

LOAN AGREEMENT

(Loan # <>)

This Loan Agreement (the "Loan Agreement" and/or "Agreement"), dated as of <> (the "Effective Date") is entered into by and between <>, a <> with a mailing address of <> ("Borrower"), and **Efficiency Maine Trust**, an independent quasi-state agency of the State of Maine, with a mailing address of 151 Capitol Street, Suite 4, Augusta, Maine 04330-6262, and its successors and assigns ("Lender").

1. DEFINITIONS AND RULES OF INTERPRETATION.

1.1 Definitions. As used herein, unless otherwise specifically defined, the following capitalized words and phrases shall have the following meanings:

Advance. The disbursement of the proceeds of the Loan made or to be made by Lender pursuant to this Agreement.

Agreement or Loan Agreement. Shall have the meaning given to it in the preamble hereof.

Applicable Interest Rate. Shall have the meaning given to it in Section 2.5 of this Agreement.

Borrower. Shall have the meaning given to it in the preamble hereof.

Disbursement Date. The date on which the conditions set forth in Section 9 have been satisfied and the Advance is to be made.

Collateral. All of the equipment purchased or installed as part of the Project using proceeds of the Loan, including those Improvements that constitute equipment under Article 9-A of Maine's Uniform Commercial Code, whether so affixed to the Property or any buildings thereon as to constitute fixtures, and any proceeds thereof.

Default. A condition or event which would, with the giving of notice or lapse of time or both, as defined in this Agreement or the Note, constitute an Event of Default.

EE RLF Program Funds. Certain funds allotted to the State of Maine Governor's Energy Office (GEO) by the United States Department of Energy pursuant to the Infrastructure Investment and Jobs Act's Energy Efficiency Revolving Loan Fund (EE RLF) Program and which are administered by Lender pursuant to a certain Memorandum of Agreement with GEO.

Eligible Recipient. Means an entity eligible to receive a loan from the Lender using EE RLF Program Funds, which is limited to a business, nonprofit organization, or a public building that satisfies *both* of the following: (i) Conducts a majority of its business in the State of Maine; and (ii) Owns or operates 1 or more commercial buildings or commercial space within a building that serves multiple functions, such as a building for commercial and residential operations.

Effective Date. Shall have the meaning given to it in the preamble hereof.

Energy Audit. A whole-building commercial energy audit that is an ASHRAE Level II Audit or its substantial equivalent, that satisfies the requirements of 42 U.S.C. § 18792(e)(2)(A)(ii), that has been completed within one (1) year of the Effective Date, and that was performed using energy

audit software that uses BuildingSync (i.e., ASHRAE, Audette, BrightPower, Buildee, AECOM, PSD, Maalka, Brand New Box, etc.).

Environmental Laws. Means any judgment, decree, order, law, license, rule or regulation pertaining to environmental matters, including without limitation, the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Federal Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq., the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act, or any state or local statute, regulation, ordinance, order or decree relating to health, safety or protection of the environment.

Event of Default. Shall have the meaning given to it in Section 10.1.

Federal Funding Requirements. Those requirements imposed by federal statute, regulation, order, policy, or guidance on the use of EE RLF Program Funds, including but not limited to those set forth on the attached Schedule A. For the avoidance of doubt, Schedule A is not a comprehensive list of potentially applicable federal requirements, and Borrower ultimately bears the responsibility for determining what federal requirements are applicable and ensuring compliance with those that are.

GAAP. Principles that are consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors, in effect for the fiscal year most recently ended as of the Effective Date and to the extent consistent with such principles, the prior accounting practices of Borrower.

Governmental Authority. The United States of America or the State of Maine, or any political subdivision thereof, and any agency, authority, department, commission, board, bureau, or instrumentality of any of them.

Improvements. Collectively, the upgrades or retrofits of building infrastructure and systems to be constructed on the Property in accordance with the Plans and Specifications, which upgrades/retrofits involve heating, ventilation, and air conditioning (HVAC) and/or water heating systems.

Indebtedness. All obligations, contingent and otherwise, that in accordance with GAAP would be classified upon the obligor's balance sheet as liabilities, or to which reference should be made by footnotes thereto, including in any event and whether or not so classified: (a) all debt and similar monetary obligations, whether direct or indirect; (b) all liabilities secured by any mortgage, pledge, security interest, lien, charge, or other encumbrance existing on property owned or acquired subject thereto, whether or not the liability secured thereby shall have been assumed; and (c) all guarantees, endorsements and other contingent obligations whether direct or indirect in respect of indebtedness of others.

Lender. Shall have the meaning given to it in the preamble hereof.

List of Contractors and Suppliers. A schedule of Qualified Partners that have been contracted by Borrower to perform work on or provide goods and materials for completion of the Project in accordance with Program requirements.

Loan. A loan of an aggregate amount of up to \$<> which is the subject of this Agreement.

Loan Amount. The sum of \$<>; provided, however, that in no event shall the Loan Amount exceed total Project Costs minus the rebate incentive received by Borrower under Lender's incentive program: FON-020-2025.

Loan Documents. This Agreement, the Note, the Security Agreement, and any other agreements, documents and instruments now or hereafter evidencing, securing or otherwise relating to the Loan.

Maturity Date. Means <>.

Note. A certain Commercial Promissory Note of even or near date herewith made by Borrower in favor of Lender in the original principal amount of the Loan, as the same may be amended, modified, renewed, extended, restated, or replaced from time to time.

Obligations. The indebtedness, obligations and liabilities of Borrower to Lender existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, to the extent that any such obligation arises or is incurred under this Agreement or any of the other Loan Documents or in respect of the Advance or the Note or other instruments at any time evidencing any thereof, including, any interest rate swap, collar, cap, floor, swaption, or other interest rate protection or similar agreement entered into in connection with the Loan, or any actual costs arising out of overdrafts on deposit or other accounts or out of electronic funds transfers (whether by wire transfer or through automated clearing houses or otherwise) or out of the return unpaid of, or other failure of Lender to receive final payment for, any check, item, instrument, payment order or other deposit or credit to a deposit or other account, or out of Lender's non-receipt of or inability to collect funds or otherwise not being made whole in connection with depository or other similar arrangements; and all costs and expenses of Lender incurred in the documentation, negotiation, modification, enforcement, collection and otherwise in connection with any of the foregoing, including reasonable attorneys' fees and expenses.

Person. Any individual, corporation, limited liability company, trust, partnership or other legal entity, and any government or any governmental agency or political subdivision thereof.

Plans and Specifications. Those final plans and specifications that identify the upgrades and/or retrofits of building infrastructure and systems that were recommended by the Qualified Partner or the Person subcontracted through the Qualified Partner who prepared the Energy Audit, that Borrower will contract with a Qualified Partner to have constructed on the Property, and that Borrower intends to finance with the Loan proceeds, which plans and specifications are submitted to and approved by Lender.

Project. The construction or installation of the Improvements on the Property in accordance with the Plans and Specifications.

Project Approvals. All approvals, consents, waivers, orders, agreements, acknowledgments, authorizations, permits and licenses required under applicable Requirements or under the terms of any restriction, covenant or easement affecting the Project, or otherwise necessary or desirable, for completion of the Project or the ownership and operation of the Property or Improvements following completion of the Project, whether obtained from a Governmental Authority or any other Person.

Project Cost Breakdown. The detailed budget for the cost of completing the Project being in form and substance reasonably satisfactory to Lender, provided to and approved by Lender prior to the Disbursement Date.

Project Costs. The costs of materials, equipment, and labor associated with completing the Project, as reflected in the Project Cost Breakdown.

Property. The real property located at <address>, Maine, with the improvements now or hereafter thereon, and at which the Project is to be performed.

Qualified Partner. A vendor, contractor, supplier, or energy professional that can be identified using the "Find a Qualified Partner" tool on Lender's web page for Qualified Partner program information: <https://www.efficiencymaine.com/at-work/qualified-partners/>.

