebate incentive encourages the EESP to achieve the Cumulative Program Performance Indicators and Annual Program Performance Indicator while controlling the Customer Rebate Budget. The EESP would be eligible to receive a Customer Rebate Budget Performance Award for this indicator if EESP is able to meet the 100% Target Levels on all three Cumulative Program Performance Indicators and spends less than the Customer Rebate Budget during either the First Period or the Second Period as set forth below.

**1. Performance Award**

The Unused Customer Rebate Budget Performance Award is based upon the EESP controlling expenditures of the Customer Rebate Budget shown in Table D-5. Should the EESP achieve the 100% Target Levels for all three Cumulative Program Performance Indicators, and spend less than the Customer Rebate Budget, the EESP would be eligible to receive an incentive of 25% of all unspent dollars of the Customer Rebate Budget at the end of the contract term. This incentive is in addition to Cumulative Program Performance Awards and Annual Program Performance Award as set forth in Sections II A through II D of this Attachment.

## **2. 100% Target Level**

For the First Period, the 100% Target Level for this indicator (also known as the “Customer Rebate Budget Target”) is the sum of the annual Customer Rebate Budgets for 2010, 2011, and 2012 ( $(\$7,030,000 + \$9,838,000 + \$13,211,000) = \$30,079,000$ ). For the Second Period, the Customer Rebate Budget Target is the sum of the annual Customer Rebate Budgets for 2010 through 2014 ( $(\$30,079,000 + \$17,275,000 + \$19,736,000) = \$67,090,000$ ).

During the contract term, the Customer Rebate Budget Targets may be adjusted to reflect changes in the Energy Efficiency Program Budget that occur, such that, if the Authority reduces or increases the Energy Efficiency Program Budget, the Customer Rebate Budget Targets will also be reduced or increased by a proportional amount. Any savings in Customer Rebate Budgets compared to the Customer Rebate Budget Targets already achieved at the time of any such funding change will be considered in the determination of any Performance Award. All savings achieved after such increase or decrease in the Energy Efficiency Program Budget will be considered based on the revised Customer Rebate Budget Targets in the determination of a Performance Award corresponding to such targets.

## **3. Threshold and Scaling**

The EESP shall be eligible to receive an Unused Customer Rebate Budget Performance Award for this indicator only if EESP meets the 100% Target Levels on all three Cumulative Program Performance Indicators, and spends less than the Customer Rebate Budget during the term of the contract. The Threshold Level is set at 100% of the Customer Rebate Budget Targets (100% Target Levels) set forth in Table D-5 or \$30,079,000 for the First Period and \$67,090,000 for the Second Period. If the EESP meets these requirements, the EESP is eligible to be paid 25% of the savings in Customer Rebate Budgets. Payment of a Performance Award for spending less than the Customer Rebate Budget Target is subject to the cap discussed in Section V below.

## **4. Summary of Unused Customer Rebate Budget Performance Awards**

- **\$0** if EESP has not achieved the 100% Target Levels for the three Cumulative Performance Indicators for that period (regardless of Customer Rebate Budget expenditures for the period).
- **\$0** if EESP meets the 100% Target Levels on all three Cumulative Program Performance Indicators for that period, but has spent equal to or more than the Customer Rebate Budget for that period.
- 25% of the positive difference determined by subtracting the amount the EESP has spent for Customer Rebates from the Customer Rebate Budget for the contract term if EESP has met the 100% Target Levels on all three Cumulative Program Performance Indicators for that period.

### **III. Documentation, Verification, Savings and Cost Assumptions**

#### **A. Cumulative Electric Demand Savings, Cumulative Electric Energy Savings, and Cumulative Depth of Savings**

In order to establish and validate achievements for the Performance Awards for the Program Performance Indicators, the following documentation and verification process shall be used.

##### **1. Verification Process**

By March 1, of each year beginning March 1, 2011 the EESP will include in its Annual Report to the Authority relevant information and data that establishes its claim for Electric Demand Savings, Electric Energy Savings, and Depth of Savings for the previous Calendar Year. Such savings shall only include amounts for Projects that have been completed and verified.<sup>10</sup> These Projects shall be submitted to rebate processing by December 10<sup>th</sup> of each year to be counted toward that year's goal.

