Contract No. \_\_\_\_\_\_\_\_

**EFFICIENCY MAINE TRUST**

**MAINE ELECTRIC VEHICLE CHARGING**

**INCENTIVE AGREEMENT**

THIS AGREEMENT, effective as of \_\_\_\_\_ (the “Effective Date”), is made by and between Efficiency Maine Trust, an independent quasi-state agency of the State of Maine (“Trust”) and \_\_\_\_\_\_\_\_, a [corporation] [limited liability company] organized and existing under the laws of the State of \_\_\_\_\_\_\_, federal tax identification number \_\_\_\_\_\_\_\_, with a place of business located at \_\_\_\_\_\_\_\_\_\_\_\_\_(“Recipient”). The Trust and the Recipient are each a “Party” and collectively, the “Parties.”

WHEREAS, the Trust is the administrator of certain funds allotted to the Maine Department of Transportation (MaineDOT) from the National EV Infrastructure (NEVI) Formula program, which uses resources from the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL) to develop EV charging infrastructure pursuant to the Memorandum of Agreement, effective January 20, 2023 between the Trust, the MaineDOT, and the Governor’s Energy Office (the “NEVI Program Funds”);

WHEREAS, the Trust issued a Request for Proposals for Public DC Fast Chargers: Phase 10 (RFP EM-004-2026) (the “RFP”) seeking proposals for the development and operation of public, universal direct current “fast chargers” (“DCFCs” and/or “EV Chargers”) to serve electric vehicles (“EVs”) along certain highway segments;

WHEREAS, in response to the RFP, Recipient submitted a proposal dated \_\_\_\_\_\_\_\_\_\_, 2025, (“Recipient’s Response to RFP”) proposing to secure one or more suitable Host Sites, procure and install all required EV charging equipment, arrange for necessary utility and service connections, operate and maintain the equipment and charging stations, and provide customer support and reporting for a period of five (5) years as called for in the RFP (the “Project”);

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

WHEREAS, in consideration of the Incentive Award, and subject to the terms of this Agreement, Recipient has agreed to perform the Project as described in the Statement of Work, Specifications and Project Description (the “SOW”) attached as Rider A to this Agreement; and,

WHEREAS, Recipient acknowledges that the Project to be performed and materials to be provided under this Agreement will be paid by and through the Trust using NEVI Program Funds, and Recipient further acknowledges that its receipt of federal funds will require it to comply with certain federal laws and abide by certain contract provisions required in connection with the receipt of federal awards.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the Parties agree as follows.

1. **PROJECT PERFORMANCE**.

* 1. Recipient agrees to undertake, perform, provide and complete all work and services and provide all labor, equipment, materials, and deliverables as set forth in the SOW appended hereto as **Rider A** and as contained in Recipient’s Response to RFP to the extent not in conflict with the SOW (the “Project Services”). Any terms and conditions that may appear in acknowledgements, invoices, or other documents of Recipient have no force or effect with respect to this Agreement and will not serve to alter, amend, or modify this Agreement or the SOW unless the Parties have expressly agreed to such new or additional terms in writing.
	2. Recipient will perform the Project Services in accordance with the terms of this Agreement, including the General Terms and Conditions set forth in Rider C and the Contract Provisions for Non-Federal Entity Contracts under Federal Awards set forth in Rider C-1.

2. **TERM; TERMINATION**.

## 2.1 This Agreement shall commence on the Effective Date and shall continue for a period of five (5) years from the date the EV Chargers at the Host Site (as defined herein) are commissioned and placed into service, after which period this Agreement shall expire (the “Term”). If the SOW provides for the development of more than one Host Site, then the period of five (5) years shall commence after the last EV Charger among all of the site locations listed in Table 1 of Rider A is commissioned and placed into service. This Agreement may be terminated before the end of the Term in accordance with the provisions of this Agreement or may be renewed or extended by mutual agreement of the Parties in a written document signed by each Party.

## 2.2 Recipient may terminate this Agreement at any time prior to the deadline for satisfying Milestone 1 as set forth in Table 1 of Rider A and prior to the Trust disbursing any portion of the Capital Incentive to Recipient upon Recipient’s satisfaction of all conditions listed in Section 1 of Rider B, for any reason, by delivering to the Trust notice of Recipient’s intention to do so at least seven (7) business days prior to the date on which such termination will become effective. Upon termination of the Agreement pursuant to this Section 2.2, the Agreement shall be terminated and each party shall be relieved of any duties or obligations hereunder except for any duties or obligations as may survive pursuant to the terms of this Agreement.

3. **INCENTIVE AWARD AND FUNDING DISBURSEMENTS**.

3.1 In consideration of Recipient’s full performance of all Project Services over the Term in compliance with this Agreement, the Trust agrees to provide Recipient an Incentive Award comprising two parts. The first part is the Capital Incentive and the second part is the Demand Charge Incentive.

a. The amount of the **Capital Incentive** to be paid by the Trust, on a reimbursement basis, will be the lesser of (i) the EMT Grant Funds Requested in the Recipient’s Response to RFP in the amount of **$XXXXXX** or (ii) **80%** of the eligible costs (as defined in the RFP) (excluding utility demand charges) **up to $800,000 per site** actually incurred as documented in receipts and paid invoices, net of expected federal tax credits and any federal, state, or private grants.

b. The amount of the **Demand Charge Incentive** to be paid by the Trust, on a reimbursement basis, will be the lesser of (i) **80%** of actual electric utility demand charges incurred and paid for the DCFCs awarded at each Host Site, or (ii) **$200,000 per site**, net of any Service Credit applied by the Trust pursuant to the Service Level Agreement (SLA) prescribed in Rider B.

3.2 The Incentive Award shall be disbursed to Recipient by the Trust in accordance with the Payment Schedule 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, the submission of properly documented invoices and reimbursement requests, the provision of required information and reports, and the implementation and performance of the Project Services in accordance with the SOW.

3.3 Recipient shall expend Incentive Award funds only for approved Project purposes at or associated with the Host Site to which that portion of the Incentive Award is allocated and only in accordance with the terms and conditions of this Agreement. The Trust will not reimburse Recipient for any cost or expense that is contrary to this Agreement or applicable law.

3.4 By submitting an invoice or request for reimbursement, Recipient is representing that the services or costs identified in the invoice or request for reimbursement have been actually provided or incurred, are within the approved Project scope, and that such costs and expenses are proper and allowable under this Agreement. Failure to comply with these terms will constitute a breach of this Agreement that may result in recoupment of funds, debarment from further contracting with the Trust, and the exercise by the Trust of all rights and remedies available under contract and at law or equity. 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.

3.5 In the event NEVI Program Funds are suspended or otherwise unavailable from the federal government, the Trust reserves the right to suspend activity under this Agreement and suspend disbursements of the Incentive Award to Recipient. The Trust shall provide Recipient with written notice of the suspension and indicate the period of the suspension. At the conclusion of the suspension period, the Trust will rescind the suspension or terminate the Agreement unless otherwise agreed by both parties in writing. The Trust’s obligation to disburse the Incentive Award for eligible Project expenses incurred prior to the notice of suspension is as provided in Section 7.2(ii) of this Agreement.

4. **STANDARDS OF PERFORMANCE**.

4.1 Recipient shall, and shall require its agents and contractors to, perform all work and services in connection with the Project in a timely, professional, and workmanlike manner. Time is of the essence in the performance of the Project Services.

4.2 Recipient shall be responsible for ensuring that the Project achieves the requirements set forth in the RFP and SOW.

4.3 Recipient shall be responsible for furnishing or arranging for all qualified personnel, facilities, equipment, materials, and services as necessary for the performance of the Project Services and shall provide and maintain competent and adequate supervision of the Project to ensure that all Project Services conform to the RFP and SOW.

4.4 Recipient shall, and shall require that its contractors, abide by and conform to all applicable local, state, and federal laws, regulations, ordinances, and standards in the performance of the Project. Without limiting any other duty or obligation of Recipient, Recipient shall ensure that all Project installations, Charging Stations, and EV Chargers comply with local, state, and federal accessibility guidelines.

4.5 The Recipient shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to (i) personnel performing services on the Project and other persons who may be affected thereby; (ii) the materials and equipment to be incorporated into the Project, whether in storage on or off the site or under the care, custody or control of the Recipient or its contractors; and (iii) persons and property at the Host Site(s) or adjacent thereto in connection with the installation or operation of any EV Chargers or associated equipment during the Term. The Recipient shall give all reasonable and necessary notices bearing on safety of persons or property and, where necessary, shall erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards.

4.6 The Recipient shall promptly remedy damage and loss to persons and property caused in whole or in part by the Recipient or its agents or contractors.

4.7 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 in order to verify compliance.

4.8 Recipient shall abide by, and enforce as necessary, the terms of any Host Site Agreement so as to ensure uninterrupted performance under this Agreement during the entire Term.

4.9 Recipient is solely responsible for the design and implementation of the Project. Neither the Trust nor its consultants are responsible for the design, engineering, construction, or operation of the Project.

4.10 The Recipient warrants that materials and equipment furnished under this Agreement for performance and operation of the Project will be of good quality and new unless otherwise required or permitted by the Agreement, that the work and services will be free from material defects, and that the work and services will conform to the requirements of the Agreement. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and must be repaired or replaced at the Recipient’s expense.

5. **RECIPIENT ACKNOWLEDGEMENTS AND REPRESENTATIONS**.

5.1 Recipient acknowledges that funding of the Incentive Award is provided for specified improvements and operations in accordance with the Program. Incentive Award funds must be used in accordance with Program requirements. Recipient and its agents and contractors may be subject to audit in connection with the receipt and use of Incentive Award funds. Recipient agrees that, if it or one or more of its contractors fails to comply with a material requirement governing use of the Incentive Award funds, the Trust may withhold or suspend, in whole or in part, the disbursement of Incentive Award funds and recover all misspent funds following an audit.

5.2 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 officers, directors, trustees, partners, members, or managers as appropriate.

