

ATTACHMENT C

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

SAMPLE AGREEMENT

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

This Agreement consists of this form plus the following documents:

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

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

[BUSINESS NAME, INC.]

NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

By _____

By _____

Name _____

Title _____

**EXHIBIT A
STATEMENT OF WORK**

Fuel NY
Portable Emergency Generator Program

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

SITE LOCATION:

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

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

DESCRIPTION OF RESPONSIBILITIES:

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

I. ADMINISTRATION

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

Authorized Representatives

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

II. PEG Delivery

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

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

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

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

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

III. PEG Deployment Period

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

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

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

IV. PEG Removal

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

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

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

V. Maintenance of Program Participation

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

Responsibility Summary

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

Participant Responsibility Summary:

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

NYSERDA Team Responsibility Summary:

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

EXHIBIT B -TERMS & CONDITIONS

1. Project Period

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

2. Amounts Payable

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

3. Payment Procedure:

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

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

Attn: Controller's Officer

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

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

4. Permits:

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

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

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

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

6. Indemnification

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

7. Insurance

A. Maintenance of Insurance; Policy Provisions. The Participant, at no additional direct cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

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

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

- (1) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and
- (2) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

C. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Participant shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Section hereof. In the event any policy furnished or carried pursuant to this Section will expire on a date prior to approval of the Payment Request Form by NYSERDA, the Participant, not less than 15 days prior to such

expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Participant shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Participant shall deliver to NYSERDA a certified copy of each policy.

8. No Warranties

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

9. Limit of Services

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

10. Release by the Participant

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

11. Title to Equipment

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

12. Compliance with Certain Laws

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

13. Audit

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

14. Entire Agreement

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

EXHIBIT C

REVISED 5/12

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

1. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Participant and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law (“FOIL,” Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Participant should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Participant considers a proprietary and/or confidential trade secret, Participant shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Participant represents that the information has actual or potential specific commercial or competitive value to the competitors of Participant. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.ny.gov/coog/foil2.html>) and NYSERDA’s Regulations, Part 501 (<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.aspx>).

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

3. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily

required) without the NYSERDA's written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

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



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

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

GAS STATION NAME

GAS STATION NUMBER

AREA STREET MAP

BUILDING FRONT

PEG DROP-OFF LOCATION

TRANSFER SWITCH

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



GAS STATION NAME		GAS STATION NUMBER	
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SITE PLAN

A large, empty rectangular box with a black border, intended for drawing a site plan.

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

Station Information:

Gas Station Number: _____

Gas Station Name: _____

Gas Station Address: _____

Authorized Individual(s) to Request a PEG: _____

Authorized Individual(s) to Receive a PEG: _____

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

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

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

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

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

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

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