The Authority will review the EESP's Annual Report and, at its discretion, audit the EESP's Project files in order to assess savings estimates for custom measures, comprehensive Projects, and/or key input assumptions. The Authority will then meet and confer with the EESP in an attempt to resolve any differences on claimed savings.

By May 31 of each year beginning May 31, 2011 the Authority will provide the EESP with a written report summarizing the results of its review including the Authority's estimate of Electric Demand Savings, Electric Energy Savings, and Depth of Savings for the applicable year. The Authority's report will also set forth the Annual Electric Energy Demand Performance Award to be paid to EESP, if any. Each year the Authority will make a final determination regarding Electric Demand Savings, Electric Energy Savings, and Depth of Savings from the previous year. By June 30, 2013, the Authority will make a final determination regarding the Cumulative Electric Demand Savings, the Cumulative Electric Energy Savings, the Cumulative Depth of Savings, the Cumulative Performance Award, and the Annual Performance Award to be paid to the EESP.

##### **2. Establishment and Documentation of Savings Estimates**

The Authority has established and maintains reasonable savings estimates for prescriptive energy efficiency measures offered. Such documentation of all prescriptive measure savings assumptions will be set forth as part of this contract upon execution. The Schedule is an energy efficiency measure characterization library for the purposes of defining common energy efficiency technologies and their accepted costs and savings over the baseline technologies they typically replace. For custom measures or Projects, where prescriptive measure savings assumptions have not been established or do not apply, the EESP shall maintain in its files documentation of all assumptions and calculations used to establish its claim for Electric Demand Savings, Electric Energy Savings, and Depth of Savings. All information on savings assumptions and calculations used shall be available for review by the Authority and the M&V contractor.

##### **3. Updating of Estimates**

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<sup>10</sup> See discussion of Annual Reports in Task 6 of Scope of Work.

As part of its ongoing management and planning, the Authority reviews and updates, as appropriate, its estimates of Electric Demand Savings, Electric Energy Savings, and Depth of Savings for measures, technologies in order to reflect information obtained from measurement and evaluation studies, experiences gained from implementation of energy efficiency services and initiatives, and changes in building and appliance standards and codes. The EESP shall use these revised estimates of Electric Demand Savings, Electric Energy Savings, and Depth of savings on a prospective basis for measures installed in reporting claims of Electric Demand Savings, Energy Savings, and Depth of Savings in future years.

**B.** The Authority will provide EESP with cost projections, costing periods and line loss factors for application to this contract. The EESP shall use these avoided costs, costing periods and line loss factors in determining individual Project cost effectiveness. The Authority and the EESP will adjust the Cumulative Electric Energy Savings Target and the Cumulative Electric Demand Savings Target on a prospective basis as LIPA requires to reflect LIPA's updated projections of avoided resource costs, revised costing periods and revised line loss factors. The following process will be used to make the appropriate adjustments to these Targets:

- Recalculate the total for each of the above Targets using the new avoided cost projections, costing periods and line loss factors as appropriate;
- Determine the percentage of the above original Targets that the EESP has achieved by the implementation date of the new avoided cost projections, costing periods and line loss factors; and
- Multiply the new Targets by that percentage to determine the amount of the new Targets that the EESP has already achieved as of the implementation date of the new avoided costs, costing periods and line loss factors.

Cumulative Electric Energy Savings and Cumulative Electric Demand Savings achieved after the revised targets are adopted will be tracked using the updated avoided costs, costing periods and line loss factors.

### **C. Customer Rebate Budget**

Since the Authority directly pays out funds from the Customer Rebate Budget, it will determine the amount spent for Customer Rebates following the protocols for such rebates that are included as part of the EESP Contract. Total Customer Rebate Budget spending will be determined by the Authority from its and/or its agents financial records.

## **IV. Total Performance Award Cap**

The Total Performance Awards will be capped at \$2,400,000 for the First Period and \$2,800,000 for the Second Period for an overall cap of \$5,200,000. Any unused amount from the cap for the First Period will expire, and will not be added to the cap for the Second Period. These caps may be adjusted to reflect changes in the Energy Efficiency Program Budget that occur, such that, if the Authority reduces or increases the Energy Efficiency Program Budget, the caps will also be reduced or increased by a proportional amount.

