

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.

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. Has the meaning given to it in Section 9.3 of this Agreement.

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, any political subdivision thereof, and any agency, authority, department, commission, board, bureau, or instrumentality of any of them.

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.

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, as disclosed on the invoice provided to Lender.

Loan Documents. This Agreement, the Note, 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.

Project. The performance of an Energy Audit on a building at the Property.

Project Costs. The costs of materials, equipment, and labor associated with completing the Project.

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.

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. 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 and continuing until the one-year anniversary of the Disbursement Date, Borrower shall repay to Lender the Loan in monthly installments of interest only on the first day of each month, in the amount of interest accrued at the Applicable Interest Rate and unpaid as of each payment date. Commencing on the first day of the month following the one-year anniversary of 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 two (2) 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 agrees that it shall have no right to make a voluntary prepayment, in whole or in part, prior to the first day of the month following the one-year anniversary of the Disbursement Date, except that Borrower shall have the right to prepay the Loan in full prior to the one-year anniversary of the Disbursement Date, without having to pay any fee, charge, or penalty on account of such amount being paid to Lender prior to becoming due hereunder, if Borrower has received a Long-Term Care Energy Audit grant from Lender under Lender's EE RLF Program and Borrower uses those grant funds to prepay the Loan. Commencing as of the first day of the month following the one-year anniversary of the Disbursement Date, 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. RESERVED.

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

6.9. 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.

6.10. 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.

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

6.12. 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.

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

6.14. Qualified Partners Every contractor, subcontractor, vendor, or supplier who performs work or provides goods or materials necessary for completion of the Project is a Qualified Partner of Lender or a Person subcontracted through a Qualified Partner.

6.15. 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's 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) 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. 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 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.

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

7.10. Further Assurances. 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.

7.11. 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 a Qualified Partner or is a Person subcontracted through a Qualified Partner and Borrower shall identify any Qualified Partner who will perform or oversee the Project to Lender before the Qualified Partner, their subcontractors, vendors, or suppliers begin work on the Project.

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

7.13. Preferred Source of Payoff. If Borrower receives a grant from Lender under the Energy Efficiency Revolving Loan Fund Capitalization Grant Program, then Borrower shall use those grant funds to pay off this Loan.

8. NEGATIVE COVENANT 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.

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.

9.3 Energy Audit. Borrower shall have obtained a whole-building energy audit that is an ASHRAE Level II audit or its substantial equivalent and that otherwise satisfies the requirements of this section (the “Energy Audit”) and shall have provided to Lender evidence of completion of said Energy Audit, together with a report prepared by the Qualified Partner, or a Person subcontracted through the Qualified Partner, that performed the Energy Audit, in form and content acceptable to Lender. Such Energy Audit shall satisfy the following requirements:

(a) The Energy Audit shall have determined the overall consumption of energy of the facility of Borrower for which such Energy Audit is being performed.

(b) The Energy Audit shall have identified and recommended lifecycle cost-effective opportunities to reduce the energy consumption of the facility of Borrower for which such Energy Audit is performed, including through energy efficient lighting; heating, ventilation, and air conditioning systems; windows; appliances; and insulation and building envelopes (each an “Improvement”).

(c) The Energy Audit shall have estimated the energy and cost savings potential of the opportunities identified in subsection (b) of this Section 9.3 using energy audit software that uses BuildingSync (e.g., ASHRAE, Audette, BrightPower, Buildee, AECOM, PSD, Maalka, Brand New Box, etc.) and is approved by the United States Department of Energy.

(d) The Energy Audit shall have identified the period and level of peak energy demand for each building within the facility for which such Energy Audit is being performed and the sources of energy consumption that are contributing the most to that period of peak energy demand.

(e) The Energy Audit shall have recommended controls and management systems to reduce or distribute peak energy consumption.

(f) The Energy Audit shall have estimated the total energy and cost savings potential for the facility of Borrower for which the Energy Audit is being performed if all recommended upgrades and retrofits are implemented, using energy audit software that uses BuildingSync (e.g., ASHRAE, Audette, BrightPower, Buildee, AECOM, PSD, Maalka, Brand New Box, etc.) and is approved by the United States Department of Energy.

(g) The Energy Audit may recommend strategies to increase energy efficiency of the facility of Borrower for which the Energy Audit is being performed through use of electric systems or other high-efficiency systems utilizing fuels, including natural gas and hydrogen.

9.5. Proof of Completion. Lender shall have been provided proof of completion from the Qualified Partner, or the Person subcontracted to perform the Energy Audit through the Qualified Partner, that completed the Project, which proof of completion shall include a certification from the Qualified Partner, or the Person subcontracted to perform the Energy Audit through the Qualified Partner, that the Energy Audit complied with all requirements of this Agreement, together with an invoice for the Energy Audit.

9.6. Energy Audit Deliverables. Lender shall have been provided with an Energy Audit report from the Qualified Partner, or the Person subcontracted to perform the Energy Audit through the Qualified Partner, in form and substance acceptable to Lender, as well as an invoice for the Energy Audit.

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

9.8. Project Completion by Qualified Partners. Borrower shall have ensured that any contractor or subcontractor who performed work necessary for completion of the Project is a Qualified Partner of Lender or a Person subcontracted through a Qualified Partner.

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

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

9.11. 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.

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

9.13. 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 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) Failure of any part of the Project to be performed by a Qualified Partner or a Person subcontracted through a Qualified Partner; 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.

10.6 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, and (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. 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 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.

16.3. 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.

17. 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.

18. 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:

19. 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).

20. 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.

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

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

23. 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.

24. 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.

25. 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. AVAILABILITY OF EE RLF PROGRAM GRAN FUNDS. Lender will grant an award (the “Award”) to the Borrower, in an amount up to the Loan Amount, using EE RLF Program Funds provided EE RLF Program Funds remain available for Lender’s use, Borrower is not in default under the terms of this Agreement, Borrower installs one or more of the Improvements identified in the Energy Audit, and Borrower successfully completes and submits an application for said Award in such manner as Lender may require from time to time.

30. 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, and 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 Requirements (2 C.F.R. Part 200, Appendix II)

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 federal grant funds).

Borrower and Borrowers' 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, 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/departments-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.