Requirements. Any law, ordinance, code, order, rule or regulation of any Governmental Authority applicable in any way to the completion of the Project or the use, occupancy and operation of the Property following completion of the Project, including those relating to subdivision control, zoning, building, use and occupancy, fire prevention, health, safety, sanitation, historic preservation and protection, tidelands, wetlands, flood control, access and earth removal, and all Environmental Laws and Federal Funding Requirements.

Security Agreement. Has the meaning set forth in Section 4 of this Agreement.

Taking. Any condemnation for public use of, or damage by reason of, the action of any Governmental Authority, or any transfer by private sale in lieu thereof, either temporarily or permanently.

2. LOAN.

2.1 Establishment of Loan Arrangement. Subject to Borrower's compliance with the terms and conditions hereinafter set forth, Lender hereby agrees to lend to Borrower on the Disbursement Date the principal sum of the Loan Amount, which funds shall be advanced in accordance with this Agreement. This Agreement hereby sets forth the terms and conditions governing Lender's obligation to make the Loan, and to disburse the Loan proceeds, and shall serve as the continuing agreement of Borrower and Lender with respect to the Loan.

2.2 Purpose of Loan. The Loan proceeds shall be used to finance the Project Costs.

2.3 The Note. The Loan shall be evidenced by the Note. All amounts at any time payable in respect of this Agreement or the Note shall be secured by the Collateral given to secure the Loan regardless of whether the total amount thereof exceeds the face amount of the Note. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note, and, in the case of any such loss, theft, destruction or mutilation, upon cancellation of such Note, Borrower will issue, in lieu thereof, a replacement note in the same principal amount thereof and otherwise of like tenor. The Note shall not be necessary to establish the indebtedness of Borrower to Lender on account of the Loan.

2.4 Repayment: Maturity. Beginning on the first day of the month following the Disbursement Date, Borrower shall repay to Lender the Loan in monthly installments of principal and accrued interest on the first day of each month, in amounts as billed by Lender, which amounts shall be calculated by Lender to approximately amortize the unpaid balance of the Loan

over a term of up to three (3) years from the Disbursement Date. Notwithstanding the foregoing, all remaining principal of the Loan plus all outstanding and accrued interest shall be paid to Lender no later than the Maturity Date.

2.5 Applicable Interest Rate. Prior to an Event of Default, Borrower shall pay interest monthly in arrears on the outstanding principal under the Note until paid in full at a fixed rate of <> Percent (<> _____%) (the "Applicable Interest Rate"). All computations of interest shall be made on the basis of a 360-day year and paid for the actual number of days elapsed.

2.6 Late Charges. In addition, and without derogating from the right of Lender to accelerate the maturity of the Loan in the event of any Event of Default, if any payment under the Loan is not received by Lender within fifteen (15) days of the date such payment is due, Borrower shall pay to Lender on demand a late charge equal to Five Percent (5%) of the amount of such payment or Ten Dollars (\$10.00), whichever is less.

2.7 Default Rate. After maturity (whether by acceleration or otherwise) or upon an Event of Default under any of the Loan Documents which is not cured within ten (10) days, the outstanding principal balance of the Loan and, to the extent permitted by applicable law, any amount of interest under this Loan Agreement which is not paid when due, shall, at Lender's election, bear interest until payment in full (whether before or after judgment), payable on demand, at a rate per annum equal to Five Percent (5%) above the then otherwise applicable interest rate, or if such increased rate of interest may not be collected under applicable law, then at the maximum rate of interest, which may be collected from Borrower under applicable law.

2.8 Prepayment. Borrower shall have the right to prepay the Loan or any amount thereof before the Maturity Date or such earlier time as such amount may become due and payable under this Loan Agreement without having to pay any fee, charge, or penalty on account of such amount being paid to Lender prior to becoming due hereunder.

3. PAYMENTS AND COMPUTATIONS; FEES.

3.1 Funds for Payments. All payments of principal, interest, fees and any other amounts due under the Note shall be made in accordance with this Agreement and the Note.

3.2 Non-Sufficient Funds Fee. If Borrower authorizes Lender to withdraw the payments contemplated by Section 2.4 by electronic funds transfer, Borrower shall pay to Lender a fee of Twenty-Five Dollars (\$25.00) each time there are insufficient funds available to do so.

4. COLLATERAL SECURITY. Borrower shall grant to Lender, in order to secure the Obligations, a continuing first priority purchase money security interest in all personal property hereafter acquired by Borrower with proceeds of the Loan, which security interest is more specifically described in a certain Security Agreement of even date herewith between Lender and Borrower (the "Security Agreement").

5. FEDERAL FUNDING PROVISIONS.

5.1 Source of Funding. The source of the Loan is the EE RLF Program Funds. If the EE RLF Program Funds are reallocated or otherwise become unavailable to fund this Agreement, Lender may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest. Lender makes no commitment to pay the Loan from other Lender, agency,

or state funds for any reason and Borrower expressly waives any right to demand or receive payment from any such non-designated funds.

5.2 Federal Funding Requirements. The Project to be completed under this Agreement is funded through EE RLF Program Funds and, as such, Borrower is required to observe certain federal requirements, including but not limited to the Federal Funding Requirements.

6. REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender as follows:

6.1 Organization; Authority; Etc.

(a) **Organization; Good Standing.** Borrower is a [corporation / limited liability company / etc.] duly formed and is validly existing and in good standing under the laws of the State of Maine. Borrower has all requisite power to own its property and conduct its business as now conducted and as presently contemplated.

(b) **Eligibility for Loan.** Borrower is an Eligible Recipient of the Loan contemplated by this Agreement funded through EE RLF Program Funds and in accordance with the Federal Funding Requirements. Borrower has completed an Energy Audit as defined in this Agreement. Borrower operates an existing licensed senior long-term care facility on the Property, and the facility is primarily heated with oil, propane, or electric resistance systems prior to completion of the Project. The Project is eligible for a rebate incentive under Lender program describe in FON-020-2025, and Borrower will seek and obtain such a rebate for the Project. Borrower is eligible to receive the Loan and is not suspended, debarred, or disqualified from receiving contracts, grants, awards, or other appropriations in Maine, in any other state, or by the federal government.

(c) **Authorization.** The execution, delivery and performance of this Agreement and the other Loan Documents and the transactions contemplated hereby by Borrower (i) are within the authority of Borrower, (ii) have been duly authorized by all necessary proceedings on the part of Borrower, (iii) do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which such Person is subject or any judgment, order, writ, injunction, license or permit applicable to such Person and (iv) do not conflict with any provision of the certificate of formation or operating agreement of Borrower, or any agreement or other instrument binding upon, such Person.

(d) **Enforceability.** The execution and delivery of this Agreement and the other Loan Documents to which Borrower is a party will result in valid and legally binding obligations of such Person enforceable against it in accordance with the respective terms and provisions hereof and thereof, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

6.2 Title to Property. Borrower holds good clear title to the Property, either in fee simple or a present possessory leasehold interest under a valid, enforceable written lease agreement that Borrower shall provide to Lender for review at Lender's request, and the instrument that grants Borrower possessory rights to the Property does not prohibit Borrower from having the Project completed.

6.3 Financial Statements. Any Borrower balance sheet and/or financial statement furnished to Lender fairly presents the financial condition of Borrower as at the Effective Date. As of the Effective Date, there are no known material liabilities or contingent liabilities of Borrower which are not disclosed in said balance sheet and the related notes thereto and said financial statement respectively other than the Obligations.

6.4 Litigation. There are no actions, suits, proceedings or investigations of any kind pending or threatened against Borrower before any court, tribunal or administrative agency or board that, if adversely determined, might, either in any case or in the aggregate, materially and adversely affect the properties, assets, financial condition or business of Borrower or materially impair the right of Borrower to carry on business substantially as now conducted by it, or result in any material liability not adequately covered by insurance, or for which adequate reserves are not maintained on the balance sheet of such Person, or which question the validity of this Agreement or any of the other Loan Documents, or which will adversely affect the ability of Borrower complete the Project or to pay and perform the Obligations.

