

EFFICIENCY MAINE TRUST
INCENTIVE AGREEMENT
Commercial & Industrial Custom Program
(ARPA/MJRP Funds)

THIS AGREEMENT is made by and between Efficiency Maine Trust, an independent quasi-state agency of the State of Maine (“Trust”) and [redacted] [type of business entity, e.g. corporation, limited liability company, partnership] organized under the laws of the State of [redacted], federal tax identification number [redacted], with a place of business located at [redacted] (“Recipient”). The Trust and the Recipient are each a “Party” and collectively, the “Parties.”

WHEREAS, the Trust administers certain funds under programs designed to promote and advance measures, investments, and arrangements in the State of Maine that enhance energy efficiency and conservation, reduce electricity consumption and cost, and reduce greenhouse gas production by fossil fuel combustion;

WHEREAS, the Trust is the administrator of certain funds through the Maine Jobs & Recovery Plan (MJRP) using federal American Rescue Plan Act (ARPA) funds for the Program that is the subject of this Agreement;

WHEREAS, the Trust has issued a Program Opportunity Notice (“PON”) for funding of certain projects designed to meet specified program criteria (the “Program”);

WHEREAS, Recipient has submitted an application in response to a PON for funding of a certain project under the Program (the “Application”), which project is described in the Statement of Work, Specifications and Project Description in Rider A (the “Project”);

WHEREAS, the Trust, in reliance upon Recipient’s representations contained in the Application and Recipient’s covenants and commitments contained in this Agreement, has decided to make an award to Recipient under the Program for implementation of the Project (the “Incentive Award”);

WHEREAS, Recipient acknowledges that the Incentive Award for the Project to be performed and equipment and materials to be acquired under this Agreement will be funded using federal ARPA funds and that its receipt of federal funds will require it to abide by certain contract provisions required in connection with the receipt of federal funds.

NOW, THEREFORE, for valuable consideration, the Parties hereby agree as follows.

1. INCENTIVE AWARD; PROJECT PERIOD; AND FUNDING DISBURSEMENTS.

- 1.1 Relying upon Recipient’s representations in its Application and Recipient’s compliance with all terms and conditions of this Agreement, the Trust will provide Recipient an Incentive Award of \$XXX,XXX for the Project, subject to adjustment as provided in this Agreement.
- 1.2 The Trust reserves the right to adjust the Incentive Award as necessary to maintain compliance with the Trust’s established Program funding criteria and any Project incentive award limitations as set forth in the PON.
- 1.3 This Agreement shall commence on [redacted], 20[redacted] and the Project shall be installed and placed into service by [redacted], 20[redacted] (the “Project Period”), unless earlier terminated in accordance with the provisions of this Agreement.
- 1.4 The Incentive Award shall be disbursed to Recipient by the Trust in accordance with the Payment Schedule and Project Milestones set forth in Rider B. The Trust’s obligation to make payments or disbursements to Recipient is conditioned on Recipient’s compliance with all material terms and conditions of this Agreement and the Program, submission of properly documented invoices and reimbursement requests, provision of required information and reports, and implementation of the Project in accordance with the Statement of Work, Specifications and Project Description in Rider A.

- 1.5 Recipient shall expend Incentive Award funds only for approved Project purposes and only in accordance with the terms and conditions of the Program and this Agreement.
- 1.6 Recipient acknowledges that payment of the Incentive Award is conditioned on Recipient's assignment to the Trust of capacity resource credits and forward capacity market revenues resulting from the Project.
- 1.7 The Trust will not reimburse Recipient for any cost or expense that is contrary to this Agreement or applicable law. Any expenditure by Recipient or commitment by Recipient to expend funds for the Project prior to the effectiveness of this Agreement is at Recipient's risk. Reimbursement of Project funds expended or committed by Recipient prior to the effectiveness of this Agreement is at the Trust's sole discretion.
- 1.8 By submitting any invoice or request for reimbursement, Recipient is representing that the services or costs identified in the invoice or request for reimbursement have been provided or incurred, are within the approved Project scope, and that such costs and expenses are proper and allowable under this Agreement. By paying all or a portion of any invoice or request for reimbursement, the Trust does not waive its right to recover any payment or reimbursement later determined to be improper or not allowable under this Agreement.

