



Multifamily New Construction Program (MF NCP)
Partnership Agreement
Program Opportunity Notice (PON) 3319

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New York State Energy Research and Development Authority's (NYSERDA) Multifamily New Construction Program (MF NCP) incorporates support for constructing multifamily buildings and certain gut rehabilitation projects. The MF NCP encourages the construction of multifamily buildings that operate more energy efficiently, are more durable and comfortable, and provide a healthier environment for their occupants than would otherwise be achieved. Incentives are available to multifamily developers and builders to support the achievement of increased levels of energy performance, up to and inclusive of buildings that are designed and constructed to achieve net zero energy performance.

This Partnership Agreement ("Agreement") establishes the terms and conditions to be met by individuals or entities offering required services in support of an Applicant's participation in MF NCP, with those individuals or entities offering the required services and support herein referred to as "Partner(s)". In order for a multifamily developer or builder to access the technical support and incentives offered through MF NCP, they must hire and utilize a Partner per MF NCP requirements. It is expressly understood that NYSEDA and its MF NCP Implementer will not process or approve any incentive payment request submitted by an Applicant until a fully executed contract between the Partner and Applicant is received. Specific requirements for accessing MF NCP incentives are detailed in other sections of the Program Opportunity Notice (PON) 3319.

The Partner shall strive to ensure that all Applicants served by the Partner under MF NCP make a bona fide attempt to achieve the MF NCP's minimum performance thresholds. The Partner agrees to affirm the compliance of each building for which incentives will be sought such that all PON 3319 requirements are met. Partners should not support applications by customers that are not intending to complete MF NCP. NYSEDA agrees to provide technical, financial, and marketing support to Partners, which may include the following:

- Limited financial assistance for NYSEDA-approved training and continued education;
- The opportunity to respond to leads generated from NYSEDA's large-scale public awareness campaigns;
- Use of approved NYSEDA marketing materials which can be customized to include the Partner's logo and other company information; and
- Opportunities to participate in other NYSEDA pilot programs or initiatives.

This Agreement is completely voluntary and may be terminated with written notice at any time and for any reason by either NYSEDA or the Partner. By executing this Agreement, the Partner agrees to play an active role in the MF NCP by providing high quality and professional multifamily new construction services. The Partner understands and agrees to all terms and conditions outlined in this Agreement and any associated MF NCP Announcements distributed and/or posted by NYSEDA or NYSEDA's Implementation Contractor, all of which are incorporated herein by reference.

NYSEDA reserves the right to limit the Partner's activity in the MF NCP, including limiting the number of projects undertaken by the Partner at any point in time or restricting activity to a particular building size or type. Any such limitation will be based, in part, on the Partner's past performance, including quality of the Partner's submissions and its compliance with the relevant MF NCP guidelines. Partners with no, or limited, historic MF NCP activity will be subject to limitations on the number of projects accepted into the MF NCP, and possibly on the size or type of projects, until an acceptable performance history has been established.

The Partner acknowledges that failure to follow MF NCP requirements and procedures, including processing of required documents, may result in a loss of applicable incentives, may result in an increased level of Quality Control and Quality Assurance of the Partner's work, and may lead to actions outlined in Section 6 of this Agreement, including termination of this Agreement.

NYSERDA reserves the right to make changes to the MF NCP upon notice to the Partner. Such notification shall be sent to the Partner by e-mail and subsequently published within the appropriate section of PON 3319. In all cases, or at any time, NYSERDA's failure to enforce any provisions of this Agreement shall not constitute a waiver of such provisions, nor does it limit NYSERDA's ability to enforce such provisions in the future.

Article 1. Partnership Application

Section 1.1 Submission Requirements

To become a Partner to MF NCP, the individual or entity must first demonstrate to NYSERDA that the minimum eligibility requirements as detailed in Request for Proposal (RFP) 3036 have been met. Approval to serve as a Partner to MF NCP must be secured through successful application to RFP 3036. The RFP 3036 contractual agreement is hereby incorporated by reference into this MF NCP Partnership Agreement.

Applicants seeking to serve as Partners to MF NCP are prohibited from representing themselves as Partners or representing that they are eligible to serve MF NCP projects unless and until the agreement associated with RFP 3036 has been fully executed, and emailed notification has been received by the Partner from NYSERDA.