6.5 No Materially Adverse Contracts, Etc. Borrower is not subject to any corporate or other legal restriction, or any judgment, decree, order, rule or regulation that has or is expected in the future to have a materially adverse effect on the business, assets or financial condition of Borrower. Borrower is not a party to any contract or agreement that has or is expected to have any materially adverse effect on Borrower.

6.6 Compliance With Other Instruments, Laws, Etc. Borrower is not in violation of its certificate of formation, operating agreement, or any agreement or instrument to which it may be subject or by which it or any of its property may be bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that could result in the imposition of material penalties or materially and adversely affect the financial condition, property or business of Borrower.

6.7 Tax Status. Borrower (a) has made or filed all federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject and, (b) has paid all taxes and other governmental assessments and charges shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and by appropriate proceedings pursued with diligence. There are no unpaid taxes in any material amount claimed to be due by any taxing authority, and Borrower knows of no basis for any such claim.

6.8 Absence of Other Liens, Etc. There is no financing statement, security agreement, chattel mortgage, or other document filed or recorded with any filing records, registry, or other public office, that purports to cover, affect or give notice of any present or possible future lien on, or security interest in the Collateral or any rights relating thereto.

6.9 Setoff, Etc. The Collateral and Lender's rights with respect to the Collateral are not subject to any setoff, claims, withholdings or other defenses. Borrower is the owner of the Collateral free from any lien, security interest, encumbrance and any other claim or demand.

6.10 Environmental Compliance. Borrower is in full compliance with Environmental Laws.

6.11 Consents and Approvals. Each consent, approval or authorization of, or filing, registration or qualification with, any Person required to be obtained or effected by any entity

constituting Borrower in connection with the execution and delivery of this Agreement or the undertaking or performance of any obligation contained in this Agreement has been duly obtained or effected.

6.12 Condition of Project. Neither the Property nor any part thereof is now damaged or injured as a result of any fire, explosion, accident, flood or other casualty or has been the subject of any Taking, and to the knowledge of Borrower, no Taking is pending or contemplated.

6.13 Compliance with Requirements. To Borrower's knowledge, the Project complies with the Requirements.

6.14 Project Approvals. Borrower has obtained all Project Approvals other than trade permits to be obtained in the ordinary course during construction. All Project Approvals obtained by Borrower hereto have been validly issued and are in full force and effect.

6.15 Real Property Taxes; Special Assessments. There are no overdue, unpaid or outstanding real estate or other taxes or assessments on or against the Property or any part thereof which are payable by Borrower or any prior owner. No abatement proceedings are pending with reference to any real estate taxes assessed against the Property.

6.16 Violations. Borrower has received no notices of, nor has any knowledge of, any violations of any applicable Requirements, Project Approvals, or Federal Funding Requirements.

6.17 Qualified Partners. Every contractor, subcontractor, vendor, or supplier who performs work or provides goods or materials necessary for completion of the Project is listed on the List of Contractors and Suppliers and each Person so listed is a Qualified Partner of Lender

6.18 Loan for Business Purposes. The Loan is incurred for business purposes only.

7. AFFIRMATIVE COVENANTS OF BORROWER. Borrower covenants and agrees that, so long as the Loan is outstanding:

7.1 Punctual Payment. Borrower will duly and punctually pay or cause to be paid the principal and interest on the Loan and all other amounts provided for in the Note, this Agreement, and any other Loan Documents. All payments under this Loan shall be made to Lender without set-off or counterclaim and free and clear of and without deduction for any taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions of any nature now or hereafter imposed or levied by any jurisdiction or any political subdivision thereof or any taxing or other authority therein unless Borrower is compelled by law to make such deduction or withholding.

7.2 Records and Accounts. Borrower will (a) keep true and accurate records and books of account in which full, true and correct entries will be made in accordance with GAAP and (b) maintain adequate accounts and reserves for all taxes (including income taxes), depreciation and amortization of its properties, contingencies, and other reserves.

7.3 Financial Statements, Certificates and Information. Borrower shall maintain at all times at Borrower's address stated in this Agreement, or such other place as Lender may approve in writing, complete, proper and accurate records and books of account in which full, true and correct entries shall be made in accordance with GAAP reflecting the results of the operation

of the Property, and copies of all written contracts, rent rolls, leases and other instruments which affect the Property. Such records, books of account, contracts, rent rolls, leases and other instruments shall be subject to examination, inspection and copying by Lender at any reasonable time at Lender's request. At Lender request, but in no event more frequently than annually, Borrower shall provide the following financial information in a format satisfactory to Lender:

(a) Financial Statements and Tax Returns.

- i. Financial statements prepared by the management of Borrower, prepared in accordance with GAAP, to include a detailed balance sheet and profit and loss statement; and
- ii. Complete copies of all related Federal income tax returns.

(b) Notice of Default. Contemporaneously with the delivery of the financial statement referred to above, a statement certified by Borrower to the effect that Borrower has read a copy of this Agreement and that it has no knowledge of any existing default or Event of Default, or if it has such knowledge it shall disclose in such statement the nature of any such default or Event of Default.

(c) Reports/Other. Such other interim financial statements, financial data and information, rent rolls, and other information in such form as Lender deems appropriate.

7.4 Notices.

(a) Defaults. Borrower will promptly notify Lender in writing of the occurrence of any Default or Event of Default of which it is aware, specifying the nature and existence of such Default or Event of Default and what action Borrower is taking or proposes to take with respect thereto.

(b) Notification of Claims against Collateral. Borrower will, promptly upon becoming aware thereof, notify Lender in writing of any setoff, claims, withholdings or other actions to which any of the Collateral, or Lender's rights with respect to the Collateral, are subject.

(c) Notice of Litigation and Judgments. Borrower will give notice to Lender in writing within fifteen (15) days of becoming aware of any litigation or proceedings threatened in writing or any pending litigation and proceedings affecting the Project or affecting Borrower or to which Borrower is or is to become a party involving an uninsured claim against Borrower that could reasonably be expected to have a materially adverse effect on Borrower and stating the nature and status of such litigation or proceedings.

7.5 Existence. Borrower will do or cause to be done all things reasonably necessary to preserve and keep in full force and effect its existence under applicable law.

7.6 Insurance. Borrower shall procure and maintain commercial general liability insurance with coverage for the activities and risks associated with the Project and with coverage limits sufficient to protect itself and Lender, as additional insured, from claims arising from the Project, including any contractual liability of Borrower under this Agreement. Borrower shall procure and maintain workers' compensation insurance coverage as required under Maine law. Borrower shall procure and maintain replacement value "special causes of loss" property and casualty insurance covering the equipment funded with the Loan provided by Borrower. Prior to

disbursement of the Advance, Borrower shall furnish Lender with a certificate of insurance or other written verification of the existence of all such insurance coverages required under this Agreement.

7.7 Taxes/Liens. Borrower will pay all taxes, assessments and other governmental charges on the Property or Improvements. Borrower will promptly pay and discharge (by bonding or otherwise) all claims for labor, material or supplies that if unpaid might by law become a lien or charge against the Property or Improvements or any part thereof or might affect the priority of the lien created with respect to the Advance made or to be made by Lender under this Agreement.

7.8 Compliance with Laws, Contracts, Licenses, and Permits. Borrower will comply, in all material ways, with, (a) the applicable laws and regulations wherever its business is conducted, including all Environmental Laws and all Requirements, (b) the provisions of its organizational documents, bylaws, operating agreements, and the like, (c) all agreements and instruments by which it or any of its properties may be bound, including the Requirements and all restrictions, covenants and easements affecting the Project, (d) all applicable decrees, orders and judgments, and (e) all licenses and permits required by applicable laws and regulations for the conduct of its business or the ownership, use or operation of its properties, including, all Project Approvals.

7.9 Project Approvals. Upon request of Lender, Borrower will provide evidence of its having obtained all Project Approvals. Borrower will comply with the Requirements and Project Approvals to use, occupy and operate the Property following completion of the Project. Borrower will also promptly obtain all utility installations and connections when required for the Project, and upon request will furnish Lender with evidence thereof.