2. STANDARDS OF PERFORMANCE.

- 2.1 Recipient shall, and shall cause its contractors to, perform all work and services in connection with the Project in a timely, professional, and workmanlike manner. Recipient shall perform, or cause to be performed, all work and services in accordance with the Statement of Work, Specifications and Project Description.
- 2.2 Recipient shall be responsible to ensure that the Project achieves the energy efficiency, conservation of electricity, reduction in energy costs, and mitigation or reduction of greenhouse gases as may be set forth in the PON and in Rider A and Rider B of this Agreement.
- 2.3 Recipient shall be responsible to furnish or arrange for all qualified personnel, facilities, equipment, materials and services as necessary for the performance of the Project and shall provide and maintain competent and adequate supervision of the Project to ensure that all work and services conform to the Statement of Work, Specifications and Project Description.
- 2.4 Recipient shall, and shall ensure that its contractors, abide by and conform to applicable state, federal, and local laws, ordinances, rules, regulations, and standards in the performance of this Agreement and execution of the Project.
- 2.5 Recipient shall keep the Trust apprised of all material developments in connection with the Project and shall consult and coordinate with the Trust, through its Agreement Administrator, as necessary in the performance of the Project. The Trust reserves the right to monitor Recipient's performance of this Agreement, including the performance of any contractor, in order to verify compliance.
- 2.6 Recipient shall operate and use the Equipment and efficiency measures funded in whole or in part with the Incentive Award for the purposes intended by the Program and this Agreement, and in accordance with the terms of this Agreement.
- 2.7 The Trust does not make any representations of any kind regarding the results to be achieved by the Project or the adequacy or safety of such measures. The Trust does not endorse, guarantee, or warrant any particular vendor, contractor, manufacturer or product, and it provides no warranties, express or implied, for any product or services. Neither the Trust nor its consultants are responsible for assuring that the design, engineering, or construction of the Project or installation of the energy efficiency and conservation measures is proper or complies with any particular laws, codes, or industry standards. Recipient is solely responsible for the design and implementation of the Project.

3. RECIPIENT REPRESENTATIONS AND RESPONSIBILITIES.

- 3.1 Recipient acknowledges that funding of the Incentive Award is provided for specified energy efficiency improvements and conservation measures. Incentive Award funds must be used in compliance with Program

requirements and all applicable regulations. Recipient shall abide by the terms of this Agreement, including the terms and conditions contained in any Riders appended hereto.

3.2 All requirements, restrictions and obligations regarding the use of Program Incentive Awards are deemed incorporated in this Agreement and Recipient agrees to comply with all such requirements, restrictions and obligations. Recipient represents and warrants that no portion of the Program Incentive Award will be used in connection with any ineligible project under the PON.

3.3 Recipient represents that it is authorized to conduct business in the State of Maine and that it shall maintain its good standing throughout the term of this Agreement. Recipient represents that it has all requisite power and authority to execute this Agreement and perform the Project and that the execution and delivery of this Agreement and the performance of the Project have been duly authorized by all necessary action of its shareholders, directors, trustees, partners, members, or managers as appropriate.

3.4 Recipient represents that it is eligible to receive the Incentive Award and that it is not suspended, debarred or disqualified from receiving state contracts, grants, awards or other appropriations.

3.5 Recipient represents that it has filed all federal and state tax returns and reports as required by law and has paid all taxes, assessments and governmental charges due, except those contested in good faith in a proceeding with the assessing authority.

3.6 Recipient has disclosed any relationship, direct or indirect, between Recipient, its officers, directors, trustees, partners, members, managers, or employees, and the Trust or State that could reasonably give rise to a conflict of interest.

3.7 There has been no material adverse change in the business, operations, or financial condition of Recipient, or in the matters described in the Application pertaining to the Project, since the submission of the Application. Recipient represents that neither the Application, nor any document, report, or certification given by Recipient in connection with this Agreement or the Project contains any untrue statement of material fact or any knowing omission of material fact.

3.8 Recipient shall notify the Trust of any material change in Recipient's legal status, financial status, corporate status, or compliance status with applicable laws, or any other change in status of the Project that could have a material adverse effect on Recipient's ability to complete and implement the Project as described in Recipient's Application and this Agreement.