V. Examples

**Example #1:**

In this example, the EESP meets the three Threshold Levels for the Cumulative Program Performance Indicators at the end of 2012, but does not meet the three 100% Target Levels for each of these indicators. Such performance entitles the EESP to Cumulative Program Performance Awards for each of the indicators, but not the Customer Rebate Budget Performance Award. The Customer Rebate Budget Performance Award requires the EESP to achieve the 100% Target Levels on each of the three Cumulative Program Performance Indicators.

Consider the following example which assumes that the contract terminates at the end of 2012 (the calculations for the Performance Awards are shown below the table):

Performance Indicator	Item	2010	2011	2012
<b>Annual Electric Demand Savings (MW)</b>	100% Target Level	7.11	9.47	12.64
	<b>Recorded &amp; Verified Achievement</b>	<b>8</b>	<b>9</b>	<b>12.8</b>
	Annual Electric Demand Savings Performance Award	\$96,000	0	\$128,000
<b>Cumulative Electric Demand Savings (MW)</b>	100% Target Level			29.22
	Threshold Level			23.38
	<b>Recorded &amp; Verified Achievement as of 12/31/12</b>			<b>29.8</b>
	Cumulative Electric Demand Savings Performance Award			\$470,238
<b>Cumulative Electric Energy Savings (MWh)</b>	100% Target Level			127,021
	Threshold Level			101,617
	<b>Recorded &amp; Verified Achievement as of 12/31/12</b>			<b>102,000</b>
	Cumulative Electric Energy Savings Performance Award			\$108,703
<b>Cumulative Depth of Savings (%)</b>	100% Target Level			15
	Threshold Level			12
	<b>Recorded &amp; Verified Achievement as of 12/31/12</b>			<b>13</b>
	Incentive Award			\$208,000
<b>Total Annual &amp; Cumulative Performance Award</b>				<b>\$1,010,941</b>

Performance Indicator/Item	2010	2011	2012	Total
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Customer Rebate Budget	\$7,030,000	\$9,838,000	\$13,211,000	\$30,079,000
Recorded & Verified Amount Spent	\$7,030,000	\$9,838,000	\$13,211,000	\$30,079,000
Difference	0	0	\$0	\$0
Customer Rebate Budget Performance Award				\$0*

\* There is no Customer Rebate Budget Performance Award even though the EESP spent no more than the Customer Rebate Budget because EESP did not meet the 100% Target Levels on each of the three Cumulative Program Performance Indicators.

### **Annual Electric Demand Savings**

- EESP met the Annual Electric Demand Savings Targets for 2010 and 2012, but did not meet the Annual Electric Demand Savings Target for 2011. Therefore, EESP is paid the Annual Electric Demand Savings Performance Awards for 2010 and 2012 in the amounts of \$96,000 and \$128,000 respectively for a total of \$224,000 (Reference: Table D-7).

### **Cumulative Electric Demand Savings**

- EESP met Threshold Levels for all three Cumulative Program Performance Indicators for 2012, therefore it is eligible for a Cumulative Electric Demand Savings Award.
  - Performance Award = (Amount for Achieving Threshold Level) + (Recorded & Verified Achievement – Threshold Level) \* Below target Dollars per MW, provided Recorded & Verified Amount is less than 100% target level. If Recorded & Verified amount is greater than 100% target level, then Performance Award = (Amount for Achieving 100% Target Level) + (Recorded and Verified Achievement – 100% Target Level) \* Above target Dollars per MW.
  - Recorded & Verified amount is greater than 100% Target Level, therefore:  $(\$448,000 + ((29.80 - 29.22) * \$38,341) = \$470,238$  (Reference: Section II A5)

### **Cumulative Electric Energy Savings**

- EESP met Threshold Levels for all three Cumulative Program Performance Indicators for 2012, therefore it is eligible for a Cumulative Electric Energy Savings Award.
  - Performance Award = (Amount for Achieving Threshold Level) + (Recorded & Verified Achievement – Threshold Level) \* Dollars per MWh, provided Recorded & Verified Amount is less than 100% target level. If Recorded & Verified amount is greater than 100% target level, then Performance Award = (Amount for Achieving 100% Target Level) + (Recorded and Verified Achievement – 100% Target Level) \* Above target Dollars per MWh.
  - Recorded & Verified amount is less than 100% target level, therefore:  $(\$104,000 + ((102,000 - 101,617) * \$12.28) = \$108,703$  (Reference: Section II B5)