7.10 Use of Proceeds. Borrower will use the proceeds to finance the completion of the Project.

7.11 Further Assurances.

(a) **Regarding Preservation of Collateral.** Borrower will execute and deliver to Lender such further documents, instruments, assignments and other writings, and will do such other acts necessary or desirable to establish, preserve and protect the Collateral, as Lender may reasonably require.

(b) **Regarding this Agreement.** Borrower will cooperate with, do such further acts and execute such further instruments and documents as Lender shall reasonably request to carry out to its satisfaction the transactions contemplated by this Agreement and the other Loan Documents. Borrower will also provide the Trust with any documentation or other evidence the Trust may reasonably require from Recipient from time to time to establish the continuing truth of the representations made in Section 6 of this Agreement at all times prior to full repayment of the Loan.

7.12 Plans and Specifications: Project. Borrower shall obtain Lender's approval of the Plans and Specifications, List of Contractors and Suppliers, and Project Cost Breakdown, and none of the foregoing documents approved by Lender shall be amended or otherwise altered without prior approval by Lender. Any and all change orders shall be subject to the approval of Lender.

7.13 Qualified Partners. Borrower shall ensure that every contractor, subcontractor, vendor, or supplier who performs work or provides goods or materials necessary for completion

of the Project is listed on the List of Contractors and Suppliers and that each Person so listed is a Qualified Partner of Lender.

7.14 Federal Funding Requirements. Borrower and the Project are and will remain in full compliance with the Federal Funding Requirements.

8. NEGATIVE COVENANTS OF BORROWER. Borrower covenants and agrees that, so long as the Loan is outstanding or Lender has an obligation to make the Advance:

8.1 Merger. Borrower shall not liquidate, merge or consolidate into or with any other person or entity.

8.2 Sale or Lease of Collateral. Borrower shall not sell, lease or otherwise dispose of the Collateral.

9. ADVANCE. The obligation of Lender to make the Advance shall be subject to the satisfaction of the conditions precedent contained in this Section 9. The proceeds of the Loan shall be disbursed by Lender to Borrower or on behalf of Borrower on the Disbursement Date in accordance with such disbursement procedures as may be established by Lender.

9.1 Loan Documents. Each of the Loan Documents shall have been duly executed, acknowledged as required, and delivered by the respective parties thereto, shall be in full force and effect and shall be in form and substance reasonably satisfactory to Lender.

9.2 Authority Documents. Lender shall have received a certificate of good standing from the appropriate officer of the State in which Borrower is organized (or other sufficient evidence of good standing) and, true copies of its articles of organization and operating agreement (if applicable) (or their substantial equivalent). All action necessary for the valid execution, delivery and performance by Borrower of this Agreement and the other Loan Documents shall have been duly and effectively taken, including without limitation delivery to Lender of resolutions adopted by its members and managers, if any, authorizing the transactions described herein, each certified by as of a recent date to be in full force and effect. Lender shall have also received from Borrower an incumbency certificate, dated as of the Disbursement Date, signed by a duly authorized officer, member or manager of Borrower and giving the name of each individual who shall be authorized to act on behalf of Borrower.

9.3 Energy Audit. Borrower shall have obtained an Energy Audit within one (1) year of the Effective Date and provided to Lender evidence of completion of said Energy Audit, together with a report prepared by the Person that performed the Energy Audit and an invoice for the Energy Audit, each in form and content acceptable to Lender.

9.4 Project Documents. Borrower shall have delivered to Lender the Plans and Specifications, the List of Contractors and Suppliers, and the Project Cost Breakdown all in form and substance acceptable to Lender and had such project documents approved by Lender.

9.5 Project Approvals. Borrower shall have obtained all necessary Project Approvals.

9.6 Insurance. Borrower shall have provided certificates of insurance for each insurance coverage required to be obtained under this Agreement.

9.7 Determination of Completion. Lender shall have determined that the Project has been completed in compliance with the Loan Documents.

9.8 Project Completion by Qualified Partners. Borrower shall have ensured that every contractor, subcontractor, vendor, or supplier who performed work or provided goods or materials necessary for completion of the Project is listed on the List of Contractors and Suppliers and that each Person so listed is a Qualified Partner of Lender.

9.9 Lien Waivers. Lender shall have been provided with assurance satisfactory to Lender that there are no mechanics' liens or other liens with priority over Lender's security interest in the Collateral. Upon request of Lender, each Contractor shall have executed and delivered recordable lien waivers and other evidence of satisfactory payment in full of any and all services rendered, labor performed or materials applied in connection with the Project.

9.10 Lien Search. Lender shall have received a certification from counsel reasonably satisfactory to Lender that a search of the public records disclosed no liens, security agreements, leases, financing statements, agreements or other matters which adversely affect the Collateral, and that no real estate taxes or other assessments are past due.

9.11 Notices. All notices required by any Governmental Authority under applicable Requirements shall have been filed.

9.12 Performance; No Default. Borrower shall have performed and complied with this Agreement and no Event of Default shall exist.

9.13 Representations and Warranties. The representations of warranties made in the Loan Documents or otherwise made by or on behalf of Borrower therewith or after the date thereof shall have been true and correct in all material respects when made and shall also be true and correct in all material respects on the Disbursement Date.

9.14 Validity of Liens. Lender shall have perfected a legal, valid and enforceable first lien and security interest in the Collateral.

9.15 Material Adverse Change. There shall have been no material, adverse change of circumstances of Borrower.

9.16 Federal Funding Requirements. Borrower and the Project shall be in full compliance with the Federal Funding Requirements.

Lender may, in its sole discretion, make the Advance: (i) without satisfaction of all or any of the conditions required by this Loan Agreement; (ii) to pay interest or any other amounts payable under the Loan Documents without requisition; and/or (iii) by direct payment to any party providing materials, labor or services to the Project; in each case without in any way waiving or affecting any of its rights or remedies. Lender may retain a construction consultant, to be selected by Lender in its discretion, to perform any review services in connection with the Project that Lender deems appropriate. Borrower shall pay all costs and fees of the construction consultant. Any consultant hired by Lender shall be responsible only to Lender and not to Borrower or any other party.

10. EVENTS OF DEFAULT AND REMEDIES.

10.1 Events of Default. The occurrence of any one or more of the following conditions or events shall be an event of default under this Loan Agreement (each an “Event of Default”):

- (a) Failure by Borrower to pay as and when due and payable any interest on or principal of or other sum payable under the Note and continuation of such failure for a period of ten (10) days after such due date; or
- (b) Failure by Borrower to perform, keep or observe any material term, provision, condition, covenant, agreement, warranty or representation contained in this Agreement or any of the Loan Documents or any other agreement with or in favor of Lender, which failure continues beyond any applicable cure period set forth therein, or for a period of thirty (30) days after written notice from Lender thereof if no other cure period is provided; or
- (c) If any representation, statement, report or certificate made or delivered by Borrower is false or incorrect in any material respect when made or delivered, and Borrower knowingly makes or delivers such false or materially incorrect representation, statement, report or certificate; or
- (d) If any attachment, trustee process, lien, execution, levy, injunction, or receivership issued or made against Borrower or any Collateral is not removed (by payment or bonding) within ninety (90) days, or if any final judgment and execution issued against Borrower remains unsatisfied for ninety (90) days; or
- (e) The entry of a decree or order for relief with respect to Borrower in an involuntary case under the federal bankruptcy law, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the appointing of a receiver, liquidator, trustee, custodian (or similar official) of or for Borrower, or the ordering of the winding-up or liquidation of Borrower’s affairs which is not promptly contested and released or discharged within ninety (90) days; or
- (f) The commencement by Borrower of a voluntary case under the federal bankruptcy law, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Borrower to the appointment of or taking possession by a receiver, liquidator, trustee, custodian (or other similar official) of or for Borrower or for any substantial part of its property, or the making by Borrower of any assignment for the benefit of creditors, or the insolvency or the failure of Borrower generally to pay its debts as such debts become due, or the taking of action by Borrower in furtherance of any of the foregoing; or
- (g) Without the prior written consent of Lender, any modification or amendment to the agreement under which Borrower has been organized resulting in a change in the voting control of Borrower, directly or indirectly, or any termination or dissolution of Borrower, or any transfer of the legal or beneficial ownership of Borrower, directly or indirectly; or
- (h) Any deviation in the construction of the project from the (i) Plans and Specifications; (ii) Project Cost Breakdown, or (iii) the List of Contractors and Suppliers; or
- (i) Any event of default or default shall occur under any other Loan Document as defined therein.