5.3 Recipient represents that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to complete the Project and perform its obligations under this Agreement. Recipient shall provide audited financial statements and such other financial information as the Trust may reasonably request to ensure Recipient’s ongoing financial solvency, viability, and ability to complete and implement the Project.

5.4 Recipient represents that it is eligible to receive the Incentive Award and that it is not suspended, debarred, or disqualified from receiving contracts, grants, awards or other appropriations in Maine or in any other state or by the federal government.

5.5 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.

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

5.7 Recipient represents that there has been no material adverse change in the business, operations, or financial condition of Recipient since the submission of the Recipient’s Response to RFP. Recipient shall notify the Trust of any material change in Recipient’s legal status, financial status, corporate status, 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 for the Term.

5.8 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 this Agreement.

5.9 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 designated Host Sites within the State of Maine and shall not be moved from a Host Site without the prior written approval of the Trust.

5.10 Recipient acknowledges that a material breach of any representation contained in this Agreement, 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 this Agreement and 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.

5.11 Recipient’s representations constitute continuing representations throughout the Term.

6. **BREACH**

6.1 The failure of Recipient to perform any of its obligations in accordance with this Agreement, in whole or in part, in a timely and satisfactory manner shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Recipient, or the appointment of a receiver or similar officer for Recipient or any of its property, which is not vacated or fully stayed within sixty (60) days after the institution of such proceeding, shall also constitute a breach.

6.2 In the event of a breach, the Trust shall give written notice of such breach to the Recipient. If the Recipient does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Trust may exercise any of the remedies as described in Section 7 of this Agreement. Notwithstanding any provision of this Agreement to the contrary, the Trust, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement, in whole or in part, or institute any other remedy in this Agreement where the breach is not reasonably capable of cure or in order to protect the public interest of the State.

7. **REMEDIES**

7.1 If Recipient is in breach of any provision of this Agreement and fails to cure such breach, the Trust, following the notice and cure period set forth in Section 6, shall have all of the rights and remedies set forth in this Section 7 in addition to all other rights and remedies set forth in this Agreement or at law or in equity.

i. Termination for Breach: In the event of Recipient’s uncured material breach, the Trust may terminate this Agreement or any part of this Agreement by written notice to Recipient. Recipient shall continue performance of this Agreement to the extent not terminated, if any.

 a. Obligations: Recipient acknowledges that the Incentive Award is provided by the Trust on the condition that the Recipient fully perform its obligations under this Agreement for the entire Term. Recipient acknowledges that the Incentive Award funds are subject to reimbursement to the Trust in the event of Recipient’s breach of this Agreement.

 b. Damages and Withholding: Notwithstanding any other remedial action by the Trust, Recipient shall remain liable to the Trust for any awarded damages sustained by the Trust in connection with any uncured breach by Recipient, and the Trust may withhold payment to Recipient for the purpose of mitigating the Trust’s damages until such time as the exact amount of awarded damages due to the Trust from Recipient is determined. The Trust may withhold any amount that may be due Recipient as reasonably necessary to protect the Trust against loss including.

 c. Enforcement of Security Interest: In the event of uncured breach by Recipient, the Trust shall be entitled to exercise any rights to enforce any bonds and/or letters of credit, or other security interests, pledges, or guaranties it may have to secure Recipient’s performance and payment obligations under this Agreement.

ii. Remedies Not Involving Termination: The Trust, in its discretion, may exercise one or more of the following additional remedies, including during the pendency of any cure period:

 a. Suspend Performance: The Trust may suspend Recipient’s performance with respect to all or any portion of the Project Services pending Recipient’s performance of corrective action as may be required by the Trust. Recipient shall promptly cease performing all Project Services upon receipt of a notice of suspension. The Trust shall not be liable for costs incurred by Recipient after delivery of a notice of suspension.

 b. Withhold Payment: The Trust may withhold payment to Recipient pending correction of Project Services that fail to comply with the requirements of this Agreement.

 c. Deny Payment: The Trust may deny payment for Project Services not performed in accordance with the requirements of this Agreement or not authorized under this Agreement.

 d. Removal: The Trust may demand prompt removal of any of Recipient’s employees, agents, or contractors from the Project whom the Trust deems unacceptable or whose continued relation to this Agreement is deemed by the Trust to be contrary to the public interest.

 e. Nothing herein is intended to limit the Trust’s right to assess and recover Service Credits as provided in Rider B.

7.2

1. Reservation of Rights and Remedies. 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 that this Agreement is terminated as a result of the Recipient’s breach or default, the 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. 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.
2. (ii) Suspension or Termination due to Unavailable Funding. If the NEVI Program Funds are reallocated by the federal government 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. Beyond this obligation, the Trust will not be liable for any damages or other costs in the event of a suspension or termination due to unavailable funding. The Trust makes no commitment to pay the Incentive Award from other funds of the Trust, another agency’s funds, or state funds for any reason and the Recipient expressly waives any right to demand or receive payment from any such non-designated funds.

7.3 Surety Bond(s) or Letter(s) of Credit

i. Recipient shall provide, upon execution of this Agreement, signed, valid, and enforceable surety bonds or letters of credit for each Host Site securing Recipient’s performance of its obligations under this Agreement, including the obligation to reimburse the Incentive Award in the event of breach, which bonds or standby letters of credit shall remain in effect until the end of the Term of this Agreement. Such surety bonds or letters of credit shall comply in all respects with the terms of this Agreement and shall be otherwise acceptable in form and substance to the Trust. The amount of the surety bonds or letters of credit shall be equal to 100% of the Capital Incentive. The execution and provision to the Trust of the required instruments shall be a condition precedent to the Trust’s obligations under this Agreement.

ii. Any surety bonds obtained in satisfaction of this Section 7.3 shall be issued by a company organized and operating in the United States, licensed or approved to do business in the State of Maine by the State of Maine Department of Professional and Financial Regulation, Bureau of Insurance, and listed on the latest Federal Department of the Treasury listing for “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.” Any letters of credit obtained in satisfaction of this Section 7.3 shall be issued by a federally insured banking institution organized and operating in the United States, licensed or approved to do business in the State of Maine by the State of Maine Department of Professional and Financial Regulation, and currently operating a branch located within the State of Maine.

iii. The surety bonds or letters of credit shall be in the full amount of the Capital Incentive and made payable to “Efficiency Maine Trust.” There shall be separate surety bonds or letters of credit for each Host Site to which a portion of the Incentive Award is awarded pursuant to this Agreement.

iv. Any surety bond or letter of credit obtained in satisfaction of this Section 7.3 shall contain a provision substantially similar to the following regarding claims related to any obligations covered by these surety bonds or letters of credit: (i) the issuing entity shall provide, within sixty (60) days of receipt of written notice thereof, full payment of the entire claim or written notice of all bases upon which it is denying or contesting payment, and (ii) failure of the issuing entity to provide such notice within the sixty (60) day period constitutes the issuing entity’s waiver of any right to deny or contest payment and the entity’s acknowledgment that the claim is valid and undisputed.

v. If the issuing entity becomes financially insolvent, ceases to be licensed or approved to do business in the State of Maine, or stops operating in the United States, the Recipient shall file new surety bonds or letters of credit complying with this Section within ten (10) days of the date the Recipient is notified or becomes aware of such change.

vi. The amount of each such surety bond or letter of credit obtained in satisfaction of this Section 7.3 may “step down” in value during the Term of the Agreement. At the second anniversary of commissioning all EV Chargers at a Host Site, the amount of the surety bonds or letters of credit obtained in satisfaction of this Section 7.3 for that Host Site may be reduced to 80% of the Capital Incentive allocated to that Host Site. At the third anniversary of commissioning all EV Chargers at a Host Site, the amount of the surety bonds or letters of credit obtained in satisfaction of this Section 7.3 for that Host Site may be reduced to 70%. At the fourth anniversary of commissioning all EV Chargers at a Host Site, the amount of the surety bonds or letters of credit obtained in satisfaction of this Section 7.3 for that Host Site may be reduced to 60% of the Capital Incentive.

8. **MISCELLANEOUS PROVISIONS**.

8.1 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 the State of Maine and Recipient hereby agrees to the exclusive jurisdiction of the state and federal courts located in the State of Maine for the resolution of disputes relating to this Agreement.

8.2 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 greatest extent possible. The invalidity or unenforceability of any particular provision or part 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.

8.3 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 therein or in a written amendment 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 in 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, at law, or in equity.

8.4 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

 Rider C – General Terms and Conditions

 Rider C-1 – Federal EV Funds Contract Requirements

Recipient’s Response to the RFP is expressly incorporated into and made part of this Agreement.

In the event of a conflict between or among the provisions of the Agreement documents, the conflict shall be resolved by giving precedence to the documents in the order listed below, with 1 having the highest precedence and 7 the lowest.

 1. Efficiency Maine Trust Maine Electric Vehicle Charging Incentive Agreement;

 2. Rider A – Statement of Work;

3. Rider C-1 -- Federal EV Funds Contract Requirements

 4. Rider C – General Terms and Conditions

 5. Rider B – Payment Schedule;

6. Efficiency Maine Trust Request for Proposals for Public DC Fast Chargers: Phase 10 (RFP EM-004-2026);

7. Recipient’s Response to RFP, dated \_\_\_\_\_\_\_\_\_\_\_\_, 2025.

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

 Name: Lily McVetty

 Title: Program Manager

 Address: 168 Capitol Street, Suite 1

 Augusta, Maine 04330-6856

 Telephone: 866-376-2463

 E-mail: lily.mcvetty@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 Term. 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.

8.6 Recipient address for notices under this Agreement:

 Name: \_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_

 Organization \_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_

 Telephone: \_\_\_\_\_\_\_\_\_\_\_

 E-mail: \_\_\_\_\_\_\_\_\_\_\_

8.7 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.

8.8 This Agreement may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart signature page of this Agreement, by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement.

This Agreement shall not be binding on the Trust until executed and delivered by the Executive Director of the Trust.