3.9 Recipient shall provide such documents and information and execute any additional documents, disclosures, certifications and statements of compliance as may be required under state or federal law or regulation, or as may be reasonably requested by the Trust in order to ensure compliance with applicable law or full performance of this Agreement.

3.10 Recipient represents that the Project will be performed in the State of Maine and that the Incentive Award will be expended solely for energy efficiency improvements, conservation measures, and carbon reduction initiatives in the State of Maine. Recipient acknowledges that equipment and measures funded in whole or in part through the Incentive Award are intended only for installation and use at the Recipient's Project location specified in the Application and shall not be moved from the Project location without the prior written approval of the Trust.

3.11 Recipient acknowledges that a breach of any representation contained herein or the provision of any false or misleading information or knowing omission of material information in connection with the Project, whether by Recipient or its agents, may result in termination and revocation of the Incentive Award, require the immediate reimbursement of any Incentive Award amounts previously disbursed, and may result in Recipient's suspension or debarment from participation in Trust programs.

3.12 Recipient's representations constitute continuing representations.

4. **SUSPENSION OF INCENTIVE AWARD.**

4.1 The Trust may suspend Incentive Award disbursements and payments to Recipient for any of the following reasons:

- (i) Recipient's failure to comply with the terms and conditions of this Agreement, including any representation or covenant contained herein;
- (ii) Recipient's failure to execute the Project in with due diligence, or to achieve an agreed Project milestone; or
- (iii) A material adverse change in Recipient's legal, business, or financial status.

4.2 The Trust shall provide Recipient with written notice of its decision to suspend Incentive Award disbursements and payments under this provision and shall provide Recipient with an explanation of the reasons therefor. The Trust shall specify the remedial actions that the Recipient must complete to successfully secure reinstatement of the Incentive Award.

5. TERMINATION OF AGREEMENT.

5.1 The Trust may declare Recipient to be in default of this Agreement upon the occurrence of any of the following events or circumstances ("Events of Default"):

- (i) Recipient's material breach of any representation, covenant, condition, or obligation under this Agreement;
- (ii) Recipient's violation of law;
- (iii) Recipient's failure to make regular and substantial progress toward the performance and completion of the Project;
- (iv) Recipient's failure to provide any periodic or final reporting or accounting as required under this Agreement or applicable law;
- (vi) Recipient's insolvency, receivership, assignment for the benefit of creditors, foreclosure, or voluntary or involuntary bankruptcy; or
- (vii) Any event of default identified elsewhere in this Agreement.

5.2 Without prejudice to any other rights or remedies, the Trust may terminate this Agreement upon any Event of Default by providing Recipient with thirty (30) days written notice of the Trust's intent to terminate, and the grounds therefor. Termination shall occur if any Event of Default remains fully or partially uncured thirty (30) days after the Trust has provided Recipient with the written notice of intent to terminate. The Trust shall have no further obligation to Recipient after termination.

5.3 Notwithstanding anything to the contrary in this Agreement, the Trust may terminate this Agreement, in whole or in part, in its discretion and without penalty, in the event that funds are de-appropriated, re-allocated or restricted by any governmental authority or court of competent jurisdiction, the Trust's authorization to operate or administer the Agreement or the relevant program or project is withdrawn or curtailed, there is a material change in project or program conditions, or there is a material change in legislation affecting the Trust's authority or operations.

5.4 The Trust reserves all rights and remedies available at law or in equity in the event of a breach of this Agreement by Recipient including, without limitation, the right to demand reimbursement of all Incentive Award funds disbursed under this Agreement and, upon such demand, Recipient shall immediately so reimburse the Trust. Without limiting the foregoing, in the event of Recipient's breach or default, Recipient shall pay on demand all of the Trust's costs, fees (including attorney and paralegal fees and disbursements, including such fees or disbursements arising in any bankruptcy case or proceeding), expenses, and damages of any kind incurred by or imposed on the Trust in connection with or as a consequence of Recipient's breach of this Agreement, including costs of collection and recovery of the Incentive Award funds and those costs incurred or paid by the Trust to protect, preserve, collect, lease, sell, repair, improve, advertise, locate, take possession of, liquidate, or otherwise deal with any collateral securing Recipient's obligations under this Agreement. The various rights, remedies, options and elections of the Trust in this Agreement are cumulative and not exclusive of any other right, remedy, or power allowed or available at law or in equity.