10.2 Cross-Default. An Event of Default by Borrower under this Agreement shall constitute a default under the Note and an Event of Default under all other Loan Documents.

10.3 Termination of Commitment and Acceleration. If any one or more of the Events of Default shall occur, Lender may declare the obligations to make an Advance hereunder to be terminated and/or declare the Note, together with any other amounts owing under the Loan Documents, including, but not limited to, the Note, Obligations and fees, to be immediately due and payable.

10.4 Other Remedies. If any one or more of the Events of Default shall have occurred, then regardless of any other actions taken by Lender, Lender may proceed to protect and enforce its rights and remedies under this Agreement, the Note or any other Loan Documents by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, including the appointment of a receiver. No remedy under this Agreement or in any of the other Loan Documents is intended to be exclusive of any other remedy. Each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or thereunder or now or hereafter existing at law or in equity or by statute or any other provision of law. Failure to exercise any such option shall not constitute a waiver of the right to exercise such option if Borrower is in default hereunder. Time is of the essence of this Loan.

10.5 Waivers. Borrower hereby waives to the extent not prohibited by applicable law (a) all presentments, demands for performance, notices of nonperformance (except to the extent required by the provisions hereof or of any of the other Loan Documents), protests and notices of dishonor, (b) any requirement of diligence or promptness on Lender's part in the enforcement of its rights (but not fulfillment of its obligations) under the provisions of this Agreement or any of the other Loan Documents, and (c) any and all notices of every kind and description which may be required to be given by any statute or rule of law and any defense of any kind which Borrower may now or hereafter have with respect to its liability under this Agreement or under any of the other Loan Documents.

11. EXPENSES. Borrower agrees to pay, upon request from Lender, (a) the actual costs of producing and reproducing this Agreement, the other Loan Documents and the other agreements and instruments mentioned herein, (b) any taxes (including any interest and penalties in respect thereto) payable by Lender (other than taxes based upon Lender's net income), including any taxes payable on or with respect to the transactions contemplated by this Agreement, including any taxes payable by Lender after the Disbursement Date, (c) the reasonable fees, expenses and disbursements of Lender's counsel to Lender incurred in connection with the preparation, administration or interpretation of the Loan Documents and other instruments mentioned herein, the making of the Advance hereunder, and amendments, modifications, approvals, consents or waivers hereto or hereunder, (d) the reasonable out-of-pocket fees, expenses and disbursements of Lender incurred in connection with the preparation, administration or interpretation of the Loan Documents and other instruments mentioned herein, and the making of the Advance hereunder (e) all reasonable out-of-pocket expenses (including reasonable attorneys' fees and costs, and the fees and costs of consultants, accountants, auctioneers, receivers, brokers, property managers, appraisers, investment bankers or other experts retained by Lender in connection with (i) the enforcement of or preservation of rights under any of the Loan Documents against Borrower or the administration thereof after the occurrence of a Default or Event of Default and (ii) any litigation, proceeding or dispute whether arising hereunder or otherwise, in any way related to Lender's relationship with Borrower or defending any

counterclaims or attacks against Lender by Borrower or any other Person, and (f) all reasonable fees, expenses and disbursements of Lender incurred in connection any UCC searches or UCC filings. The covenants of this Section shall survive payment or satisfaction of payment of all amounts owing with respect to the Note.

12. INDEMNIFICATION. Except for Lender's gross negligence or willful misconduct, Borrower agrees to indemnify and hold harmless Lender from and against any and all claims, actions and suits, whether groundless or otherwise, and from and against any and all liabilities, losses, damages and expenses of every nature and character arising out of this Agreement or any other Loan Documents or the transactions contemplated hereby and thereby including, without limitation, (a) any brokerage, leasing, finders or similar fees, (b) any disbursement of the proceeds of the Advance, (c) any condition of the Project whether related to the quality of construction or otherwise, (d) any actual or proposed use by Borrower of the proceeds of the Advance, (e) any actual or alleged violation of any Requirements, Project Approvals, or Federal Funding Requirements (f) Borrower entering into or performing this Agreement or any of the other Loan Documents or (g) with respect to Borrower and their respective properties and assets, the violation of any Environmental Law, the Release or threatened Release of any Hazardous Materials (as defined in relevant Environmental Laws) or any action, suit, proceeding or investigation brought or threatened with respect to any Hazardous Materials (including, but not limited to claims with respect to wrongful death, personal injury or damage to property), in each case including, without limitation, the reasonable fees and disbursements of counsel and allocated costs of internal counsel incurred in connection with any such investigation, litigation or other proceeding. In litigation, or the preparation therefor, Lender shall be entitled to select its own counsel and, in addition to the foregoing indemnity, Borrower agrees to pay promptly the reasonable fees and expenses of such counsel. If, and to the extent that the obligations of Borrower under this Section are unenforceable for any reason, Borrower hereby agrees to make the maximum contribution to the payment in satisfaction of such obligations which is permissible under applicable law.

13. LIABILITY OF LENDER. No action shall be commenced by Borrower for any claim against Lender under the terms of this Agreement unless written notice thereof, specifically setting forth the claim of Borrower, shall have been given to Lender at least fifteen (15) Business Days prior to the commencement of such action. The liability of Lender to Borrower for any breach of the terms of this Agreement by Lender shall not exceed a sum equal to the amount which Lender shall be determined to have failed to advance in consequence of a breach by Lender of its obligations under this Agreement, together with interest thereon at the rate payable by Borrower under the terms of the Note, computed from the date when the Advance should have been made by Lender to the date when the Advance is, in fact, made by Lender, and, upon the making of any such payment by Lender to Borrower, the same shall be treated as the Advance under this Agreement. In no event shall Lender be liable to Borrower, or anyone claiming by, under or through Borrower, for any special, exemplary, punitive or consequential damages, whatever the nature of the breach of the terms of this Agreement by Lender, such damages and claims therefor being expressly waived by Borrower.

14. RIGHTS OF THIRD PARTIES. This Agreement including without limitation the obligation to make the Advance, is solely and exclusively for the benefit of Lender; no other Person may enforce or shall be deemed to be a beneficiary thereof.

15. SURVIVAL OF COVENANTS. All covenants, agreements, representations and warranties made herein, in the Note, and in any other Loan Documents shall be deemed to have been relied upon by Lender, notwithstanding any investigation heretofore or hereafter made by Lender, shall survive the making of the Advance, and shall continue in full force and effect so long

as any amount due under this Agreement or the Note or any of the other Loan Documents remains outstanding or Lender has any obligation to make the Advance.

16. PARTICIPATION.

16.1 Participations. Lender may sell participations to one or more banks or other entities in all or a portion of Lender's rights and obligations under this Agreement and the other Loan Documents and deliver copies of all Loan Documents and financial information on Borrower to such participant or buyer; provided that any such sale or participation shall not affect the rights and duties of Lender hereunder to Borrower and Lender shall remain as the "lead lender."

16.2 Pledge by Lender. Lender may at any time pledge all or any portion of its interest and rights under this Agreement (including all or any portion of the Note) to any of the twelve Federal Reserve Banks organized under §4 of the Federal Reserve Act, 12 U.S.C. §341. No such pledge or the enforcement thereof shall release Lender from its obligations hereunder or under any of the other Loan Documents.

17. NO ASSIGNMENT BY BORROWER. Borrower shall not assign or transfer any of its rights or obligations under any of the Loan Documents without the prior approval of Lender.

18. RELATIONSHIP. The relationship between Lender and Borrower is solely that of a lender and borrower, and nothing contained herein or in any of the other Loan Documents shall in any manner be construed as making the parties hereto joint venturers or any other relationship other than lender and borrower.