*{Signature Page Follows}*

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

**EFFICIENCY MAINE TRUST**

By:

 Michael D. Stoddard, Executive Director

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**XXXXXXXX**

 By:

 XXXXXX, XXXXXXXXXX

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attachments: Rider A (Statement of Work); Rider B (Payment Schedule); Rider C (General Terms and Conditions); Rider C-1 (Federal EV Funds Contract Requirements)

**RIDER A**

 STATEMENT OF WORK, SPECIFICATIONS AND PROJECT DESCRIPTION

The Recipient shall be responsible to fully execute all work and services described in this Statement of Work (SOW) and Recipient’s Response to RFP (to the extent not in conflict with this SOW), it being the intent of the Parties that this SOW be interpreted to include everything necessary for the proper execution and performance of the Project over the Term. The Project Services include all work and services contained in this SOW and Recipient’s Response to RFP (to the extent not in conflict with this SOW) or reasonably inferable therefrom as necessary to produce the results intended by the RFP.

Definitions:

* Charging Network: A collection of Chargers located on one or more property(ies) that are connected via digital communications to manage the facilitation of payment, the facilitation of electrical charging, and any related data requests.
* Charging Network Provider. The entity that operates the digital communications network that remotely manages the EV Chargers. Charging Network Providers may also serve as Charging Station Operators and/or manufacture EV Chargers.
* Charging Port: The system within an EV Charger that charges one (1) EV. A Charging Port may have multiple Connectors, but it can provide power to charge only one EV through one Connector at a time.
* Charging Station: Refers to the area in the immediate vicinity of a group of EV Chargers and includes the EV Chargers, supporting equipment, parking areas adjacent to the EV Chargers, and lanes for vehicle ingress and egress. A Charging Station could comprise only part of the Host Site on which it is located.
* Charging Station Operator: The entity that operates and maintains the Chargers and supporting equipment and facilities at one or more Charging Stations. In some cases, the Charging Station Operator and the Charging Network Provider are the same entity. In other cases, the Charging Station Operator may be the property owner or a third party.
* Combined Charging System (CCS): A standard Connector interface that allows DCFC EV Chargers to connect to, communicate with, and charge EVs.
* Connector: Refers to the device that attaches an EV to a Charging Port in order to transfer electricity.
* Contactless Payment Methods: A secure method for consumers to purchase services using a debit, credit, smartcard, or another payment device by using radio frequency identification (RFID) technology and near-field communication.
* Direct Current Fast Charger (DCFC): A Charger that uses a 3-phase, 480-volt alternating-current (AC) electrical circuit to enable rapid charging through delivering direct-current (DC) electricity directly to the EV. Sometimes also referred to as a “Level 3 charger”.
* Distributed Energy Resource: Small, modular, energy generation and storage technologies that provide electric capacity or energy where it is needed.
* Downtime: A period of time when a Charging Port’s hardware or software are not online and available for use, or the Charging Port does not successfully dispense electricity as expected. Downtime does not include outages for reasons outside the Charging Station Operator’s control, such as electric utility service interruptions, internet or cellular service provider interruptions and outages caused by the vehicles, provided that the Charging Station Operator can demonstrate that the Charging Port would otherwise be operational.
* Electric Vehicle (EV): A motor vehicle that is either partially or fully powered on electric power received from an external source. For the purposes of this Agreement, this definition does not include golf carts, electric bicycles, or other micromobility devices.
* EV Charger / Charger: A device with one or more Charging Ports and Connectors for charging EVs.
* Host Site: A property at which Recipient obtains the right and authority to install, operate, and maintain Charging Stations during the entire Term of this Agreement.
* Host Site Agreement: Refers to the enforceable written agreement, whether styled as a lease or occupancy agreement, under which the Recipient obtains the right and authority to install, operate, and maintain Charging Stations at a Host Site during the entire Term of this Agreement.
* Open Charge Point Interface (OCPI): An open-source communication protocol that governs the communication among multiple Charging Networks, other communication networks, and software applications to provide information and services for EV drivers.
* Open Charge Point Protocol (OCPP): An open-source communication protocol that governs the communication between EV Chargers and the Charging Networks that remotely manage the EV Chargers.
* Plug and Charge: A method of initiating charging, whereby an EV charging customer plugs a Connector into their vehicle and their identity is authenticated through digital certificates defined by ISO-15118, a charging session initiates, and a payment is transacted automatically, without any other customer actions required at the point of use.
* Power Sharing: Means dynamically limiting the charging power output of individual charging ports at the same charging station to ensure that the sum total power output to all EVs concurrently charging remains below a maximum power threshold. This is also called automated load management.
* Secure Payment Method: Means a type of payment processing that ensures a user’s financial and personal information is protected from fraud and unauthorized access.
* Smart Charge Management: means controlling the amount of power dispensed by chargers to EVs to meet customers’ charging needs while also responding to external power demand or pricing signals to provide loan management, resilience, or other benefits to the electric grid.
* Uptime: Refers to a period of time when a Charging Port’s hardware and software are both online and available for use, or in use, and the Charging Port successfully dispenses electricity as expected.

The Project requires the complete installation of Charging Stations and EV Chargers, including DCFC EV Chargers, if applicable, no later than the dates noted in the Deployment Table (below) at the Host Site location(s) specified below. These commissioning deadlines cannot and will not be extended. The Recipient is fully responsible to provide or select appropriate Host Site(s) and, as necessary, to enter into enforceable written Host Site Agreements giving Recipient all necessary right and authority to install, operate, and maintain the Charging Stations at the Host Site(s) during the entire Term of this Agreement. The Recipient is required to provide or cause to be provided and shall pay for all design services, labor, materials, equipment, tools, machinery, utilities, transportation, facilities, services, hardware, software, EV Chargers, infrastructure, communications and network operations, and other materials and things necessary for proper installation, operation, maintenance, and support of the Charging Stations and full and proper execution and completion of the Project throughout the entire five-year Term. The Recipient, or its dealers or agents for whose actions Recipient shall be responsible, is fully responsible to operate and maintain the Charging Stations at the Host Site locations for the entire five-year Term of this Agreement in accordance with all required performance standards.

Host Site Location(s):

XXXX

Table 1 - Deployment

|  |  |  |
| --- | --- | --- |
| **Site Location** | **Deadline for Satisfying Milestone 1 Conditions** | **Deadline for Commissioning** |
| **1** | XXX | XX | XX |
| **2** | *(Add additional sites as needed, per awarded proposal)* | XX | *XX* |

Final Host Site selection is subject to approval by the Trust. If a written Host Site Agreement is required because the Recipient otherwise lacks the right and authority to install, operate, and maintain the Charging Stations at the Host Site(s) during the entire Term of the Agreement, then the Recipient shall cause such Host Site Agreement to be executed no later than \_\_\_\_\_\_\_\_\_\_\_\_. If the Host Site Agreement is not submitted to and reviewed by the Trust as part of the Recipient’s Response to RFP, Recipient shall provide the Trust with copies of each Host Site Agreement for review and approval prior to execution by Recipient and the Host Site owner, such approval not to be unreasonably withheld. In such cases, Recipient also shall provide the Trust with an executed Host Site Agreement with each Host Site owner before commencing any work or services at such Host Site. Recipient shall not add, remove, or otherwise change any Host Site location without prior written notice to and approval from the Trust.

SOW Requirements:

The Project shall conform to the National Electric Vehicle Infrastructure Standards and Requirements set forth in 23 CFR Part 680 (the “NEVI Standards”). Without limiting any additional work or services specified in Recipient’s Response to RFP, Recipient shall perform and provide the following for the EV Chargers awarded pursuant to the RFP and Recipient’s Response to RFP:

### Install EV Charging Sites and Chargers.

### Installation: The Recipient is responsible for achieving completed installations at each Host Site, to include:

* 1. Obtain all applicable local, state, and federal permits required for installation and operation of the EV chargers;
	2. Ensure that the workforce installing, maintaining, and operating chargers meets the following standards as required by Section 680.106(j) of the NEVI Standards:
		1. Except as provided in paragraph (b)(2) of this section, all electricians installing, operating, or maintaining EV Chargers must meet one of the following requirements:
			1. Certification from the Electric Vehicle Infrastructure Training Program (EVITP).
			2. Graduation or a continuing education certificate from a registered apprenticeship program for electricians that includes charger-specific training and is developed as a part of a national guideline standard approved by the Department of Labor in consultation with the Department of Transportation.
		2. For projects requiring more than one electrician, at least one electrician must meet the requirements above, and at least one electrician must be enrolled in an electrical registered apprenticeship program.
		3. All other onsite, non-electrical workers directly involved in the installation, operation, and maintenance of chargers must have graduated from a registered apprenticeship program or have appropriate licenses, certifications, and training as required by the State.
	3. Ensure that all installation work as it pertains to site preparation, curbing, striping, signage, charging equipment, billing and networking systems, and electrical interconnections is installed:
		1. consistent with the manufacturers’ specifications;
		2. consistent with the project design and specifications proposed in the bid;
		3. in accordance with all applicable local, state and federal zoning and code requirements; and
		4. is working properly;
	4. Coordinate the installation activities with the equipment manufacturer, Host Site owner, networking service, electric utility, and any sub-contractors needed to complete the work.
1. Charging Equipment Requirements –

The charging equipment at each Host Site that is subject to a financial incentive through this Agreement must:

1. Be new, and unused (not refurbished or remanufactured);
2. Meet the following minimum specifications:
	* 1. Must have not less than four (4) and not more than eight (8) network-connected DCFC charging ports per site and be capable of simultaneously charging at least four EVs;
		2. All charging connectors must meet applicable industry standards. Each DCFC charging port must be capable of charging any CCS-compliant vehicle and each DCFC charging port must have at least one permanently attached CCS Type 1 connector. (Per NEVI Q&A, 23 CFR 680.106(c), permanently attached non-proprietary connectors (such as NACS) may be provided on each Charging Port so long as the requirements of 23 CFR 680 are met, including that each DCFC Charging Port has at least one permanently attached Combined Charging System (CCS) Type 1 connector capable of charging a CCS-compliant vehicle).
		3. DCFC charging ports must support output voltages between 250 volts DC and 920 volts DC. Chargers must have a continuous power delivery rating of at least 150 kilowatt (kW) and supply power according to an EV's power delivery request up to at least 150kW, simultaneously from each charging port at a charging station. DCFCs may conduct power sharing so long as each charging port continues to meet an EV’s request for power up to 150 kW.
3. Include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full operation;
4. Be factory calibrated (as applicable) prior to, or during installation, in accordance with the Original Equipment Manufacturer (OEM) standards;
5. Include all standard manufacturer accessories;
6. Use the most current software version available as of the time it is installed;
7. Have the ability to stop the flow of power when not in use; and should have over-current protection to prevent vehicles from drawing too much power;
8. Be certified by the Underwriters Laboratories, Inc. (UL), or another Occupational Safety and Health Administration Nationally Recognized Testing Laboratory to the appropriate Underwriters Laboratories (UL) standards for EV charging system equipment;
9. Include physical and cybersecurity security features to ensure charging station operations protect consumer data and protect against the risk of harm to, or disruption of, charging infrastructure and the grid;
10. Be able to withstand extreme weather conditions, including temperature extremes, flooding, ice, heavy snow or rain, and high winds and is protected from malfunctions due to condensation;
11. Include barriers or other configurations to prevent damage from equipment used for snow removal;
12. Include screen displays that are user friendly and easy to operate (display should be LCD, LED or equivalent, or better and should be readable in direct sunlight and at night);
13. Be tamper-proof and deter vandalism;
14. Incorporate a cord management system or method to minimize the potential for cable entanglement, user injury, or connector damage from lying on the ground, and comply with National Electrical Code (NEC) Article 625 as it applies to cord management systems; and
15. Comply with all NEC and Federal Communications Commission regulations for safety and operation requirements.
16. Interoperability of Electric Vehicle Charging Infrastructure –
	1. Charger-to-EV Communication. Chargers must conform to ISO 15118-3 and must have hardware capable of implementing both ISO 15118-2 and ISO 15118-20. Charger software must conform to ISO 15118-2 and be capable of Plug and Charge. Conformance testing for charger software and hardware should follow ISO 15118-4 and ISO 15118-5, respectively.
	2. Charger-to-Charger-Network Communication. Chargers must conform to Open Charge Point Protocol (OCPP) 1.6J or higher. Chargers must conform to OCPP 2.0.1.
	3. Charging-Network-to-Charging-Network Communication. Charging networks must be capable of communicating with other charging networks in accordance with Open Charge Point Interface (OCPI) 2.2.1.
	4. Network Switching Capability. Chargers must be designed to securely switch charging network providers without any changes to hardware.
17. Charging Network Connectivity of Electric Vehicle Charging Infrastructure –
18. Charger-to-Charger-Network Communication.
	* 1. Chargers must communicate with a charging network via a secure communication method. Chargers must conform to Open Charge Point Protocol (OCPP) 2.0.1.

2. Chargers must have the ability to receive and implement secure, remote software updates and conduct real-time protocol translation, encryption and decryption, authentication, and authorization in their communication with charging networks.

3. Charging networks must perform and chargers must support remote charger monitoring, diagnostics, control, and smart charge management.

4. Chargers and charging networks must securely measure, communicate, store, and report energy and power dispensed, real-time charging-port status, real-time price to the customer, and historical charging-port uptime.

1. Interoperability. See Section 680.108 of the NEVI Standards for interoperability requirements.
2. Charging-Network-to-Charging-Network Communication. A charging network must be capable of communicating with other charging networks to enable an EV driver to use a single method of identification to charge at Charging Stations that are a part of multiple charging networks. Charging networks must be capable of communicating with other charging networks in accordance with Open Charge Point Interface (OCPI) 2.2.1.
3. Charging-Network-to-Grid Communication. Charging networks must be capable of secure communication with electric utilities, other energy providers, or local energy management systems.
4. Disrupted Network Connectivity. Chargers must remain functional if communication with the charging network is temporarily disrupted, such that they initiate and complete charging sessions, providing the minimum required power level defined in Section 680.106(d) of the NEVI Standards.
5. Data Capture Requirements –

Each EV charger must have network communications that, at a minimum, provide the following information:

1. Date and time of each charging session (start and stop time);
2. Total kWh dispensed and maximum kW demand for each session;
3. Total dollar amount charged to the user for each session;
4. Charger status and health in real time;
5. Malfunction or operating error;
6. Full site level demand; and
7. For projects that employ battery energy storage systems (BESS), BESS state of charge before and after each vehicle charging session and time to charge and discharge.

This information will be reported quarterly to the Trust as part of Recipient’s reporting obligation further specified below for the duration of the Term.

1. Payment Methods –

Each charger must:

* 1. Provide for secure payment methods, accessible to persons with disabilities, which at a minimum shall include a contactless payment method that accepts major debit and credit cards, and either an automated toll-free phone number or a short message/messaging system (SMS) that provides the EV charging customer with the option to initiate a charging session and submit payment;
	2. Not require a membership for use;
	3. Not delay, limit, or curtail power flow to vehicles on the basis of payment method or membership; and
	4. Provide access for users that are limited English proficient and accessibility for people with disabilities. Automated toll-free phone numbers and SMS payment options must clearly identify payment access for these populations.
1. Communication of Price –
	1. The price for charging must be displayed on the charging unit prior to initiating a charging transaction and be based on the price for electricity to charge in $/kWh.
	2. The price for charging displayed and communicated via the charging network must be the real-time price (i.e., price at that moment in time). The price that is offered at the start of the session cannot be changed during the session.
	3. Price structure including any other fees in addition to the price for electricity to charge must be clearly displayed and explained.
	4. The chargers must have a point-of-sale and supporting network that is compatible with other public networks in Maine and, to the greatest extent practicable, employs roaming agreements providing compatibility with systems most commonly used in adjacent jurisdictions; and
	5. For the first five years of the contract, the chargers must charge a rate or fee to the customer for each charging event equal to the starting rate proposed in the Recipient’s bid, unless the Recipient provides written notification to Efficiency Maine of an increase to the rate or fee.
2. Customer Data Privacy –
	1. Charging station operators must collect, process, and retain only that personal information strictly necessary to provide the charging service to a consumer, including information to complete the charging transaction and to provide the location of charging stations to the consumer. Chargers and charging networks should be compliant with appropriate Payment Card Industry Data Security Standards (PCI DSS) for the processing, transmission, and storage of cardholder data. Charging Station Operators must also take reasonable measures to safeguard consumer data.
3. Traffic Control Devices or On-Premises Signs Acquired, Installed, or Operated –
4. General Requirements: Signage must comply with all applicable local, state, and/or federal laws, ordinances, regulations, and standards; and
5. On-Site: Signage and other traffic control devices for each Host Site must clearly identify to an approaching driver from any ingress, that the Host Site has an EV Charger(s) and the location(s) of the EV Charger(s). On-site signage should indicate that parking spaces associated with the chargers are reserved for electric vehicles only.
6. The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) found at 23 CFR part 655 and the Highway Beautification regulation at 23 CFR part 750 address requirements about traffic control devices and on-premise signs.
	* 1. Manual on Uniform Traffic Control Devices for Streets and Highways. All traffic control devices must comply with 23 CFR Part 655.
		2. On-Premises Signs. On-property or on-premise advertising signs must comply with 23 CFR Part 750.
7. Requirements for Accessibility and Availability –

The chargers awarded through this Agreement must:

1. Be available to the public 24 hours per day, seven (7) days a week, year-round;
2. Be accessible from a paved or hardscaped parking space that is clearly marked to designate the spaces as reserved for EV Charger parking, where the number of parking spaces reserved for EVs, within reach of the DCFC, is equal to the maximum number of EVs that can be charged simultaneously from chargers awarded pursuant to the RFP;
3. Have dusk-to-dawn area lighting;
4. Be accessible to persons with disabilities, which will be satisfied if at least one of the parking spaces meets ADA requirements and is accessible according to U.S. Access Board Design Recommendations for Accessible Electric Vehicle Charging Stations (it will not be necessary for the ADA spaces to be ADA reserved);[[1]](#footnote-1) and
5. Provide appropriate safety instructions for EV drivers regarding the proper use of the charging equipment.
6. Third-Party Data Sharing –

As required by the NEVI Standards § 680.116, Recipient must ensure that the following data fields are made available, free of charge, to third-party software developers, via application programming interface:

1. Unique charging station name or identifier;
2. Address (street address, city, State, and zip code) of the property where the charging station is located;
3. Geographic coordinates in decimal degrees of exact charging station location;
4. Charging station operator name;
5. Charging network provider name;
6. Charging station status (operational, under construction, planned, or decommissioned);
7. Charging station access information:
8. Charging station access type (public or limited to commercial vehicles);
9. Charging station access days/times (hours of operation for the charging station);
10. Charging port information:
11. Number of charging ports;
12. Unique port identifier;
13. Connector types available by port;
14. Charging level by port (DCFC, AC Level 2, etc.);
15. Power delivery rating in kilowatts by port;
16. Accessibility by vehicle with trailer (pull-through stall) by port (yes/no);
17. Real-time status by port in terms defined by Open Charge Point Interface 2.2.1;
18. Pricing and payment information:
19. Pricing structure;
20. Real-time price to charge at each charging port, in terms defined by Open Charge Point Interface 2.2.1; and
21. Payment methods accepted at charging station.