6. MISCELLANEOUS PROVISIONS.

6.1 This Agreement shall be governed in all respects by the laws, statutes, and regulations of the State of Maine. Any legal proceeding instituted by the Trust or Recipient regarding this Agreement shall be brought in State of Maine administrative or judicial forums.

6.2 All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the other terms of this Agreement to the extent possible. The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

6.3 This Agreement, along with the Riders and other provisions expressly incorporated herein, contains the entire Agreement of the Parties, and neither party shall be bound by any statement or representation not contained herein or in a written amendment or change order signed by the Trust. This Agreement, and the rights and obligations hereunder, shall inure to the benefit of the Parties and their permitted assigns. No waiver shall be deemed to have been made by any of the Parties unless expressed in writing and signed by the waiving party. The Parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the Parties which is not expressed in writing. The failure of any Party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any Party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

6.4 The following Riders are attached to and made part of this Agreement:

Rider A – Statement of Work, Specifications and Project Description
 Rider B – Payment Schedule and Project Milestones
 Rider C – General Terms and Conditions
 Rider C-1 -- Contract Provisions for Non-Federal Entity Contracts under Federal Awards

6.5 All progress reports, correspondence and related submissions from the Recipient shall be submitted to:

Name: Jesse Remillard
 Title: Senior Program Manager
 Efficiency Maine Trust
 Address: 168 Capitol Street, Suite 1
 Augusta, Maine 04330-6856
 Telephone: (207) 368-2558
 E-mail: jesse.remillard@efficiencymaine.com

This individual is designated as the Agreement Administrator on behalf of the Trust for this Agreement, except where specified otherwise in this Agreement or as replaced by the Executive Director of the Trust. The Agreement Administrator shall be the Trust's representative during the Project Period. He/she has authority to curtail services if necessary to ensure proper execution and compliance. He/she shall certify to the Trust when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Recipient, subject to the approval of the Executive Director of the Trust.

6.7. All notices under the Agreement shall be deemed to have been duly given and delivered: (i) upon delivery, if delivered by hand, (ii) three (3) business days following posting, if sent by registered or certified mail, return receipt requested, or (iii) one (1) business day after dispatch if sent overnight or next day delivery by national courier service, such as FedEx or UPS, with tracking receipt.

IN WITNESS WHEREOF, the Trust and Recipient have executed this Agreement through their authorized representatives.

EFFICIENCY MAINE TRUST

By:

Michael Stoddard, Executive Director
Date: _____

[RECIPIENT COMPANY NAME]

By:

Name and Title, Recipient Representative
Date: _____

RIDER A

STATEMENT OF WORK, SPECIFICATIONS AND PROJECT DESCRIPTION

Recipient shall implement and perform the Project in accordance with the requirements of PON#_____.

[INSERT PROJECT DESCRIPTION AND STATEMENT OF WORK AND ANY SPECIFICATIONS OR REDUCTION/EFFICIENCY LEVELS TO BE ACHIEVED]

RIDER B

PAYMENT SCHEDULE AND PROJECT MILESTONES

Award No. [REDACTED]

Incentive Agreement Total \$ _____ (Subject to adjustment as provided in the Agreement)

INVOICES AND PAYMENTS. The Trust will disburse the Incentive Award to Recipient in installments upon full completion or satisfaction of each milestone, as follows:

<u>Milestone</u>	<u>Percent of Incentive Payment</u>
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[INSERT DISBURSEMENT MILESTONES]

Invoices for payment must contain sufficient detail to establish completion of the relevant milestone, reference the contract number, and include copies of invoices associated with the Recipient's Project equal to or greater than the associated disbursement amount requested. In lieu of mailing, invoices and supporting documentation may be submitted via electronic mail to accountspayable@efficiencymaine.com, with a copy to the Agreement Administrator.

Payments are subject to the Recipient's compliance with all terms set forth in this Agreement and subject to the availability of funds. No invoice will be processed for payment until approved by the Agreement Administrator. The Trust will process approved payments within 30 days. The Trust is not responsible for any direct payments to Recipient's contractors or vendors.

All payments are subject to reimbursement by Recipient in the event of a breach of the Agreement.