19. NOTICES. Each notice, demand, election or request provided for or permitted to be given pursuant to this Note (hereinafter in this paragraph referred to as "Notice") must be in writing and shall be deemed to have been properly given or served by personal delivery, or by sending same by overnight courier or by depositing same in the United States Mail, postpaid and Express Mail or registered or certified, return receipt requested, and addressed as set forth at the beginning of this Note. Each Notice shall be effective upon being personally delivered or upon being sent by reputable overnight courier service or upon being deposited in the United States Mail as aforesaid. The time period in which a response to such Notice must be given or any action taken with respect thereto (if any), however, shall commence to run from the date of receipt if personally delivered or sent by overnight courier or, if so deposited in the United States Mail, the earlier of three (3) Business Days following such deposit and the date of receipt as disclosed on the return receipt or upon One Business Day if sent by Express Mail. Rejection or other refusal to accept or the inability to deliver because of changed address for which no Notice was given shall be deemed to be receipt of the Notice sent. By giving at least thirty (30) days prior Notice thereof, Borrower or Lender shall have the right from time to time and at any time during the term of this Note to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

If to Lender:

Efficiency Maine Trust
151 Capitol Street, Suite 4
Augusta, ME 04330-6262

If to Borrower:

20. GOVERNING LAW. This Agreement and each of the other Loan Documents, except as otherwise specifically provided therein shall for all purposes be construed in accordance with and governed by the laws of Maine (excluding the laws applicable to conflicts or choice of law).

21. CONSENT TO JURISDICTION; WAIVERS. BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF MAINE OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS, AND (B) WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY STATE (I) TO THE RIGHT, IF ANY, TO TRIAL BY JURY, (II) TO OBJECT TO JURISDICTION WITHIN THE STATE OF MAINE OR VENUE IN ANY PARTICULAR FORUM WITHIN THE STATE OF MAINE, AND (III) TO THE RIGHT, IF ANY, TO CLAIM OR RECOVER ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN ACTUAL DAMAGES. NOTHING CONTAINED HEREIN, HOWEVER, SHALL PREVENT LENDER FROM BRINGING ANY SUIT, ACTION OR PROCEEDING OR EXERCISING ANY RIGHTS AGAINST ANY COLLATERAL AND AGAINST BORROWER, AND AGAINST ANY PROPERTY OF BORROWER, IN ANY OTHER STATE. INITIATING SUCH SUIT, ACTION OR PROCEEDING OR TAKING SUCH ACTION IN ANY STATE SHALL IN NO EVENT CONSTITUTE A WAIVER OF THE AGREEMENT CONTAINED HEREIN THAT THE LAWS OF THE STATE OF MAINE SHALL GOVERN THE RIGHTS AND OBLIGATIONS OF BORROWER AND LENDER HEREUNDER OR THE SUBMISSION HEREIN BY BORROWER TO PERSONAL JURISDICTION WITHIN THE STATE OF MAINE.

22. HEADINGS. The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

23. COUNTERPARTS. This Agreement and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart.

24. ENTIRE AGREEMENT. The Loan Documents and any other documents executed in connection herewith or therewith express the entire understanding of the parties with respect to the transactions contemplated hereby. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated.

25. WAIVER OF JURY TRIAL AND CERTAIN DAMAGE CLAIMS. BORROWER AND LENDER AND ANY OTHER PARTY LIABLE FOR BORROWER'S OBLIGATIONS RESPECTIVELY EACH HEREBY WAIVE ANY AND ALL RIGHTS RESPECTIVELY TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THEREUNDER OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS WHETHER ARISING UNDER THE UNITED STATES OR THE STATE OF MAINE CONSTITUTION, ANY RULES OF CIVIL PROCEDURE, COMMON LAW OR OTHER PROCEEDING (WHETHER SUCH CASE OR CONTROVERSY IS INITIATED BY OR AGAINST LENDER OR IN WHICH LENDER IS JOINED AS A PARTY LITIGANT), WHICH CASE OR CONTROVERSY ARISES OUT OF, OR IS IN RESPECT TO, ANY RELATIONSHIP AMONGST OR BETWEEN BORROWER, ANY SUCH PERSON, AND LENDER. EXCEPT TO THE EXTENT EXPRESSLY PROHIBITED BY LAW,

BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION REFERRED TO IN THE PRECEDING SENTENCE ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. BORROWER (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS AND (B) ACKNOWLEDGES THAT LENDER HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS TO WHICH IT IS A PARTY BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED HEREIN. Borrower makes the foregoing waiver (in which Lender joins) knowingly, voluntarily, and intentionally, and understands that Lender, in the establishment and maintenance of Lender's relationship with Borrower, is relying thereon.

26. TIME OF THE ESSENCE. Time is of the essence with respect to the provisions hereof.

27. SEVERABILITY. The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and shall not in any manner affect any other clause or provision of this Agreement.

28. NOTICE. No promise, contract or agreement to lend money, extend credit, forbear from collection of a debt or make any other accommodation for the repayment of a debt may be enforced in court against Lender unless the promise, contract or agreement is in writing and signed by Lender. Accordingly, Borrower cannot enforce any oral promise unless it is contained in a loan document signed by Lender, nor can any change, forbearance or other accommodation relating to the Loan, this Agreement or any other Loan Document be enforced, unless it is in writing and signed by Lender.

29. ELECTRONIC SIGNATURES. This Agreement may be executed by the manual or electronic signature of a party. Each party agrees that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 U.S.C. §§ 7001 to 7031) and the Uniform Electronic Transactions Act (UETA) (10 M.R.S. §§ 9401 to 9420).

[signature page follows]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as a sealed instrument as of the Effective Date.

[BORROWER'S NAME IF ENTITY]

By: _____
Name:
Title:

[Borrower's Name if an Individual]

EFFICIENCY MAINE TRUST

By: _____
Name:
Title:

SCHEDULE A

CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

Efficiency Maine Trust (the “Trust”) is a Subrecipient, through the State of Maine Governor’s Energy Office (“GEO”), of certain federal funds from the United States Department of Energy (“DOE”) authorized under the Infrastructure Investment and Jobs Act (“IIJA”), including funds established under the Energy Efficiency Revolving Loan Fund Program (the “EE RLF Program Funds”). The Project to be completed and the equipment and materials to be provided under this Agreement are funded through these EE RLF Program Funds and, as such, the Borrower is required to observe certain federal requirements described in Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. Further, the Borrower is required to observe certain additional contract provisions as a condition for receiving EE RLF Program Funds.

To the extent applicable to the Project funded by the Award, Borrower shall comply with each of the following additional contract provisions, which provisions are expressly incorporated into and made part of the Agreement. The extent to which the following additional contract provisions are applicable to the Project funded by the Award depends on whether the project satisfies the statutory and/or regulatory applicability provisions. Although the Trust has endeavored herein to provide the Borrower with general guidelines to aid in the assessment of these provisions’ applicability to the Agreement, the Borrower ultimately bears the responsibility for determining the extent to which these legal requirements are applicable and ensuring compliance with those that are. References in the required federal contract provisions to “contractor” shall include the Borrower, any Qualified Partner that Borrower contracts with to carry out the Project, any of such Qualified Partner’s subcontractors, vendors, or suppliers who performs work or provides goods or materials necessary for completion of the Project. Furthermore, references to the “contract” shall include the Agreement, the agreement between Borrower and any Qualified Partner(s) regarding the Project, and any agreement between any such Qualified Partner and their subcontractors, vendors, or suppliers regarding the Project. Borrower shall ensure that these required contract provisions are included in their contracts with any contractors performing work on the Project.

Uniform Grant Guidance (2 C.F.R. Part 200, Appendix II)

Equal Opportunity (41 CFR §§ 60-1.3 and 60-1.4(b)) (Except as otherwise provided under 41 C.F.R. Part 60, this provision applies to the Agreement if the Project the Borrower will contract to have completed under the Agreement includes “construction work.” The term “construction work” includes the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services, as well as the supervision, inspection, and other onsite functions incidental to the actual construction.)