### **Depth of Savings**

- EESP met Threshold Levels for all three Cumulative Program Performance Indicators for 2012, therefore it is eligible for a Cumulative Depth of Savings Award.
  - Performance Award = (Amount for Achieving Threshold Level) + (Recorded & Verified Achievement – Threshold Level) \* Dollars per %

- $(\$104,000 + ((13 - 12) * \$104,000)) = \$208,000$  (Reference: Section II C5)

**Customer Rebate Budget**

- Since EESP did not achieve 100% Target Levels on all three Cumulative Program Performance Indicators, it would not be eligible for a Customer Rebate Budget Performance Award.

**Total Incentive Calculation**

- Total Program Performance Award = \$224,000 + \$470,238 + \$108,703 + \$208,000 = \$1,010,941

**Example #2:**

This example is similar to Example #1, except that EESP meets the 100% Target Levels on each of the three Cumulative Program Performance Indicators and the Customer Rebate Budget is not fully spent at the end of 2012. Thus, the EESP receives Cumulative Program Performance Awards for achieving the 100% Target Levels on each of the three Cumulative Program Performance Indicators and the Customer Rebate Budget Performance Award since the EESP also spent less than the Customer Rebate Budget in achieving such 100% Target Levels.

Consider the following example (the calculations for the Performance Awards are shown below the table):

<b>Performance Indicator</b>	<b>Item</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Annual Electric Demand Savings (MW)</b>	100% Target Level	7.11	9.47	12.64
	<b>Recorded &amp; Verified Achievement</b>	<b>8</b>	<b>9</b>	<b>12.80</b>
	Annual Electric Demand Savings Performance Award	\$96,000	0	\$128,000
<b>Cumulative Electric Demand Savings (MW)</b>	100% Target Level			29.22
	Threshold Level			23.38
	<b>Recorded &amp; Verified Achievement</b>			<b>29.80</b>
	Cumulative Electric Demand Savings Performance Award			\$470,149
<b>Cumulative Electric Energy Savings (MWh)</b>	100% Target Level			127,021
	Threshold Level			101,617
	<b>Recorded &amp; Verified Achievement as of 12/31/12</b>			<b>127,021</b>
	Cumulative Electric Energy Savings Performance Award			\$408,000
<b>Cumulative Depth of Savings (%)</b>	100 % Target Level			15
	Threshold Level			12
	<b>Recorded &amp; Verified</b>			<b>15</b>

	<b>Achievement as of 12/31/12</b>			
	Incentive Award			\$416,000
<b>Total Annual &amp; Cumulative Performance Award</b>				<b>\$1,518,149</b>

Performance Indicator/Item	2010	2011	2012	Total
Customer Rebate Budget	\$7,030,000	\$9,838,000	\$13,211,000	\$30,079,000
Recorded & Verified Amount Spent	\$7,030,000	\$9,576,000	\$13,211,000	\$29,817,000
Difference	\$0	\$262,000	\$0	\$262,000
Customer Rebate Budget Performance Award				\$65,500*

\* Since EESP met the 100% Target Levels on each of the three Cumulative Program Performance Indicators and spent less than the Customer Rebate Budget to achieve such 100% Target Levels, EESP qualifies for the Customer Rebate Performance Award as shown in this table.

#### **Annual Electric Demand Savings**

- Same as for Example #1 with EESP being paid the Annual Electric Demand Savings Performance Awards for 2010 and 2011 in the amounts of \$96,000 and \$128,000 respectively for a total of \$224,000 (Reference: Table D-7).