**B. Provide Ongoing Operation and Maintenance and Customer Service Support**

1. Operation and Maintenance –

The Recipient must:

* 1. Operate and maintain each EV Charger for at least five (5) years from the date the EV charger developed under this RFP becomes fully operational, in accordance with the terms of the contract resulting from this RFP;
	2. Be responsible for ensuring the maintenance of the chargers including cables, ancillary equipment, and any awnings, canopies, shelters, and information display kiosks for signage associated with the charger. “Maintain” as used in this RFP shall mean “to provide all needed repairs or desired and approved alteration, as well as regular maintenance needed to ensure optimal performance and minimize downtime. Equipment shall be kept safe and presentable;”
	3. Minimum Uptime. Recipients must ensure that each charging port has an average annual uptime of greater than 97%.
		+ 1. A charging port is considered “up” when its hardware and software are both online and available for use, or in use, and the charging port successfully dispenses electricity in accordance with requirements for minimum power level (see Section 680.106(d) of the NEVI Standards).
			2. Charging port uptime must be calculated on a monthly basis for the previous 12 months using the methodology described in Section 680.116(b) of the NEVI Standards.
	4. In addition to the minimum uptime requirement defined above, the Recipient must ensure that downtime for each individual charging port does not exceed 72 consecutive hours. It is the Recipient’s responsibility to ensure the 97% uptime requirement is met for each individual charging port and that interruptions are remedied within 72 hours. For any interruption in service to any DCFC that has lasted or is expected to last more than four (4) hours:
1. Notify appropriate information sources including, but not limited to, website and application hosts, as appropriate so drivers are aware of the interruption; and
2. Inform the Trust via email within one business day to give the Trust notice of the event and when it started and to explain the cause of the interruption and the plan for and estimated time needed to restore service;
	1. Provide for snow removal plan to ensure access during and after inclement weather;
	2. List the EV chargers on PlugShare.com and the Alternative Fuels Data Center Electric Vehicle Charging Station Locator: <https://afdc.energy.gov/fuels/electricity_locations.html#/find/nearest?fuel=ELEC>
	3. **Not**, during the term of the contract, move an EV charger to another host site location or sell or permanently take an EV charger out of service at a given Host Site for any reason, without **prior written approval** from the Trust.
3. Customer Support Services –
4. Recipient must ensure that EV charging customers have mechanisms to report outages, malfunctions, and other issues with charging infrastructure. Charging station operators must enable access to accessible platforms that provide multilingual services. Recipient must comply with the American with Disabilities Act of 1990 requirements and multilingual access when creating reporting mechanisms.
5. Be available 24 hours a day, seven (7) days per week via a toll-free telephone number posted on or near the EV chargers, that is clearly visible to the customer.
6. Provide customer support for the duration of the contract, with the ability to provide customer support/or extend after the completion of the contract.
7. Resolve customer issues over the telephone.

**C. Manage Host Site Relationship; Adhere to Host Site Agreement**

The Recipient must have sufficient property rights to install, operate, and maintain the EV charger(s) at the selected site(s) for the full five-year term. The Recipient shall be solely responsible to secure and maintain the designated Host Sites as necessary for the performance and operation of the Project for the entire Term. If the Recipient is not the owner of the Host Site property, then the Recipient will be required to secure a written, enforceable lease or occupancy agreement (a “Host Site Agreement”) with the property owner. The Recipient’s Host Site Agreement must, at a minimum, include:

1. All necessary rights in the Recipient to install, operate, and maintain the EV Chargers at the site for at least five (5) years;
2. Be executed by individuals who have the legal power and authority to enter into a Host Site Agreement; and identify the name, title and capacity on behalf of the entity represented.

All final site location decisions must be approved in writing by the Trust.

Except in cases where the operator of the EV chargers and the property owner are one and the same party, the Host Site Agreement(s) must be executed by no later than May 1, 2026 or the grant funds may be forfeited.

**D. Reporting**

Without limiting any additional data collection and reporting as specified in this Agreement and Recipient’s Response to RFP, Recipient shall provide the following reporting to the Trust:

1. Construction updates. For the period from the effective date of this Agreement through the date of final commissioning of each EV Charging Station at each Host Site, Recipient will provide a **monthly construction update** by Host Site location to include status of: Host Site agreements, permits, utility assessment and interconnection, site construction progress, charger installation, and station commissioning.
2. Ad hoc operations reports. For the period from the commissioning of each EV Charging Station through the entire Term of this Agreement, Recipient will provide the Trust access to its network operating system. The network operating system will enable the Trust to generate ad hoc, operational reports to include plug time, day and time of charge event, length of time charging, length of time connected, kWh provided per charging event and aggregate, total dollar amount charged to each user, and number of unique users for each EV Charging Station.
3. Periodic status reports. For the period from the commissioning of each EV Charging Station through the entire Term of this Agreement, Recipient will, upon request, provide quarterly **status** **reports** to include:
4. **Maintenance reports** detailing Charging Station and EV Charger status, maintenance dispatches, service and repair response time, station Uptime, and any other notable events.
5. **Customer service reports** by Charging Stationdetailing the type and number of customer service issues received. Reports should include a description of any unresolved issues and a plan to resolve them.
6. Operational reports - Recipient must collect and submit the following data to the Joint Office of Energy and Transportation’s Electric Vehicle Charging Analytics and Reporting Tool (EV-ChART)[[2]](#footnote-2) at the frequencies listed below. These data capture and reporting requirements are based on those in the NEVI Standards at § 680.112 and § 680.116(c).
	1. **Quarterly Data submittal.** Recipients must submit the following data on a quarterly basis for each individual port:
		1. Charging station identifier that the following data can be associated with. This must be the same charging station name or identifier used to identify the charging station in data made available to third-parties in § 680.116(c)(1) of the NEVI Standards (see Third Party Data Sharing below);
		2. Charging port identifier. This must be the same charging port identifier used to identify the charging port in data made available to third-parties in § 680.116(c)(8)(ii);
		3. Charging session start time, end time, and any error codes associated with an unsuccessful charging session by port;
		4. Energy (kWh) dispensed to the EV per charging session by port;
		5. Peak session power (kW) by port;
		6. Payment method associated with each charging session;
		7. Charging station port uptime, T\_outage, and T\_excluded calculated in accordance with the equation in § 680.116(b) of the NEVI Standards for each of the previous 3 months;
		8. Duration (minutes) of each outage

In addition to the above listed data, Recipient should report to the Trust quarterly:

1. The amount billed to each customer for each transaction; and
2. For projects that employ battery energy storage systems (BESS), BESS state of charge before and after each vehicle charging session and time to charge and discharge.
	1. **Annual Data Submittal.** Recipient must submit the following data on an annual basis, on or before March 1:
3. Maintenance and repair cost per charging station for the previous year.
4. For private entities involved in the operation and maintenance of chargers, identification of and participation in any State or local business opportunity certification programs including but not limited to minority-owned businesses, Veteran-owned businesses, woman-owned businesses, and businesses owned by economically disadvantaged individuals.
	1. **One-time Data Submittal.** Recipient must submit the following data once for each charging station, on or before March 1 of each year:
		1. The name and address of the private entity(ies) involved in the operation and maintenance of chargers.
		2. Distributed energy resource installed capacity, in kW or kWh as appropriate, of asset by type (e.g., stationary battery, solar, etc.) per charging station; and
		3. Charging station real property acquisition cost, charging equipment acquisition and installation cost, and distributed energy resource acquisition and installation cost;
		4. Aggregate grid connection and upgrade costs paid to the electric utility as part of the project, separated into:
			* 1. Total distribution and system costs, such as extensions to overhead/underground lines, and upgrades from single-phase to three-phase lines; and
				2. Total service costs, such as the cost of including poles, transformers, meters, and on-service connection equipment.
5. **Notable Downtime issues** shall be reported to the Trust within one business day. In addition, Recipient shall provide a system availability and response time report within three business days upon request by the Trust.
6. Recipient shall provide such other reporting and shall provide such other information relevant to the EV Chargers, Charging Stations, and Host Sites as the Trust may reasonably request from time to time.

**F. Project Kickoff Meeting**

The Recipient, in consultation with the Trust, will organize and facilitate a project kickoff meeting. The purpose of the meeting is for the Trust and the Recipient to establish a common understanding of the Project Services and deliverables, the overall Project schedule, and expectations.

**RIDER B**

PAYMENT SCHEDULE AND PROJECT MILESTONES

Contract No. \_\_\_\_\_\_\_\_\_

**Capital Incentive** Up to $ \_\_\_\_\_\_\_\_\_

 This amount does not include the Demand Charge Incentive

**Demand Charge Incentive** Up to $ \_\_\_\_\_\_\_\_\_

 This amount does not include the Capital Incentive

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

**1. Milestone 1: Secure Host Site Agreement, site development and utility upgrades.** Reimbursement of 80% of eligible costs (as defined in the RFP) incurred in accomplishing the following at or in connection with a Host Site, up to 20% of the total Capital Incentive allocated to that Host Site, will be **disbursed, on a per site basis,** following documentation, which shall include copies of paid invoices, **of all of** the following deliverables for a Host Site:

* Host Site Agreement executed
* Surety bond(s) or letter(s) of credit pursuant to and in compliance with the provisions of Section 7.3 of the Agreement
* Final site drawings and installation plans
* Utility interconnection fees paid

For awards that cover more than one Host Site, the Trust will pay this portion of the Incentive Award pro rata for each individual site when the site completes the milestone. For the avoidance of doubt, Incentive Award payments will be made only on completion of the specified milestone requirements for the subject Host Site and only for eligible costs allocable to the subject Host Site.

**2. Milestone 2: Acquisition, installation and commissioning of all equipment and connection of utility and communication services at for Charging Stations.** Reimbursement of 80% of eligible costs (as defined in the RFP), incurred in accomplishing the following at or in connection with all Charging Stations at a Host Site, up to the full amount of the Capital Incentive allocated to that Host Site remaining after any disbursements under Milestone 1, will be disbursed, on a per site basis, following documentation, which shall include copies of paid invoices, **of all of** the following deliverables for a Host Site:

* Installation of EV Chargers
* EV Charging Station complete and operable
* Delivery of as-built drawings
* Notification to Trust of completion and intent to operate
* Service Credit Surety Bond(s) or Service Credit LOC(s) pursuant to and in compliance with the provisions of Section 5 of this Rider B, if the Recipient requests and receives a Demand Charge Incentive in an amount less than $100,000 or does not request any demand charge incentive in its Response to RFP.
* EV Charging Stations visible at the Department of Energy’s Alternative Fuels Data Center (http://www.afdc.energy.gov/fuels/electricity\_locations.html)
* EV Charging Stations visible and listed as “Public” on PlugShare.com and the PlugShare mobile app.
* EV Charging Station real-time availability and status available at \_\_\_\_\_\_\_\_\_\_.com and the \_\_\_\_\_\_\_\_\_\_ mobile app
* Payment Options listed in Rider A, Section A(6) are operational.