Section 1.2 To become a Partner, the following steps must be completed:

- 1. Become a Modeling Partner through successful application to NYSERDA's RFP 3036:** The applicant must first be deemed eligible for participation through NYSERDA's RFP 3036, Energy Modeling Partner Application. To view the details on NYSERDA's RFP 3036, please visit the Funding Opportunities section of the NYSERDA website at: www.nyserda.ny.gov.
- 2. Receive confirmation from NYSERDA that the agreement associated with RFP 3036 has been executed:** NYSERDA will execute that agreement only when the applicant has submitted all required information and the information is verified. The decision to fully execute an Agreement is at the sole discretion of NYSERDA.
- 3. Complete a MF NCP orientation on the associated requirements and protocols.** The Partner must fulfill this requirement prior to providing service to an Applicant to MF NCP.

Article 2. Technical Requirements

The Partner must ensure that all projects that they serve in the MF NCP meet the program's requirements, inclusive of the requirements detailed within the MF NCP Guidelines and other documents found on the PON 3319 website and, as applicable, the ENERGY STAR Multifamily High Rise (MFHR) program documents, Passive House Institute's (PHI) Passive House Standard, or the Passive House Institute US (PHIUS) PHIUS+ Multifamily Certification Standard.

Article 3. Consumer Relations

Section 3.1 Consumer Inquiries

The Partner shall promptly and appropriately respond to any MF NCP inquiries or referrals.

Section 3.2 Consumer Referrals

The Partner may choose to receive MF NCP referrals via the NYSERDA website. Those Partners choosing to receive referrals shall make every reasonable effort to encourage

participation in this program. When providing MF NCP services to these referrals, the Partner shall do so in accordance with all aspects of PON 3319, including this Agreement.

Section 3.3 Timely Communication

The Partner shall respond to consumer inquiries in a timely manner, and ensure prompt and accurate reporting, when requested by NYSERDA, regarding any resulting actions.

Article 4. Business Practices and Related Requirements

The Partner is expected to be an ambassador for NYSERDA and the MF NCP. Any conduct to the contrary will result in disciplinary action. Under this Agreement, each Partner commits to promoting MF NCP and the mission of improving the energy performance, durability, comfort, and safety of newly constructed multifamily housing. All Partners shall remain in full compliance with the terms of this Agreement including the following business practices:

Section 4.1 Professional Conduct

The Partner shall treat all consumers fairly and deliver promised services in a timely, competent, professional, and reasonable manner. The Partner shall not engage in behavior that adversely impacts NYSERDA, tarnishes NYSERDA's service marks, and/or diminishes the profession or service in the eyes of the public.

Section 4.2 Professional Courtesy

The Partner and all its employees shall conduct themselves in a professional, respectful, and reasonable manner when interacting with any NYSERDA staff and representatives of NYSERDA's Program Implementation Contractor.

Section 4.3 Service Levels to MF NCP projects

Partners that have not been actively involved with a project within the past twelve (12) months may have their company profile and information removed from NYSERDA's website Resource Locator Map until they submit a project and become reengaged with MF NCP.

Section 4.4 MF NCP Representations

The Partner shall not engage in unfair or inaccurate representations of NYSERDA, or NYSERDA's Program Implementer Contractor, and affiliates.

a) Partner

The Partner shall properly and accurately represent the relationship of the Partner and its subcontractor(s) to the State of New York, NYSERDA, and to NYSERDA's Program Implementation Contractor. This relationship shall be that the Partner is independent of and voluntarily participating in the MF NCP.

The Partner shall not represent itself as working for or certified by, the State of New York, NYSERDA, or their Program Implementation Contractor. The Partner shall not represent that the services it provides, or the materials it uses, are in any way endorsed or approved by the State of New York, NYSERDA, or the Program Implementation Contractor.

b) Non-Participating Subcontractor

A non-participating subcontractor of a Partner shall not represent itself as a MF NCP Partner or as able to offer MF NCP services and benefits. Additionally, any subcontractor of a Partner shall not represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or the Program Implementation Contractor.

Section 4.5 Insurance

The Partner shall maintain, at its own cost, general liability insurance coverage of at least \$1 million and produce evidence of such upon request by NYSERDA or its Program Implementer.

Section 4.6 Contract Compliance

It is the sole responsibility of the Partner to ensure that all contracts and subcontracts used in the execution of providing Program services are written in full compliance with applicable federal, state, and/or local law(s).