#### **Cumulative Electric Demand Savings**

- Same as for Example #1 with EESP being paid the Cumulative Electric Demand Savings Performance Award of \$470,238 (Reference: Section II A5)

#### **Cumulative Electric Energy Savings**

- Since EESP met all Threshold Levels for 2012 and the 100% Target Level for Cumulative Electric Energy Savings for 2012, it qualifies for a Cumulative Electric Energy Savings Performance Award.
  - Performance Award = (Amount for Achieving Threshold Level) + (Recorded & Verified Achievement – Threshold Level) \* Below target Dollars per MWh, provided Recorded & Verified Amount is less than 100% target level. If Recorded & Verified amount is greater than 100% target level, then Performance Award = (Amount for Achieving 100% Target Level) + (Recorded and Verified Achievement – 100% Target Level) \* Above target Dollars per MWh.
  - Recorded & Verified amount is equal to or greater than 100% target level, therefore: (\$408,000 + ((127,021 – 127,021) \* \$12.28) = \$408,000 (Reference: Section II B5)

#### **Depth of Savings**

- Since EESP met all Threshold Levels for 2012 and the 100% Target Level for Cumulative Depth of Savings for 2012, it qualifies for a Cumulative Depth of Savings Performance Award.
  - Performance Award = (Amount for Achieving Threshold Level) + (Recorded & Verified Achievement – Threshold Level) \* Dollars per %
  - (\$104,000 + ((15 - 12) \* \$104,000) = \$416,000 (Reference: Section IIC5)

#### **Customer Rebate Budget**

- Since EESP achieved the 100% Target Levels on all three Cumulative Program Performance Indicators and spent less than the Customer Rebate Budget, it is eligible for a Customer Rebate Budget Performance Award.
  - Customer Rebate Budget Performance Award = (Customer Rebate Budget – Recorded & Verified Amount Spent) \* 25%
  - (\$30,079,000 - \$29,817,000) = \$262,000 \* 25% = \$65,500

**Total Program Performance Award**

- Total Program Performance Award = \$224,000 + \$470,238 + \$408,000 + \$416,000 + \$65,500 = \$1,583,738.

**Example #3:**

In this example, the EESP does not achieve the Threshold Level for one of the three Cumulative Performance Indicators and thus is not eligible for any Cumulative Program Performance Award or the Customer Rebate Budget Performance Award. Consider the following example:

Performance Indicator	Item	2010	2011	2012
<b>Annual Electric Demand Savings (MW)</b>	100% Target Level	7.11	9.47	12.64
	<b>Recorded &amp; Verified Achievement</b>	<b>8.0</b>	<b>2.5</b>	<b>12.8</b>
	Annual Electric Demand Savings Performance Award	\$96,000	0	\$128,000
<b>Cumulative Electric Demand Savings (MW)</b>	100% Target Level			29.22
	Threshold Level			23.38
	<b>Recorded &amp; Verified Achievement as of 12/31/12</b>			<b>23.3</b>
	Cumulative Electric Demand Savings Performance Award			\$0
<b>Cumulative Electric Energy Savings (MWh)</b>	100% Target Level			127,021
	Threshold Level			101,617
	<b>Recorded &amp; Verified Achievement as of 12/31/12</b>			<b>101,617</b>
	Cumulative Electric Energy Savings Performance Award			\$0
<b>Cumulative Depth of Savings (%)</b>	100 % Target Level			15
	Threshold Level			12
	<b>Recorded &amp; Verified Achievement as of 12/31/12</b>			<b>15</b>
	Incentive Award			\$0
<b>Total Annual &amp; Cumulative</b>				<b>\$224,000</b>

<b>Performance Award</b>				
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\* There is no Total Cumulative Performance Award because EESP did not meet the Threshold Levels on each of the three Cumulative Program Performance Indicators.

Performance Indicator/Item	2010	2011	2012	Total
Customer Rebate Budget	\$7,030,000	\$9,838,000	\$13,211,000	\$30,079,000
Recorded & Verified Amount Spent	\$7,030,000	\$9,838,000	\$13,211,000	\$30,079,000
Difference	0	0	0	0
Customer Rebate Budget Performance Award				\$0*

\* There is no Customer Rebate Budget Performance Award because EESP did not meet the 100% Target Levels on each of the three Cumulative Program Performance Indicators.

**Annual Electric Demand Savings**

- Same as for Example #1 with EESP being paid the Annual Electric Demand Savings Performance Awards for 2010 and 2011 in the amounts of \$96,000 and \$128,000 respectively for a total of \$224,000 (Reference: Table D-7).