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that

employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to

section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis-Bacon Act (40 U.S.C. 3141-3148; 29 CFR Part 5; 42 U.S.C. 7614) (These provisions apply to the Borrower and to the Agreement if the Agreement, the contract between Borrower and any Qualified Partner regarding the Project, and any agreement between any such Qualified Partner and their subcontractors, vendors, or suppliers regarding the Project, is a prime construction contract over \$2,000. The Agreement is a prime construction contract if it is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated). The term "building or work" generally includes construction activities of all types, as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The term includes, without limitation, buildings, structures, and improvements of all types, such as, among other things, solar panels, wind turbines, installation of electric car chargers, excavating, clearing, and landscaping. It also includes a portion of a building or work, or the installation (where appropriate) of equipment or components into a building or work.). The Federal wage requirements of the Davis Bacon Act apply to this Project. In accordance with the statute, contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week. The decision to award this contract is conditioned upon the acceptance of the wage determination, and any contractor or subcontractor's decision to award a subcontract must be conditioned upon the acceptance of the wage determination.

(1) Minimum wages—

(i) Wage rates and fringe benefits. All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 C.F.R. § 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or

mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(v) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (4) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Frequently recurring classifications.

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to 29 CFR § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (1)(iii) of this section, provided that:

- (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
 - (2) The classification is used in the area by the construction industry;
- and
- (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator of the U.S. Department of Labor's Wage and Hour Division (the "Administrator") will establish wage rates for such classifications in accordance with paragraph (1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) Conformance

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is used in the area by the construction industry;
- and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division (the "WHD") under paragraphs (1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) Fringe benefits not expressed as an hourly rate. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) Unfunded plans. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in 29 C.F.R. § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) Interest. In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) Withholding—

(i) Withholding requirements. The DOE, GEO, and/or Trust may, upon their own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis–Bacon labor standards, that is held by the same prime contractor (as defined in 29 C.F.R. § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis–Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (3)(iv) of this section, the DOE, GEO, and/or Trust may on their own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) Priority to withheld funds. The Department of Labor has priority to funds withheld or to be withheld in accordance with paragraph (2)(i) of this section, paragraph (3)(1) of the Contract Work Hours and Safety Standards Act section below, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its procurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(3) Records and certified payrolls—

(i) Basic record requirements—

(A) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(B) Information required. Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis–Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under paragraph (1)(v) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis–Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) Certified payroll requirements—

(A) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the DOE if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the DOE. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(B) Information required. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to

the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

(C) Statement of Compliance. Each certified payroll submitted must be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor, or the contractor’s or subcontractor’s agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(1) That the certified payroll for the payroll period contains the information required to be provided under paragraph (3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (3)(i) of this section, and such information and records are correct and complete;

(2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) Use of Optional Form WH-347. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (3)(ii)(C) of this section.

(E) Signature. The signature by the contractor, subcontractor, or the contractor’s or subcontractor’s agent must be an original handwritten signature or a legally valid electronic signature.

(F) Falsification. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(G) Length of certified payroll retention. The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iii) Contracts, subcontracts, and related documents. The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iv) Required disclosures and access—

(A) Required record disclosures and access to workers. The contractor or subcontractor must make the records required under paragraphs (3)(i) through (iii) of this

section, and any other documents that the DOE, GEO, Trust, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 C.F.R. § 5.1, available for inspection, copying, or transcription by authorized representatives of the DOE, GEO, Trust, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) Sanctions for non-compliance with records and worker access requirements. If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 C.F.R. § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to the Wage and Hour Division of the Department of Labor within the time the Wage and Hour Division requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to the Wage and Hour Division. The Wage and Hour Division will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. The Wage and Hour Division will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) Required information disclosures. Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the DOE if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the DOE, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) Apprentices and equal employment opportunity—

(i) Apprentices—

(A) Rate of pay. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship

program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits. Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) Apprenticeship ratio. The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) Reciprocity of ratios and wage rates. Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) Equal employment opportunity. The use of apprentices and journey workers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the DOE may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis–Bacon and Related Act requirements. All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or 29 C.F.R. § 5.12(a).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or 29 C.F.R. § 5.12(a).

(iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

(11) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

Copeland "Anti-Kickback" Act (40 USC § 3145-3148; 29 CFR Part 3) (These provisions apply to the Borrower and to the Agreement in the same circumstances under which the Davis-Bacon Act's provisions apply). Each contractor or subrecipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated herein by reference.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and also a clause requiring the subcontractors to include these clauses in any lower tier

subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708; 29 C.F.R. § 5.5(b)(1)-(4); § 5.5(c)) (These provisions apply to the Agreement if the Agreement is for an amount over \$100,000 and may require or involve the employment of laborers or mechanics. The term “laborers and mechanics” includes, without limitation, watchmen, guards, and workers performing services in connection with dredging or rock excavation in any river or harbor of the United States).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$33 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1).

(3) Withholding for unpaid wages and liquidated damages—

(i) Withholding process. The DOE, GEO, and/or the Trust may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section of the contract, any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor as defined in 29 C.F.R. § 5.2. The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) Priority to withheld funds. The Department of Labor has priority to funds withheld or to be withheld in accordance with paragraph (3)(i) of this section over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(4) Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraph (1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

(iv) Informing any other person about their rights under CWHSSA or this part.

Clean Air Act and Federal Water Pollution Control Act (42 U.S.C. §§ 7401-7671q; 33 U.S.C. §§ 1251–1387) (These provisions apply to the Agreement and are required to be restated in this Agreement if the Agreement is for an amount in excess of \$150,000).

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The contractor agrees to report each violation to the Trust and understands and agrees that the Trust will, in turn, report each violation as required to assure notification to the DOE, GEO, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance under the EE RLF Program.

Debarment and Suspension (2 C.F.R. Part 180 (implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989)) (These provisions apply to the Agreement if the Agreement is for an amount that exceeds \$25,000).

A contract award must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM). SAM Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority. The contractor must comply with 2 C.F.R. Part 180 and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

This certification is a material representation of fact relied upon by the Trust. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C, in addition to remedies available to the Trust, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

Byrd Anti-Lobbying Amendment (2 C.F.R. Part 200, Appendix II, § I (citing 31 U.S.C. § 1352)) (This provision applies to the Agreement if the Agreement is for an amount greater than \$100,000, and applies to subrecipients and subcontracts if the subcontract is for an amount greater than \$100,000).

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

If applicable, contractors must sign and submit a certification to the Trust containing the following language with each bid or offer exceeding \$100,000:

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, [INSERT NAME], certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Procurement of Recovered Materials (2 C.F.R. Part 200, Appendix II, § J (citing 2 C.F.R. § 200.323; Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962)) (This provision applies to Borrower and to Borrower's contractors).

When procuring items necessary to the performance of this contract, the purchase price of which exceed \$10,000 or which were acquired during the preceding fiscal year in a quantity worth more than \$10,000, the Borrower and its contractors shall procure only items designated in the guidelines of the Environmental Protection Agency at 40 CFR part 247 that contain the highest percentage of recoverable materials practicable, consistent with maintaining a satisfactory level of competition.

The Borrower and its contractors also agree to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and recovery Act of 1976 as amended, including by procuring solid waste management services in a

manner that maximizes energy and resource recovery, and by establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

The Borrower and its contractors shall, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

Prohibition on Contracting for Covered Telecommunications Equipment or Services (John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 889(b)(1), 132 Stat. 1917 (2018); 2 C.F.R. § 200.216) (This provision applies to the Borrower because the Borrower is a subrecipient of a federal loan or grant funds).

Recipient and Recipients' contractors are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain covered telecommunications equipment or services;
- (2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

As described in Public Law 115-232, section 889, "covered telecommunications equipment" means any of the following:

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment;
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country;
- (5) Systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Domestic Preferences for Procurements (2 C.F.R. Part 200, Appendix II, § L (citing 2 C.F.R. § 200.322)) (This provision applies to the Agreement because the Agreement is a federally funded contract).