RIDER CGENERAL TERMS AND CONDITIONS

1. INDEPENDENT CAPACITY. Recipient is an independent party and is not an agent or representative of the Trust. Recipient has no authority to represent or bind the Trust in any manner. Recipient shall be solely responsible for the performance of the Project and the conduct of its employees, agents and contractors. Recipient shall be solely responsible for the payment of wages and benefits to its employees and the payment of contract and service fees to its contractors and vendors
2. ASSIGNMENT. Recipient shall not assign or otherwise transfer or dispose of its rights, interest, duties or obligations under this Agreement, including any right or interest in the efficiency measures or Equipment funded with the Incentive Award, without the prior express written consent of the Trust. The Trust may impose reasonable conditions on any transfer or assignment. Any purported transfer or assignment without prior written consent of the Trust shall be null and void.
3. EQUAL EMPLOYMENT OPPORTUNITY; NON-DISCRIMINATION. During the performance of this Agreement, Recipient shall abide by all applicable equal employment opportunity and nondiscrimination statutes, regulations, and orders including, without limitation, the Maine Human Rights Act. To the extent applicable, the provisions of 5 MRSA §784 are incorporated herein by reference and Recipient shall cause the such provisions to be inserted in any contract or subcontract for any work covered by this Agreement so that such provisions shall be binding upon each contractor or subcontractor.
4. EMPLOYMENT AND PERSONNEL; STATE EMPLOYEES NOT TO BENEFIT. Recipient shall not engage any person in the employ of the Trust or any State department or agency in a position that would constitute a violation of 5 MRSA § 18-A (Conflicts of Interest in Contracts with State) or 17 MRSA § 3104 (Conflicts of Interest in State Purchases). No individual employed by the Trust or the State at the time this Agreement is executed or any time thereafter during the Project Period shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom that would constitute a violation of 5 MRSA § 18-A or 17 MRSA § 3104. Recipient shall not engage on a full-time, part-time or other basis during the Project Period any other personnel who are or have been at any time during the Project Period in the employ of the Trust or any State department or agency, except regularly retired employees, without the written consent of the Executive Director of the Trust. Recipient shall not engage on this Project on a full-time, part-time or other basis during the Project Period any retired employee of the Trust who has not been retired for at least one year, without the written consent of the Executive Director of the Trust.
5. NO SOLICITATION WARRANTY. Recipient warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for Recipient, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the Incentive Award or this Agreement.
6. LOBBYING. No State-appropriated funds shall be expended by the Recipient for influencing, or attempting to influence, an officer or employee of any agency, a member of the State Legislature, an officer or employee of the State Legislature, or an employee of a member of the State Legislature, in connection with the awarding of any agreement, the making of any grant or award, the entering into any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any agreement, grant, award, or cooperative agreement.
7. RECORD RETENTION AND INSPECTION. Recipient shall make and retain all project records (including financial records, progress reports, service, equipment, and material orders, invoices, evidence of payment, and payment and reimbursement requests) for a minimum of three (3) years following the expiration or termination of this Agreement. Recipient shall permit the Trust or its authorized representatives to examine such records and to interview any officer or employee of Recipient or any of its contractors regarding the work performed under this Agreement. Recipient shall furnish copies of all such records upon request.