**Cumulative Electric Demand Savings**

- Since the EESP did not meet the Threshold Level for this indicator for 2012, it is not eligible for a Cumulative Electric Demand Savings Performance Award. (Reference: Section II A5)

**Cumulative Electric Energy Savings**

- Although the EESP met the Threshold Level for this indicator for 2012, since it did not meet the Threshold Level for the Cumulative Electric Demand Savings indicator for 2012, it is not eligible for any Cumulative Program Performance Awards. (Reference: Section II A5)

**Depth of Savings**

- Although the EESP met the Threshold Level for this indicator for 2012, since it did not meet the Threshold Level for the Cumulative Electric Demand Savings indicator for 2012, it is not eligible for any Cumulative Program Performance Awards. (Reference: Section II C5)

**Customer Rebate Budget**

- Since EESP did not achieve 100% Target Levels on all three Cumulative Program Performance Indicators, it would not be eligible for a Customer Rebate Budget Performance Award.

**Total Program Performance Award**

- Total Program Performance Award = \$224,000

**Example #4:**

In this example, EESP achieves the performance as shown in Example #2 for the First Period. During the Second Period, EESP does not achieve the Threshold Levels for each of the three Cumulative Program Performance indicators and thus does not receive any Cumulative Program Performance Awards or Customer Rebate Budget Award for the Second Period. Consider the following example:

**First Period**

EESP has the same performance as shown in Example #2 and receives a Total Program Performance Award for the period of \$1,649,238 including the \$65,500 calculated in that example for the Customer Rebate Budget Performance Award.

**Second Period**

<b>Performance Indicator</b>	<b>Item</b>	<b>2013</b>	<b>2014</b>
<b>Annual Electric Demand Savings (MW)</b>	100% Target Level	16.26	18.53
	<b>Recorded &amp; Verified Achievement</b>	<b>16.26</b>	<b>18</b>
	Annual Electric Demand Savings Performance Award	\$144,000	\$0
<b>Cumulative Electric Demand Savings (MW)</b>	100% Target Level		34.79
	Threshold Level		27.8
	<b>Recorded &amp; Verified Achievement as of 12/31/14</b>		<b>34.26</b>
	Cumulative Electric Demand Savings Performance Award		0*
<b>Cumulative Electric Energy Savings (MWh)</b>	100% Target Level		150.522
	Threshold Level		120,418
	<b>Recorded &amp; Verified Achievement as of 12/31/14</b>		<b>121,000</b>
	Cumulative Electric Energy Savings Performance Award		0*
<b>Cumulative Depth of Savings (%)</b>	100 % Target Level		15
	Threshold Level		12
	<b>Recorded &amp; Verified Achievement as of 12/31/14</b>		<b>11</b>
	Cumulative Depth of Savings Performance Award		0*
<b>Total Annual &amp; Cumulative Performance Award</b>			\$144,000

\* There is no Total Cumulative Performance Award because EESP did not meet the Threshold Levels on each of the three Cumulative Program Performance Indicators.

Performance Indicator/Item	Total
Customer Rebate Budget	\$67,090,000
Recorded & Verified Amount Spent	\$67,084,000
Difference	(\$6,000)
Customer Rebate Budget Performance Award	\$0*

\* There is no Customer Rebate Budget Performance Award because EESP did not meet the 100% Target Levels on each of the three Cumulative Program Performance Indicators.

#### **Annual Electric Demand Savings**

- EESP met the Annual Electric Demand Savings Targets for 2013, but did not meet the Annual Electric Demand Savings Target for 2014. Therefore, EESP is paid the Annual Electric Demand Savings Performance Awards for 2013 in the amounts of \$144,000 (Reference: Table D-7).

#### **Cumulative Electric Demand Savings**

- Although the EESP met the cumulative Electric Demand Savings Threshold Level for the Second period, it did not meet the Threshold Level for the Cumulative Depth of Savings indicator for 2014. Therefore, the EESP is not eligible for any Cumulative Program Performance Awards. (Reference: Section II A5)

#### **Cumulative Electric Energy**

- Although the EESP met the Threshold Level for this indicator for the Second period, it did not meet the Threshold Level for the Cumulative Depth of Savings indicator for 2014. Therefore, the EESP is not eligible for any Cumulative Program Performance Awards. (Reference: Section II B5)

#### **Depth of Savings**

- Since the EESP did not meet the Threshold Level for the Cumulative Depth of Savings indicator for 2014, it is not eligible for any Cumulative Program Performance Awards. (Reference: Section II C5)

#### **Customer Rebate Budget**

- Since EESP did not achieve 100% Target Levels on all three Cumulative Program Performance Indicators, it is not eligible for a Customer Rebate Budget Performance Award.