Section 4.7 Dispute Resolution and Indemnification

If any Partner, or subcontractor, becomes involved in a contractual or business practices dispute with respect to MF NCP activities, the Partner(s) shall work to settle the dispute amicably utilizing fair and reasonable dispute resolution practices.

The relationship between the Partner and the project developer/builder are independent from NYSERDA or the Program Implementation Contractor. Any disputes or contract issues which may arise between Partners and their clients are the sole responsibility of those Partners to resolve. NYSERDA and the Program Implementation Contractor have no responsibility to provide dispute resolution assistance. Regardless of the nature of, or parties involved in, the dispute and any resolution, the Partner(s) shall hold NYSERDA and its Program Implementation Contractor harmless from any legal action arising from work associated with MF NCP.

The Partner(s) shall protect, indemnify, and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorney's fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to the performance of this Agreement. The obligations of the Partner(s) under this section shall survive any expiration or termination of this agreement.

Section 4.8 Survival

All provisions of Article 4 survive termination of this Agreement.

Article 5. Quality Assurance and Quality Control

The goals of the Quality Assurance and Quality Control (QA/QC) processes are to verify that buildings built with MF NCP support meet all MF NCP requirements while maintaining healthy and safe living conditions for the occupants. The QA/QC function of the MF NCP includes field inspections, technical and administrative review. QA/QC activities are a crucial part of the MF NCP providing NYSERDA and the Partner with valuable information related to compliance with the MF NCP's technical requirements.

The Partner shall not inhibit or discourage project Applicants from participating in the MF NCP's QA/QC processes and, if requested, shall provide project-related information in a timely manner.

Article 6. Partner Status Designations

The Partner shall be classified in one of the participation status designations listed below. Each designation shall be subject to limitations, or requirements associated with that designation, as detailed below. NYSERDA reserves the right to modify the definition, limitations, and requirements of the participation status designations at any time. NYSERDA retains sole discretion for determining the Partner's progression into and through each status designation. In all cases, NYSERDA's written decision is final.

Section 6.1 Provisional

New Partners are automatically assigned the participation status of 'Provisional' and will remain as such until their first Stage 1 Modeling Submittal is reviewed by NYSERDA. At this point, NYSERDA and its representatives shall review the Partner's performance and make a determination of the Partner's future status designation. NYSERDA may change the Partner's status to Full, extend their Provisional status, place the Partner on Probation, or choose to Terminate the Partner's Agreement.

If NYSERDA decides to extend the Provisional status designation for a Partner after the Stage 1 Modeling Submittal for their first project is reviewed, the conditions of that extension may result in limitations to the Partner's ability to perform additional work under MF NCP.

The Provisional Partner's name will be displayed on the NYSERDA website's Resource Locator Map, but potential clients must be informed of any limitation to serve new Applicants.

Projects completed by the Partner while on Provisional status may be subject to enhanced QA/QC oversight.

Section 6.2 Full

A Partner which is not operating under any of the other status designations, and which meets all requirements of MF NCP, abides by the conditions of this Agreement, and provides quality services utilizing industry best practices shall have the status designation of Full.

Full Partners are entitled to all applicable MF NCP incentives.

The Full Partner's name will be displayed on the NYSERDA Website's Resource Locator Map.

Projects completed by the Partner while on Full status are subject to standard QA/QC oversight.

Section 6.3 Probationary

The status designation of Probationary may be imposed based on the Partner's failure to adhere to MF NCP policies and procedures as outlined in this Partnership Agreement or other applicable documents listed in PON 3319.

A Partner may be assigned to the Probationary Partner status for any reason deemed sufficient by NYSERDA, including, but not limited to the following:

- Partner repeatedly submits incomplete project Applications.
- Partner displays a pattern of failing to meet submission deadlines and guidelines.
- Building Performance Plan submittals are consistently deficient due to:
 - Failure to adhere to MF NCP requirements and/or MF NCP Guidelines; or,
 - Failure to adhere to Simulation Guidelines or generally accepted analysis practice; or,
 - Generally being of such poor quality that technical review is not considered possible.
- Partner consistently repeats deficiencies in work product.
- Partner fails to address issues identified during QA/QC review.
- Partner regularly submits inspection documentation that cannot be approved by NYSERDA due to misrepresentation of progress, installations not meeting MF NCP prerequisites, or other MF NCP requirements.