Recipient may issue an invoice for each site individually, after the EV Charging Site is commissioned and the Chargers for the site are placed in service.

For awards that cover more than one EV Charging Site, the Trust will pay this portion of the Incentive Award pro rata for each individual site when the site completes the milestone. For the avoidance of doubt, Incentive Award payments will be made only on completion of the specified milestone requirements for the subject Host Site and only for eligible costs allocable to the subject Host Site.

**3. Milestone 3 (applicable if Recipient has requested a Demand Charge Incentive in Recipient’s Response to RFP): Provide operations, maintenance, and customer service for a five-year term.** Payment of the **Demand Charge Incentive** will be **disbursed in even quarterly installments of 5% of the Demand Charge Incentive, on a per site basis** following documentation **of all of** the actual utility demand charges incurred by the DCFCs funded under this Agreement and paid during the most recently completed quarter and subject to the application of any service credits pursuant to Section 5 of this Rider.

**4. Documentation and Process for Invoices.** 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. Without limiting any other right or remedy of the Trust Recipient’s failure to operate and maintain the EV Charging Equipment consistent with the terms of this Agreement will result in withholding of some or all subsequent payments. 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.

In order to be eligible for reimbursement under Milestone Sections 1, 2, or 3, as applicable, of this Rider B, an eligible cost must be one of the types of eligible costs listed in the RFP and must be included in a request for reimbursements received by the Trust by November 20, 2026. Notwithstanding any provision in the Agreement or any Rider thereto to the contrary, the Trust shall have no obligation to reimburse Recipient for costs that are not included in a request for reimbursement received by the Trust by November 20, 2026.

**5. Service Credits and Service Level Agreement**

1. The Trust shall be entitled to a credit (a “Service Credit”), in the event, and to the extent, of Recipient’s failure to achieve the service levels and performance standards required by Section B(1)(c)–(d) of Rider A of the Agreement. Service Credits shall be calculated quarterly on a site-by-site basis. Any Service Credit shall be assessed at the end of every fourth quarter (each four-quarter period being an “Annual Assessment Period”) and shall be paid to the Trust by Recipient within thirty (30) days of Recipient’s receipt of notice from the Trust that such Service Credit is due. Notwithstanding the foregoing, if Recipient has requested a Demand Charge Incentive in Recipient’s Response to RFP, the Service Credit calculated by the Trust for each quarter, if any, will be deducted from the quarterly payment of the Demand Charge Incentive due to Recipient under the terms of this Agreement up to the full amount of the quarterly payment of the Demand Charge Incentive, provided that the foregoing shall not be construed to relieve Recipient of the obligation to pay any Service Credits calculated and assessed under this Agreement that exceed the amount of the Demand Charge Incentive requested in Recipient’s Response to RFP.

2. In the event that Recipient’s Incentive Award does not include a Demand Charge Incentive or includes a Demand Charge Incentive less than $100,000 and in order to secure payment of up to $100,000 of any Service Credits that may be due, Recipient shall provide to the Trust one or more surety bonds or letters of credit (each a “Service Credit Surety Bond” or “Service Credit LOC,” as the case may be) payable to the Trust in the amount of $100,000 and guaranteeing payment of up to $20,000 of the Service Credit assessed, if any, for each Annual Assessment Period. For the avoidance of doubt, Recipient shall be required to obtain a Service Credit Surety Bond or Service Credit LOC under this Section if Recipient receives a Battery Incentive since a Recipient who receives a Battery Incentive is ineligible to receive a Demand Charge Incentive.

3. If Recipient is required to provide a Service Credit Surety Bond or Service Credit LOC under this Section 4 of Rider B, Recipient may provide a single Service Credit Surety Bond or Service Credit LOC, in the amount of $100,000, guaranteeing the Recipient’s payment of up to $100,000 of the Service Credit, if any, assessed for all five (5) Annual Assessment Periods during the term of the Agreement, or may supply a new Service Credit Surety Bond or Service Credit LOC before the beginning of each Annual Assessment Period, each in the amount of $20,000 and each guarantying Recipient’s payment of up to $20,000 of the Service Credit, if any, assessed for the single Annual Assessment Period to which that Service Credit Surety Bond or Service Credit LOC applies.

4. In the event that Recipient is required to obtain a Service Credit Surety Bond or Service Credit LOC pursuant to this Section, Recipient shall deliver a copy of a satisfactory Service Credit Surety Bond or Service Credit LOC to the Trust no later than thirty (30) days prior to the date on which the EV Chargers at the Host Site are commissioned and placed into service. If any Service Credit Surety Bond or Service Credit LOC required by this Section expires by its terms earlier than that day which is five (5) years from the date on which the EV Chargers at the Host Site are commissioned and placed into service, then Recipient shall deliver to the Trust a new Service Credit Surety Bond or Service Credit LOC that complies with all applicable requirements of this Section no later than thirty (30) days prior to the expiration of the expiring Service Credit Surety Bond or Service Credit LOC. Notwithstanding anything to the contrary, the Trust will not accept any Service Credit Surety Bond or Service Credit LOC that has a duration of less than one (1) year, nor will the Trust permit a gap or any period in which Recipient does not have a compliant Service Credit Service Credit Surety Bond or Service Credit LOC in place.

5. Any Service Credit Surety Bonds and/or Service Credit LOCs required by this Section 4 of Rider B must be issued by an entity that satisfies the applicable requirements of Section 7.3.ii of the Agreement as though the Service Credit Surety Bond or Service Credit LOC were an instrument issued pursuant to that section.

6. The Service Credit that may be calculated, assessed, and collected pursuant to this Service Level Agreement shall be limited to a maximum amount of the greater of: (i) the Demand Charge Incentive requested by Recipient in Recipient’s Response to RFP; or (ii) $100,000.00, over the Term of this Agreement (the “Maximum Service Credit”). The Service Credit that may be calculated, assessed, and collected for any one Annual Assessment Period pursuant to this provision shall be limited to a maximum amount of one fifth (1/5) of the Maximum Service Credit (the “Maximum Annual Service Credit”). The Service Credit that may be calculated for any one quarter pursuant to this provision shall be limited to a maximum amount of one quarter (1/4) of the Maximum Annual Service Credit (the “Maximum Quarterly Service Credit”).

7. The actual amount of the Service Credit to be assessed for each quarter during an Annual Assessment Period shall be calculated as follows:

a. Limiting Individual Charging Port Downtime: In the event that a Downtime event for an individual charging port is not remedied within seventy-two (72) hours, as required in Rider A, Section B(1)(d), the Trust is entitled to a Service Credit equal to:

i. 15% of the Maximum Quarterly Service Credit for the first occurrence during the quarter,

ii. 50% of the Maximum Quarterly Service Credit for the second occurrence during the quarter,

iii. 100% of the Maximum Quarterly Service Credit upon the third occurrence during the quarter.

b. Annual Uptime for Each Charging Port: The Trust is entitled to an annual Service Credit of 100% of the Maximum Quarterly Service Credit for the fourth quarter of an Annual Assessment Period in the event that Recipient fails to achieve the annual charging port minimum uptime standard described in Rider A, Section B(1)(c).

c. Customer Service and Reporting: The Trust also shall be entitled to a Service Credit equal to 5% of the Maximum Quarterly Service Credit for each documented incident of the Recipient’s failure to provide customer service in accordance with the service and performance levels required by this Agreement or fails to provide complete and timely reporting as required by the Agreement. Recipient shall have 5 days to remedy any issues related to timely reporting before a Service Credit penalty is incurred.

8. Except to the extent caused by Recipient’s breach of this Agreement or the negligence or misconduct of Recipient or its agents, Service Credits will not be assessed and shall not be due where the failure to satisfy a required service level results from unavailability of electrical service to EV Chargers; unavailability of any wireless or cellular communications network or Internet service provider network necessary for the continued operation by Recipient of its services; unavailability of or interruption of the Recipient’s network attributable to unauthorized intrusions; or force majeure or circumstances beyond Recipient’s reasonable control that prevent Recipient from performing its obligations under this Agreement.

9. The Service Credits shall not be considered liquidated damages or the Trust's sole and exclusive remedy for Recipient's failure to meet required service levels or performance standards. The Trust shall be entitled to any other rights or remedies set forth in the Agreement.