#### **Total Incentive Calculation for Second Period**

- Total Program Performance Award = \$144,000

#### **Total Incentive Calculation for Contract Term**

- Total Program Performance Award = \$1,518,149 + \$144,000 = \$1,662,149

**Non-Collusive Bidding Certification  
Required by Section 2878 of the Public Authorities Law**

By submission of this bid, bidder and each person signing on behalf of bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

[1] The prices in this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

**[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]**

**Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ as the act and deed of said corporation of partnership.**

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS

LEGAL RESIDENCE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

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\_\_\_\_\_

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAMES

LEGAL RESIDENCE

\_\_\_\_\_

\_\_\_\_\_

**President**

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_

\_\_\_\_\_  
**Treasurer**

\_\_\_\_\_

\_\_\_\_\_  
**President**

\_\_\_\_\_

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_

\_\_\_\_\_  
**Treasurer**

\_\_\_\_\_

Identifying Data:

**Potential EESP:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**City, Town, etc.** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Title:** \_\_\_\_\_

\_\_\_\_\_  
If applicable, Responsible Corporate Officer Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

**Joint or combined bids by companies or firms must be certified on behalf of each participant:**

\_\_\_\_\_  
Legal name of person, firm or corporation

\_\_\_\_\_  
Legal name of person, firm or corporation

By \_\_\_\_\_  
... (Name)

By \_\_\_\_\_  
... (Name)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City and State

\_\_\_\_\_  
City and State

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:**

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

(1) has business operations in Northern Ireland;

Yes\_\_\_ or No\_\_\_

If yes:

(2) shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes\_\_\_ or No\_\_\_

\_\_\_\_\_  
**Signature**



5. Has any Governmental Entity or other governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

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\_\_\_\_\_

Offerer certifies that all information provided to the Long Island Power Authority with respect to State Finance Law § 139-k in complete, true and accurate.

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

**CONTINGENT FEE CERTIFICATION**

In accordance with section F.2 of Article II of the Long Island Power Authority “Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts” (the “Guidelines”), Proposer, by submission of this proposal certifies the following with respect to the payment of contingent fees:

- (1) Proposer has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any Long Island Power Authority contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto; and
- (2) Proposer will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by the Long Island Power Authority.

\*\*\*\*\*

FAILURE TO PROVIDE THIS CERTIFICATION WILL BE GROUNDS FOR DISQUALIFICATION IN THE PROCUREMENT PROCESS.

VIOLATION OF EITHER (1) OR (2) OF THIS CERTIFICATION SHALL RESULT IN:

- (i) disqualification of Proposer from the procurement process; and
- (ii) prohibition of the Proposer from being awarded any contract for a period of three years from the commencement of the procurement process.

\*\*\*\*\*

Certified as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name of person, firm or corporation

By \_\_\_\_\_  
(Name and Title)

**RELEASE**

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned hereby acknowledges that pursuant to a contract \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, wherein the undersigned agreed to furnish for the Long Island Power Authority (LIPA) all the work necessary to complete

\*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LIPA has paid or will pay the undersigned, or a person, firm or corporation claiming by or through the undersigned, the full and entire sum due from LIPA to the undersigned under said contract. Upon payment by LIPA of the undersigned's final invoice # \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ the undersigned hereby releases and discharges LIPA, its officers, agents and employees, of and from all claims of liability to the undersigned for anything out of the contract or out of the work covered by said contract, including, but not limited to, all claims for extra work, labor or materials and for any prior act, neglect or default on the part of LIPA or any of its officers, agents or employees in connection therewith.

The undersigned further acknowledges that neither the aforesaid payment nor acceptance by LIPA of the work covered by the aforementioned contract shall in any way or manner operate as or constitute a release or waiver of the undersigned's obligations, undertakings or liabilities under said contract or in any way affect or limit the same.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereto subscribed and its seal to be hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Name of EESP

[corporate seal]

By: \_\_\_\_\_

\* Indicate type of work performed: i.e., architectural design, engineering services, consulting, etc.

**ST-220 CA**

**Form ST-220 NYS Dept of Taxation & Finance Contractor Certification**  
[To be attached]