Partners on Probation will be eligible to serve only projects currently under contract under PON 3319. Partners on Probation will not be allowed to submit applications for new projects. If a Partner on Probation has no active projects, NYSERDA may choose to allow the Partner to submit one new application to MF NCP on behalf of a project Applicant in order to demonstrate improvement.

The names of Partners on Probation will not be displayed on the NYSERDA website's Resource Locator Map.

Projects completed by the Partner while on Probation may be subject to enhanced QA/QC oversight.

Section 6.4 Inactive

A Partner which voluntarily decides to end participation in MF NCP will be placed in Inactive status. A Partner in 'Inactive' status has relinquished all privileges associated with participation, including access to incentives. The Partner must immediately remove any MF NCP references from any of their company's materials, inclusive of all marketing or advertising. To resume participation, the 'Inactive' Partner will need to reapply to RFP 3036 and be determined eligible.

Section 6.5 Terminated

If the Partner is assigned the status of “Terminated”, the Partner forfeits eligibility to submit application for new projects. NYSERDA has sole discretion in determining whether to terminate the Partner.

Grounds for Partner Termination shall include, but are not limited to:

- The Partner is on Probation status and has been either unresponsive to, or failed to adequately fulfill, the terms of its Probation.
- The Partner has failed to adhere to MF NCP requirements, policies and procedures as outlined in this Agreement, PON 3319, or MF NCP announcements.
- The Partner has submitted false or fraudulent documentation at any time, during any phase of participation in the MF NCP.
- The Partner has misrepresented MF NCP, its relationship to the MF NCP, or information about the MF NCP, to potential or existing project Applicants or other stakeholders.
- The Partner misrepresents a project to MF NCP staff.
- NYSERDA receives legitimate and serious complaint(s) about the Partner from current or prospective MF NCP Applicants.

Terminated Partners are ineligible for all MF NCP incentives. The Terminated Partner may be prohibited from completing MF NCP work in progress, as determined by NYSERDA. The Terminated Partner must immediately remove any MF NCP references from any of their company’s materials, inclusive of all marketing or advertising.

The names of Terminated Partners will not be displayed on the NYSERDA website’s Resource Locator Map.

Project Applicants currently under contract with a Terminated Partner will be notified that the Partner has been terminated and will be provided options for remaining in MF NCP.

Section 7 Independent Contractors:

Relationship of the Parties. It is understood and agreed that the personnel furnished by Partner to perform the services stipulated in this Agreement, including personnel who may perform such services at NYSERDA’s offices, shall be Partner’s employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA’s employee(s) or agent(s), and shall remain the employees of Partner, except to the extent required by section 414(n) of the Internal Revenue Code.

The relationship of the parties to this Agreement is that of independent contractors. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment, agency, legal representation or other relationship between NYSERDA and Partner for any reason, including but not limited to unemployment, workers’ compensation, employee benefits, vicarious liability, professional liability coverage or indemnification. Neither party shall have the right, power or authority to obligate or bind the other in any manner not specified in this Agreement.

No Benefits. Partner agrees that if the personnel furnished by Partner are determined to be “leased employees” within the meaning of section 414(n) of the Internal Revenue Code, Partner acknowledges that leased employees are excluded from participation in the employee benefit plans, funds and programs provided by NYSERDA to its employees including, but not limited to, any group health plan,

sickness or accident plan, retirement plan, retirement plan or similar benefit plan provided to employees by NYSERDA, by the terms of such benefit plans, funds or programs. Partner agrees to notify NYSERDA if it maintains (or ceases to maintain) a plan described in section 414(n)(5)(B) of the Internal Revenue Code.

Notification of Claims/Events. Partner expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Partner and/or Partner's personnel by virtue of any act or omission on the part of NYSERDA or its employees.

Accordingly, Partner expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon Partner's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

Section 8 Assignment:

A Party shall not assign its rights and/or obligations or delegate its duties under this Agreement without the prior written approval of the other Party (Parties) and any attempted assignment or delegation without such approval shall be void and constitute a material breach. This Agreement and all of the terms and provisions hereof will be binding upon, and will inure to the benefit of, the Parties hereto, and their respective successors and approved assigns.

Section 9: Governing Law:

This Agreement shall be governed by, and be construed in accordance with, the laws of the State of New York, without regard to its choice of law principles.

Authorized Signatory:

Name

Title