**RIDER C**

GENERAL TERMS AND CONDITIONS

1. INDEPENDENT CONTRACTOR..Recipient is an independent contractor with respect to all work or services performed under this Agreement. Recipient has no authority to represent or bind the Trust in any manner. Recipient shall be solely responsible for the performance and conduct of its employees, agents, and contractors. Recipient shall only employ or engage personnel who are authorized to work in the United States and Recipient shall comply with all applicable labor, employment, and occupational safety laws and regulations in the performance of this Agreement. 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 and for all associated tax withholding and reporting obligations.
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 equipment or measures funded with the Incentive Award, without the prior express written consent of the Trust, which may be granted, conditioned, or denied in the Trust’s reasonable discretion. Any purported transfer or assignment without the 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. 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 Term 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 Term any other personnel who are or have been at any time during the Term 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 Term 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. REPORTING; RECORD RETENTION AND INSPECTION.Recipient shall make and maintain all such documents and records necessary to establish proper performance of the Project Services and to support all invoices and requests for payment under this Agreement. 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, upon reasonable notice to Recipient, 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, and shall require its contractors and agents to, 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 for performance of the Agreement and implementation of the Project throughout the Term.
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) (each a “Claim” and collectively, “Claims”) made against or suffered or incurred by the Trust resulting from or arising out of Recipient’s performance of this Agreement, the Project, and the installation or operation of the equipment or measures funded in whole or in part by the Incentive 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) claims of any Host Site owner or Host Site occupant or invitee and any customer or user of the Charging Sites; (iii) personal injury, death, or property damage suffered or incurred by any person or entity arising from the Recipient’s or its agent’s performance (act or omission) of this Agreement and the installation, maintenance, or operation of the Project, including claims of Recipient’s employees, agents, or contractors; and (iv) claims arising or resulting from Recipient’s breach of this Agreement or violation of law. Recipient’s indemnity obligations shall apply to the full extent of the negligence or misconduct of Recipient or those for which it is legally responsible and shall apply without regard to any immunity that might otherwise be accorded Recipient under the workers’ compensation laws. Recipient will not be obligated to indemnify for any Claim to the extent caused by the negligence or willful misconduct of the Trust or its officers, directors, trustees, agents, and employees. 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 threatened or filed related in any way to the Agreement or Project or which may affect the Recipient’s performance of the Agreement or the Project.
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. Recipient is solely responsible for payment of all excise, sales, use, property, employment, income and other taxes and assessments relating to the Project and Recipient’s business operations.
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 “special causes of loss” property and casualty insurance covering the equipment funded with the Incentive Award 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.

Without limiting the foregoing, Recipient shall maintain the following minimum insurance throughout the Term, which coverage types and amounts do not serve to limit Recipient’s obligation or liability to the Trust under this Agreement:

A. Commercial General Liability

Commercial general liability insurance covering property damage, premises operations, fire damage, products and completed operations, blanket contractual liability, bodily injury, personal injury, and advertising liability with minimum limits as follows:

 i. $1,000,000 each occurrence;

 ii. $2,000,000 general aggregate;

 iii. $1,000,000 products and completed operations aggregate.

B. Property and Casualty

Property and casualty insurance covering full replacement value in the event of loss or damage to Chargers and other Charging Site equipment and appurtenances.

C. Workers’ Compensation

Workers’ compensation insurance as required by state law and employers’ liability insurance covering all Recipient and contractor employees acting within the course and scope of their employment in connection with the Project.

D. Other Provisions. Unless explicitly waived by the Trust in writing, the insurance policies must contain, or be endorsed to contain, the following provisions:

 (i) Recipient’s commercial general liability policies shall include the Trust as an additional insured. Recipient’s insurance coverage shall be the primary insurance. Any insurance or self-insurance maintained by the Trust for its officers, agents, and employees shall be in excess of the Recipient's insurance and shall be non-contributory.

 (ii) Recipient's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

 (iii) Recipient shall furnish the Trust with certificates of insurance and endorsements confirming all coverage required by these insurance requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Trust before this Agreement commences. The Trust reserves the right to require complete copies of all required insurance policies at any time.

 (iv) All policies should contain a revised cancellation clause allowing thirty (30) days’ notice to the Trust in the event of cancellation for any reason, including nonpayment.

1. AVAILABILITY OF NEVI FUNDS. It is understood and agreed that the source of the Capital Incentive Award under this Agreement is that portion of the National EV Infrastructure Formula Funds (the “NEVI Funds”) expressly allocated to the Trust under the Memorandum of Agreement between the State of Maine Department of Transportation, the Governor’s Energy Office, and Efficiency Maine Trust dated on or about January 20, 2023. If the NEVI 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.
2. 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.
3. 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.
4. RESERVATION OF IMMUNITIES AND LIMITATION OF LIABILITY. The Trust is a quasi-state agency and a governmental entity and expressly retains all defenses to, immunities from, and limitations of liability. Nothing in this Agreement is intended, nor shall be construed, to constitute a waiver of any defense, immunity, or limitation of liability that may be available to the Trust as a governmental entity or otherwise, or to any of its officers, agents or employees, pursuant to the Eleventh Amendment to the Constitution of the United States of America, the Maine Constitution, the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.), any state or federal statute, the common law, or any other privileges or immunities as may be provided by law. In no event shall the Trust be liable or responsible to the Recipient for any indirect, incidental, consequential, or exemplary damages of any kind.
5. NO THIRD-PARTY BENEFICIARIES. There are no express or intended third-party beneficiaries under this Agreement. No person or entity that is not a party to this Agreement may assert any right or make any claim under this Agreement.
6. CONFLICTING REQUIREMENTS. If any term or condition in this Rider C directly conflicts with any term or condition contained in Rider C-1 (Federal EV Funds Contract Requirements), the terms and conditions of Rider C-1 shall control.
7. 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. Recipient shall, upon request of the Trust and at the Trust’s own expense, display such mutually agreed upon signage or other notices at each EV Charging Station as may be reasonably required by the Trust acknowledging the support of the Trust, the Maine Department of Transportation, and/or State of Maine.
8. Data in Support of PROGRAM. Recipient grants authorization to the Trust or its agents to access facilities and to collect data needed to measure and verify usage and operation of equipment and measures funded with the Incentive Award.
9. 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, including kWh dispensed and total number of sessions may be made available to the public. Recipient agrees to cooperate with the Trust on such reporting and shall provide information related to the Incentive 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.
10. 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 Charging Stations and facilities and shall provide reasonable 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.
11. MEASUREMENT AND VERIFICATION. Recipient shall allow independent third-party verification of Project performance and utilization 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 efficacy of 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.
12. 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 participation. Recipient is solely responsible for management of its vendors and contractors.
13. CONFIDENTIALITY AND DATA SECURITY. All records and information given to the Recipient by the Trust whether in verbal, written, electronic, or any other format, shall be regarded by the Recipient as confidential information.

Recipient shall keep confidential, and shall require all of its employees, agents, and contractors to keep confidential, all Trust records and information, unless those Trust records are publicly available. Recipient shall not, without prior written approval of the Trust, use, publish, copy, disclose to any third party, or permit the use by any third party of any Trust confidential records and information except as otherwise stated in this Agreement, as permitted by law, or approved in writing by the Trust. Recipient shall immediately forward any request or demand for Trust records or information to the Trust’s Agreement Administrator.

Recipient shall use, hold, and maintain Trust confidential records and information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality and security of all Trust confidential records and information wherever located. Recipient shall provide the Trust with access, subject to Recipient’s reasonable security requirements, for purposes of inspecting and monitoring access and use of Trust confidential records and information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Recipient shall return Trust confidential records and information provided to Recipient or destroy such Trust confidential records and information and certify to the Trust that it has done so, as directed by the Trust. If Recipient is prevented by law or regulation from returning or destroying Trust confidential records and information, Recipient warrants it will maintain the confidentiality of, and cease to use, such Trust confidential records and information.

If Recipient becomes aware of any accidental or deliberate event that results in or constitutes an imminent threat of unauthorized access, loss, disclosure, disruption, or destruction of any Trust confidential records or information, it shall notify the Trust immediately and, at its expense, take prompt steps to prevent or remediate such loss.

Recipient shall safeguard all personally identifiable information (PII) it may receive in connection with the performance of this Agreement. PII means information about an individual that can be used to distinguish or trace an individual‘s identity, such as name, social security number, date and place of birth, mother‘s maiden name, or biometric records and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. If Recipient or any of its contractors will or may receive PII in connection with the performance of this Agreement, Recipient shall provide for the security of such PII and shall implement administrative, physical, and technical safeguards to protect PII from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than accepted industry practices, and shall ensure that all such safeguards, including the manner in which PII is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Recipient shall take full responsibility for the security of all PII in its possession or in the possession of its contractors and shall hold the Trust harmless from and against any damages or liabilities resulting from an unauthorized disclosure or data breach.

Without limiting any other data privacy or security obligations imposed on Recipient under any applicable law, regulation, ordinance, or standard, if, in the course of performing this Agreement, Recipient has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other payment cardholder information, Recipient shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at Recipient’s sole cost and expense.

The Trust shall have the right, upon reasonable notice to the Recipient, to audit, review, and inspect the Recipient’s records and procedures for compliance with these confidentiality provisions.

1. 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 require its contractors to comply with all such requirements, restrictions, and obligations.
2. 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, indemnity, and remedies, shall survive the termination or expiration of this Agreement.

**Rider C-1**

**FEDERAL EV FUNDS CONTRACT REQUIREMENTS**

Efficiency Maine Trust (the “Trust”) is a Subrecipient, through the Maine Department of Transportation, of certain federal funds authorized under the 2021 Bipartisan Infrastructure Law (“BIL”), including funds established under the National Electric Vehicle Formula Program, as a component of the Federal Highway Administration’s Highway Infrastructure Program, to strategically deploy EV charging infrastructure (“NEVI Program Funds”). The NEVI Program Funds are referred to herein as the “Federal EV Funds.” The Services to be performed and the equipment and materials to be provided under this Agreement are funded through these Federal EV Funds and, 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, Federal Highway Administration (“FHWA”) regulations set forth in 23 C.F.R. §680.118 of the National Electric Vehicle Infrastructure Standards and Requirements, and FHWA Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts).

To the extent applicable to the Services provided 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. The extent to which the following additional contract provisions are applicable to the Services provided under the Agreement depends on whether the Services satisfy the statutory and/or regulatory applicability provisions. Although the Trust has endeavored herein to provide the Recipient with general guidelines to aid in the assessment of these provisions’ applicability to the Agreement, the Recipient 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 Recipient and references to the “contract” shall include the Agreement.

**Form FHWA-1273** is attached hereto as **Appendix A** to this Rider C-1. Recipient shall comply with all laws and regulations specified in Form FHWA-1273 and shall flow down and insert the same requirements in any lower tier Project subcontracts. To the extent that anything contained in Form FHWA-1273 conflicts with the regulations set out in Appendix II to 2 CFR Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards), Form FHWA -1273 shall control.

**National Electric Vehicle Infrastructure Standards and Requirements** (23 C.F.R. §680.118):

(a) Buy America Requirements – 23 U.S.C. §313. Pursuant to 23 C.F.R. §680.118(a), the Buy America requirements set forth in 23 U.S.C. §313 apply to EV charger projects using NEVI Program Funds.