To the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. This requirement must be included in all contracts and purchase orders for work or products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

EE RLF Program Requirements

Performance of Work in United States (Term 9 of the Bipartisan Infrastructure Law (BIL) Special Terms and Conditions)

All work performed under this Agreement must be performed in the United States unless the DOE provides a waiver allowing a portion of the work to be performed outside the United States under limited circumstances, which waiver must be obtained from the DOE prior to any work being conducted outside the United States. This requirement does not apply to the purchase of supplies and equipment; however, the Borrower should make every effort to purchase supplies and equipment within the United States. The Borrower must flow down this requirement to its contractors and require them to flow down the requirements to their subcontractors.

If the Borrower fails to comply with this requirement, the DOE may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable Borrower cost share regardless if the work is performed by the Borrower, subrecipients, vendors or other project partners.

Foreign National Involvement (Term 10 of the BIL Special Terms and Conditions)

Borrower agrees to provide, and to contractually require its contractors and subcontractors, as applicable, to provide the Trust with specific information, the volume and type of which may depend on various factors associated with the Agreement, about each foreign national that Borrower, or its contractors and subcontractors, anticipate involving in the performance of the Project. A “foreign national” is defined as any person who is not a citizen of the United States by birth or naturalization.

Borrower further agrees to perform, and to contractually require its contractors and subcontractors, as applicable, to perform any measures required by DOE to mitigate or eliminate any risks to economic or national security interests that DOE determines are posed by the involvement of the foreign national(s). The list of countries that are currently designated as

foreign countries of risk is as follows: Iran, North Korea, Russia, and China; however, this list is subject to change.

Borrower and Borrower's contractors and subcontractors may submit their disclosures directly to DOE if the disclosures contain business confidential information.

Lobbying (Term 14 of the BIL Special Terms and Conditions)

In addition to those prescriptions on lobbying contained in statutes and regulations, Borrower agrees that it will not expend, directly or indirectly, any amount of the Loan to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913.

Site Visits and Recipient Administrative Organizational Reviews (Term 25 of the BIL Special Terms and Conditions)

Borrower must provide, and must require its contractors and subcontractors to provide, authorized representatives of DOE with reasonable access to facilities, office space, resources, and assistance for their safety and convenience in the performance of site visits, provided that DOE makes reasonable efforts to ensure that these site visits do not interfere with or unduly delay work on the Project.

Interim Conflict of Interest Policy for Financial Assistance Policy (Term 47 of the BIL Special Terms and Conditions)

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at <https://www.energy.gov/management/pf-2022-17-department-energy-interim-conflict-interest-policy-requirements-financial>. This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under the DOE financial assistance award. Borrower must comply with DOE's Interim COI Policy and contractually require its contractors and subcontractors to do the same.

Organizational Conflict of Interest (Term 48 of the BIL Special Terms and Conditions).

Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, a person is unable or appears to be unable to be impartial in conducting procurement action involving a related organization (2 CFR 200.318(c)(2)). The Borrower must disclose in writing any potential or actual organizational conflict of interest to the Trust. The Borrower must provide the disclosure prior to engaging in a procurement or transaction using EE RLF Program Funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. For a list of the information that must be included in the disclosure, see Section VI of the DOE interim Conflict of Interest Policy for Financial Assistance at <https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance>. If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the Borrower must procure goods and services from other sources when using project funds. Otherwise, the Trust may terminate the Award unless continued performance is determined by DOE to be in the best interest of the federal government. If the Borrower has a parent, affiliate, or subsidiary

organization that is not a state, local government, or Indian tribe, the Borrower must maintain written standards of conduct covering organizational conflicts of interest.

Affirmative Action and Pay Transparency Requirements (Term 51 of the BIL Special Terms and Conditions).

All federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246:

- (1) Recipients, subrecipients, and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- (2) Recipients and Contractors are required to take affirmative action to ensure that equal opportunity is provided in all respects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.
- (3) Recipients, subrecipients, contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors, and subcontractors must take. See OFCCP's Technical Assistance Guide at:

<https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec>.

Buy American Requirements for Infrastructure Projects (Term 55 of the BIL Special Terms and Conditions)

A. Definitions

Components: See 2 C.F.R. § 184.3 "Definitions".

Construction Materials: See 2 C.F.R. § 184.3 "Definitions".

Domestic Procurement Preference Requirement or Buy America Requirement means a requirement that no amount of EE RLF Program Funds may be obligated for an infrastructure project unless—

- (A) All iron and steel used in the project are produced in the United States;
- (B) The manufactured products used in the project are produced in the United States; or
- (C) The construction materials used in the project are produced in the United States.

Infrastructure: See 2 C.F.R. § 184.4(c) and (d).

Manufactured Products: See 2 C.F.R. § 184.3 "Definitions".

Predominantly of iron or steel: See 2 C.F.R. § 184.3 "Definitions".

Project means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Public: The Buy America Requirement does not apply to non-public infrastructure. Infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

B. Buy America Requirement

None of the funds provided under the Loan may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. See 2 CFR 184.5 for determining the cost of components for manufactured products; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6 for construction material standards.

The Buy America Requirement only applies to those articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to the infrastructure in the project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

The Buy America Requirement only applies to an article, material, or supply classified into one of the following categories* based on its status at the time it is brought to the work site for incorporation into an infrastructure project:

- (i) Iron or steel products;
- (ii) Manufactured products; or
- (iii) Construction materials;

The Buy America Requirement only applies to the iron or steel products, manufactured products, and construction materials used for the construction, alteration, maintenance, or repair of public infrastructure in the United States when those items are consumed in, incorporated into, or permanently affixed to the infrastructure. An article, material, or supply incorporated into

an infrastructure project should not be considered to fall into multiple categories, but rather must meet the Buy America Preference Requirement for only the single category in which it is classified.

All iron and steel, manufactured products, and construction materials used in the infrastructure project must be produced in the United States.

* Section 70917(c) of the BABA states that “construction materials” do not include cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. Section 70917(c) materials are excluded from Construction materials. Asphalt concrete pavement mixes are typically composed of asphalt cement (a binding agent) and aggregates such as stone, sand, and gravel. Accordingly, asphalt is also excluded from the definition of Construction materials.

Section 70917(c) materials, on their own, are not manufactured products. Further, Section 70917(c) materials should not be considered manufactured products when they are used at or combined proximate to the work site—such as is the case with wet concrete or hot mix asphalt brought to the work site for incorporation. However, when certain Section 70917(c) materials (such as stone, sand, and gravel) are used to produce a manufactured product, such as is precast concrete processed into a specific shape or form, and is in such state when brought to the work site, then that product is subject to the BABA requirements.

Further clarification is provided in 2 CFR 184 on the circumstances under which a determination is made that Section 70917(c) materials should be treated as components of a manufactured product. That determination is based on consideration of: (i) the revised definition of the “manufactured products” at 2 CFR 184.3; (ii) a new definition of “section 70917(c) materials” at 2 CFR 184.3; (iii) new instructions at 2 CFR 184.4(e) on how and when to categorize articles, materials, and supplies; and (iv) new instructions at 2 CFR 184.4(f) on how to apply the Buy America preference by category.

Borrower must ensure, and must contractually require its contractors to ensure, that the Buy America Requirement term and condition is included in all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

C. Certification of Compliance

Borrower must contractually require any contractors performing work on an infrastructure project to certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under the Award, and must contractually require any contractors performing work on an infrastructure project to flow this requirement down to their subcontractors.

Borrower must maintain, and contractually require subcontractors performing work on an infrastructure project to maintain, certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the recipient. Borrower must keep these certifications with the award/project files and be able to produce them upon request from the Trust, GEO, DOE, auditors or Office of Inspector General.

D. Waivers

DOE may grant limited waivers to the Buy America Requirement for the following reasons:

1. Public Interest – Applying the Buy America Requirement would be inconsistent with the public interest;
2. Non-Availability – The types of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Unreasonable Cost – The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

Requests to waive the application of the Buy America Requirement must be in writing to the DOE. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOE's final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.