8. ACCESS TO PUBLIC RECORDS. As a condition of accepting any public funds under this Agreement, Recipient hereby acknowledges and agrees that documents and information relating to Recipient's project, the Incentive Award and this Agreement, other than information designated confidential by statute, may be treated as public records under the freedom of access laws. The Trust requires transparency on how funds are managed, awarded, and spent. Accordingly, subject to the foregoing limitation on designated confidential information, Recipient hereby agrees to permit disclosure of information about Recipient's project and how Incentive Awards and Program funds were awarded and spent.
9. COMPLIANCE WITH LAW. Recipient shall comply with all applicable laws, rules, regulations and ordinances in the performance of this Agreement. Recipient is responsible to obtain and maintain all permits, licenses, and other approvals as may be required under applicable laws for implementation of Recipient's project and the performance of any work or services under this Agreement.
10. INDEMNIFICATION. Recipient agrees to indemnify, defend and save harmless the Trust and its officers, directors, trustees, agents and employees from and against any and all demands, suits, actions, claims, injuries, liabilities, losses, damages, costs, fees, and expenses (including attorney fees and legal expenses and the costs of enforcing any right to indemnification under this Agreement) made against or suffered or incurred by the Trust resulting from or arising out of Recipient's performance of this Agreement, the Project, or the installation or operation of the equipment or efficiency measures funded in whole or in part by an incentive or award provided by the Trust. Claims to which this indemnification applies include, without limitation: (i) claims of any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other entity providing work, services, materials, equipment or supplies in connection with the performance of this Agreement or the Project; (ii) personal injury, death, or property damage suffered or incurred by any person or entity arising from the Recipient's performance of this Agreement or the installation or operation of the Project, including claims of Recipient's employees, agents, or contractors and subcontractors; and (iii) claims arising or resulting from Recipient's breach of this Agreement or violation of law. Recipient's indemnity obligations apply without regard to any alleged negligence of the Trust and without regard to any immunity that might otherwise be accorded under the workers' compensation laws. This indemnification is intended to be as broad as the law allows.
11. NOTICE OF CLAIMS. Recipient shall give the Agreement Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of the Agreement or the Project, and prompt notice of any claim made against the Recipient by any contractor or vendor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.
12. APPROVAL. This Agreement must have the written approval of the Executive Director of the Trust before it can be considered an enforceable contract binding on the Trust.
13. TAXES. Recipient shall be solely responsible for the determination and payment when due of all taxes that may be due in connection with the Incentive Award and the Project.
14. INSURANCE. Recipient 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 the Trust, as additional insured, from claims arising from the Project, including any contractual liability of Recipient under this Agreement. Recipient shall procure and maintain workers' compensation insurance coverage as required under Maine law. Recipient shall procure and maintain replacement value "all risk" property and casualty insurance covering the Equipment funded with the incentive or grant provided by the Trust. Prior to disbursement of any Incentive Award amount, Recipient shall furnish the Trust with a certificate of insurance or other written verification of the existence of all such insurance coverages required under this Agreement.
15. NON-APPROPRIATION. Notwithstanding any other provision of this Agreement, if the Trust does not receive sufficient appropriations to fund this Agreement, if funds are de-appropriated or re-allocated, or if the Maine State Legislature, the Maine Public Utilities Commission, or a state or federal court restricts or divests the Trust of its authority to expend funds, then the Trust will be relieved of any obligation to make further payments under this Agreement.

16. AVAILABILITY OF ARPA FUNDS. It is understood that the source of the Incentive Award is that portion of the ARPA State and Local Fiscal Recovery Funds expressly allocated to the Trust under the Maine Jobs & Recovery Plan and allocated by the Trust to the Program (the “ARPA Funds”). If the ARPA Funds are reallocated or otherwise become unavailable to fund this Agreement, the Trust may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The Trust shall, however, remain obligated to pay for all work and services that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest. The Trust makes no commitment to pay the Incentive Award from other Trust, agency, or state funds for any reason and the Recipient expressly waives any right to demand or receive payment from any such non-designated funds.
17. FORCE MAJEURE. The obligations of each party under this Agreement shall be excused for the duration of any Force Majeure Event that prevents a Party’s ability to perform such obligations. A “Force Majeure Event” shall mean an act of God, act of war, riot, fire, explosion, flood or other catastrophe, or other condition or circumstance beyond the reasonable control of a Party and which could not reasonably be avoided by the Party claiming Force Majeure. The Party claiming Force Majeure shall notify the other Party upon the occurrence of a Force Majeure Event that will or is expected to prevent performance under this Agreement. The Trust may terminate this Agreement if a Force Majeure Event lasts more than 90 days.
18. SET-OFF RIGHTS. Without limiting any other right or remedy, the Trust shall have all common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Trust’s option to withhold for the purposes of set-off any monies due to Recipient under this Agreement up to any amounts due and owing to the Trust with regard to this Agreement or any other agreement between Recipient and the Trust, including any agreement for a term commencing prior to the term of this Agreement.
19. DAMAGE LIMITATION; NO THIRD-PARTY RIGHTS. No person or entity that is not a party to this Agreement may assert any right or make any claim under this Agreement. In no event shall the Trust be liable to Recipient or any person or entity claiming through Recipient for indirect, incidental, special or consequential damages of any kind, all of which are expressly waived by Recipient. Nothing in this Agreement shall be construed as a waiver or limitation of the Trust’s immunity from or limitation of liability as a government entity, which immunities and limitations of liability the Trust hereby expressly retains.
20. EFFICIENCY MAINE LOGO; PUBLIC DISCLOSURE. The “Efficiency Maine” name and logo are registered trademarks of the Trust. The Trust grants Recipient a limited, revocable, non-exclusive license to use the Efficiency Maine logo in connection with the Project to publicly acknowledge the Trust’s funding and participation in the Project. Any such use must be in strict accordance with the Trust’s design, image, and placement standards. The license to use the “Efficiency Maine” marks is revocable by the Trust at any time.
21. DATA IN SUPPORT OF ENERGY SAVINGS AND EMISSIONS REDUCTIONS. The Trust may access Recipient’s utility data to analyze program energy saving and greenhouse gas emission reduction impacts. Recipient grants authorization to the Trust or its agents to access facilities and records to collect data needed to measure and verify electricity savings and fuel reductions (this may include but is not limited to utility bills, metering data, facility equipment surveys, information on operational practices, and site occupancy levels). Recipient agrees to provide the Trust or its agents associated data from a period prior to the start of the Project as necessary to establish baseline energy and/or fuel use and costs.
22. INFORMATION IN SUPPORT OF THE PROGRAM. The Trust is required to report on use of and the performance of energy efficiency and conservation programs and projects. Information from these reports may be made available to the public. Recipient agrees to cooperate with the Trust on such reporting and shall provide information related to the award, this Agreement, the Project, and any related agreement as requested or required by the Trust to meet its obligation to provide accurate, complete, and timely information to the public, to meet the Program reporting requirements, and/or to comply with state or federal law or regulation.
23. SITE VISITS. The Trust has the right to make site visits at reasonable times to review Project progress, performance, and operation. Recipient shall provide reasonable access to facilities, resources, and assistance for the safety and convenience of the Trust and its representatives to perform their duties. All site visits will be performed in a manner that does not unduly interfere with or delay the work or operations of Recipient or its

contractors. Site visits shall be subject to Recipient's reasonable facility access, safety, security, and confidentiality policies.

24. MEASUREMENT AND VERIFICATION. Recipient shall allow independent third-party verification of Project completion and energy savings under terms as may be established by the Trust. Recipient shall work in good faith with the Trust to develop a measurement and verification plan designed to assess the efficiency measures, reduction in greenhouse gas production, and reduction in consumption of electricity achieved by the Project. Recipient shall conduct and cooperate in such auditing and reporting as may be necessary to assess performance of the Project and to provide information as may be necessary or useful for the Program.
25. CAPACITY RESOURCES; CREDITS; FORWARD CAPACITY REVENUE. It is understood that the Project is intended to achieve certain energy efficiencies and reductions in electricity consumption and that the Project may produce or result in certain marketable or tradable credits, benefits and proceeds, including energy efficiency capacity resources, capacity savings, avoided energy, renewable energy credits, and forward capacity market credits, payments, or revenues (collectively, the "Capacity Resources, Credits and Revenues"). In consideration of the Incentive Award, and unless otherwise expressly agreed in writing by the Trust, the value of all such Capacity Resources, Credits and Revenues produced or resulting from the Project for the expected lifetime of the equipment and measures installed or implemented under this Agreement shall be deemed owned by the Trust and the Trust shall have the sole right to bid, trade, transfer, sell, assign, use, and apply all such Capacity Resources, Credits and Revenues for the benefit of the Trust and the programs administered by the Trust under the Efficiency Maine Trust Act. Recipient hereby transfers and assigns to the Trust all of Recipient's right, title, and interest in such Capacity Resources, Credits and Revenues.
26. VENDOR OR CONTRACTOR SELECTION. Recipient may select any vendor or contractor to provide the equipment and perform the work contemplated by this Agreement. The Trust, however, reserves the right to prohibit specific vendors or contractors from Program participation.
27. REMOVAL OF EXISTING EQUIPMENT. If the Incentive Award from the Trust is intended to fund the replacement of inefficient equipment, Recipient agrees, as a condition of participation in the Program, to remove and dispose of the equipment being replaced by the efficiency measures installed or implemented under this Agreement in accordance with all applicable laws. Recipient agrees not to reinstall any of the replaced equipment anywhere in the State of Maine or transfer it to any other party for installation in the State of Maine.
28. MEASURE LIFE. It is the express intention of the Parties that the Equipment and efficiency measures funded in whole or in part with the Incentive Award shall be used for the purposes intended under the Program and this Agreement, and that all such efficiency measures and Equipment funded by the Trust will be used for their rated useful life. By accepting an Incentive Award, Recipient hereby agrees that it will not discontinue use of the installed efficiency measures and Equipment without prior written approval from the Trust. Any authorized transferee or assignee of this Agreement or the Equipment shall be bound by the obligation to keep the efficiency measures and Equipment in place and in use pursuant to the terms of this Agreement.
29. ADDITIONAL CONTRACTING REQUIREMENTS. All requirements, restrictions and obligations regarding the use of State or Trust funds and Incentive Awards are deemed incorporated in this Agreement to the extent necessary to ensure compliance with applicable law. Any alterations, additions, or deletions to the terms of the Agreement that are required by changes in law or regulation governing the use of State or Trust funds or Incentive Awards are automatically incorporated in the Agreement without the necessity of a formal written amendment. Recipient agrees to comply with all such requirements, restrictions and obligations and shall cause its contractors to comply with all such requirements, restrictions and obligations.
30. SURVIVAL. The terms, conditions and obligations in this Agreement which by their nature or intent continue beyond termination or expiration of this Agreement, including, without limitation, provisions regarding document retention, audit, site visits, reporting, use and performance of the funded equipment and measures, indemnity and remedies, shall survive the termination or expiration of this Agreement.

Rider C-1

**American Rescue Plan Act
 Coronavirus State and Local Fiscal Recovery Funds
 Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

Efficiency Maine Trust is the administrator of certain federal American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds (ARPA SLFRF) for this Program through the Maine Jobs & Recovery Plan (MJRP). The Incentive Award under this Agreement is funded through these federal ARPA SLFRF funds awarded to the State of Maine. As such, the Trust is required to include, and the Recipient is required to observe, certain contract provisions described in Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

To the extent applicable to the Project to be performed under the Agreement, Recipient shall comply with each of the following additional contract provisions, which provisions are expressly incorporated into and made part of the Agreement. References in the required federal contract provisions to “contractor” shall include the Recipient and references to the “contract” shall include the Agreement.

Equal Opportunity (41 CFR §§ 60-1.3 and 60-1.4(b) (For federally-assisted construction contracts for “construction work,” including 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. The term also includes 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.

Copeland "Anti-Kickback" Act (40 USC § 3145-3148; 29 CFR Part 3) (For prime construction contracts over \$2,000).

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)) (For contracts over \$100,000 that involve the employment of mechanics, laborers, and construction work).

Compliance with the Contract Work Hours and Safety Standards Act.

(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 (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. 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 watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Trust shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or 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, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Clean Air Act and Federal Water Pollution Control Act (42 U.S.C. §§ 7401-7671q) (For contracts over \$150,000).

Clean Air Act

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.

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 US Department of Treasury, the State of Maine Department of Administrative and Financial Services, 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 CSFRF/CLFRF.

Federal Water Pollution Control Act

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to 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 US Department of Treasury, the State of Maine Department of Administrative and Financial Services, 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 provided under the CSFRF/CLFRF.

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)) (For all contracts and subcontracts for \$25,000 or more).

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 if the contract amount exceeds \$25,000. 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).

The contractor must comply with 2 C.F.R. Part 180, subpart, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

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) (For contracts of more than \$100,000, and for subcontracts of more 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)) (For all contracts procurements over \$10,000 made by a state agency or an agency of a political subdivision of a state and its contractors).

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

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>

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Prohibition on Contracting for Covered Telecommunications Equipment or Services (Section 889(b)(1) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and 2 C.F.R. § 200.216) (For recipients and subrecipients of federal loan or grant funds).

Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) 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).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) 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.

Domestic Preferences for Procurements (2 C.F.R. Part 200, Appendix II, § L (citing 2 C.F.R. § 200.322) For all federally-funded contracts).

As appropriate, and 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.

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.”