[Notwithstanding the foregoing, on February 21, 2023, the FHWA issued a temporary public interest waiver to waive Buy America requirements for steel, iron, manufactured products, and construction materials in EV chargers. The temporary waiver is effective March 23, 2023. The FHWA summary of this temporary waiver reads as follows:

*“The Federal Highway Administration (FHWA) is establishing a temporary public interest waiver to waive Buy America requirements for steel, iron, manufactured products, and construction materials in electric vehicle (EV) chargers. This short-term, temporary waiver enables EV charger acquisition and installation to immediately proceed while also ensuring the application of Buy America to EV chargers by the phasing out of the waiver over time. On the effective date of this waiver, it will apply to all EV chargers manufactured by July 1, 2024, whose final assembly occurs in the United States, and whose installation has begun by October 1, 2024. Beginning with EV chargers manufactured on July 1, 2024, FHWA will phase out coverage under this waiver for those previously covered EV chargers where the cost of components manufactured in the United States does not exceed 55 percent of the cost of all components. This second phase will therefore apply to all EV chargers that are manufactured on or after July 1, 2024, whose final assembly occurs in the United States, and for which the cost of components manufactured in the United States is at least 55 percent of the cost of all components. For all phases, EV charger housing components that are predominantly steel and iron are excluded from the waiver and must meet current FHWA Buy America requirements. As of the effective date of this waiver, FHWA is also removing EV chargers from its existing general applicability waiver for manufactured products.” See* 88 FR 10619 (02/21/2023).]

(b) Davis Bacon Federal Wage Requirements – 40 U.S.C. 3141-3148; 29 CFR Part 5. Pursuant to 23 U.S.C. §109(s)(2) and 23 C.F.R. §680.118(b), projects to install EV chargers are treated as if the project is located on a Federal-aid highway and, therefore, Davis Bacon Federal wage requirements apply to the project. Statutorily prescribed wages must be paid for any project funded with NEVI Formula Program Funds. *See also*, Appendix A hereto, Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts).

(c) Americans with Disabilities Act of 1990 (ADA). Pursuant to 23 C.F.R. §680.118(c), EV charging stations must comply with applicable accessibility standards adopted by the Department of Transportation into its ADA regulations (49 CFR part 37) in 2006, and adopted by the Department of Justice into its ADA regulations (28 CFR parts 35 and 36) in 2010.

(d) Title VI of the Civil Rights Act of 1964. Pursuant to 23 C.F.R. §680.118(d), Title VI of the Civil Rights Act of 1964, and implementing regulations, apply to the NEVI Program to ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(e) Title VIII of the Civil Rights Act of 1968 (Fair Housing Act). Pursuant to 23 C.F.R. §680.118(e), all applicable requirements of Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), and implementing regulations, apply to the NEVI Program.

(f) [Reserved].

(g) Uniform Relocation Assistance and Real Property Acquisition Act. Pursuant to 23 C.F.R. §680.118(g), the Uniform Relocation Assistance and Real Property Acquisition Act, and implementing regulations, apply to the NEVI Program by establishing minimum standards for federally funded programs and projects that involve the acquisition of real property (real estate) or the displacement or relocation of persons from their homes, businesses, or farms.

(h) National Environmental Policy Act of 1969 (NEPA). Pursuant to 23 C.F.R. §680.118(h), the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's NEPA implementing regulations, and applicable agency NEPA procedures apply to the NEVI Program by establishing procedural requirements to ensure that Federal agencies consider the consequences of their proposed actions on the human environment and inform the public about their decision making for major Federal actions significantly affecting the quality of the human environment.

**Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards:**

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

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

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

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

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

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

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

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

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

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

Davis-Bacon Act(40 U.S.C. 3141-3148; 29 CFR Part 5; 42 U.S.C. 7614) (These provisions apply to the Recipient and to the Agreement if the Agreement is a prime construction contract over $2,000. The Agreement is a prime construction contract if it is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated). The term “building or work” generally includes construction activities of all types, as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The term includes, without limitation, buildings, structures, and improvements of all types, such as, among other things, solar panels, wind turbines, installation of electric car chargers, excavating, clearing, and landscaping. It also includes a portion of a building or work, or the installation (where appropriate) of equipment or components into a building or work.). The Federal wage requirements of the Davis Bacon Act apply to this Project. In accordance with the statute, contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week. The decision to award this contract is conditioned upon the acceptance of the wage determination, and any contractor or subcontractor’s decision to award a subcontract must be conditioned upon the acceptance of the wage determination. *See also*, Appendix A hereto, Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts).

(1) Minimum wages—

 (i) Wage rates and fringe benefits. All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 C.F.R. § 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(v) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (4) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer’s payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

 (ii) Frequently recurring classifications.

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

 (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

 (2) The classification is used in the area by the construction industry; and

 (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

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

 (iii) Conformance

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

 (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

 (2) The classification is used in the area by the construction industry; and

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

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

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

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

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

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

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

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

(2) Withholding—

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

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

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

 (B) A contracting agency for its reprocurement costs;

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

 (D) A contactor’s assignee(s);

 (E) A contractor’s successor(s); or

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

(3) Records and certified payrolls—

 (i) Basic record requirements—

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

 (B) Information required. Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker’s correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141(2)(B)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=40USCAS3141&originatingDoc=NFA5125D0B06D11EEA5B7B5D0520ADEC9&refType=RB&originationContext=document&transitionType=DocumentItem&ppcid=ed4f2c04920049af8efa1ab60542aafd&contextData=(sc.Document)#co_pp_432f0000fa201) of the Davis–Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

 (C) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under paragraph (1)(v) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141(2)(B)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=40USCAS3141&originatingDoc=NFA5125D0B06D11EEA5B7B5D0520ADEC9&refType=RB&originationContext=document&transitionType=DocumentItem&ppcid=ed4f2c04920049af8efa1ab60542aafd&contextData=(sc.Document)#co_pp_432f0000fa201) of the Davis–Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

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

 (ii) Certified payroll requirements—

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

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

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

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

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

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

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

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

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

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

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

 (iv) Required disclosures and access—

 (A) Required record disclosures and access to workers. The contractor or subcontractor must make the records required under paragraphs (3)(i) through (iii) of this section, and any other documents that the U.S. Department of Transportation, Trust, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 C.F.R. § 5.1, available for inspection, copying, or transcription by authorized representatives of the U.S. Department of Transportation, Trust, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

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

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

(4) Apprentices and equal employment opportunity—

 (i) Apprentices—

 (A) Rate of pay. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

 (i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor’s firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144(b)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=40USCAS3144&originatingDoc=NFA5125D0B06D11EEA5B7B5D0520ADEC9&refType=RB&originationContext=document&transitionType=DocumentItem&ppcid=ed4f2c04920049af8efa1ab60542aafd&contextData=(sc.Document)#co_pp_a83b000018c76) or 29 C.F.R. [§ 5.12(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=29CFRS5.12&originatingDoc=NFA5125D0B06D11EEA5B7B5D0520ADEC9&refType=VB&originationContext=document&transitionType=DocumentItem&ppcid=ed4f2c04920049af8efa1ab60542aafd&contextData=(sc.Document)#co_pp_8b3b0000958a4).

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

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

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

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

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

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

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

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

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

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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

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

Under 40 U.S.C. 3702, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. *See also*, Appendix A hereto, Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts)

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

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

(3) Withholding for unpaid wages and liquidated damages—

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

(ii) Priority to withheld funds. The Department of Labor has priority to funds withheld or to be withheld in accordance with paragraph (2)(i) of the Davis Bacon Act section above or paragraph (3)(i) of this section, or both, over claims to those funds by:

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

 (B) A contracting agency for its reprocurement costs;

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

 (D) A contractor’s assignee(s);

 (E) A contractor’s successor(s); or

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

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

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

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

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

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

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

 If the Agreement is subject only to the Contract Work Hours and Safety Standards Act and not to any other law listed in 29 C.F.R. § 5.1, the contractor or subcontractor must comply with the following requirements in order to comply with the Contract Work Hours and Safety Standards Act:

(1) The contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker’s correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid.

(2) Records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the U.S. Department of Transportation and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.

Clean Air Act and Federal Water Pollution Control Act(42 U.S.C. §§ 7401-7671q; 33 U.S.C. §§ 1251–1387) (These provisions apply to the Recipient and to the Agreement and are required to be restated in this Agreement if the Agreement is for an amount in excess of $150,000). *See also*, Appendix A hereto, Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts)The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The contractor agrees to report each violation to the Trust and understands and agrees that the Trust will, in turn, report each violation as required to assure notification to the State of Maine Department of Administrative and Financial Services, the State of Maine Department of Transportation, the U.S. Department of Transportation, 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 NEVI Program.

Debarment and Suspension(2 C.F.R. Part 180 (implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989)) (These provisions apply to the Recipient and to the Agreement if the Agreement is for an amount that exceeds $25,000). *See also*, Appendix A hereto, Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts)

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

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

Byrd Anti-Lobbying Amendment(2 C.F.R. Part 200, Appendix II, § I (citing 31 U.S.C. § 1352) (This provision applies to the Recipient and to the Agreement if the Agreement is for an amount greater than $100,000, and applies to subrecipients and subcontracts if the subcontract is for an amount greater than $100,000). *See also*, Appendix A hereto, Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts)

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)) (These provisions apply to the Recipient if the Recipient is the Trust’s “contractor” as that term is defined in 2 C.F.R. § 200.1).

The Contractor agrees to comply with all applicable requirements of Section 6002 of the Solid Waste Disposal Act, including but not limited to procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, whether the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

The Contractor also agrees to, 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. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products.

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 Recipient because the Recipient is a subrecipient of a federal loan or grant funds).

Recipients and subrecipients 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 section 889 of Public Law 115-232, “covered telecommunications equipment or services” 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.

“Covered telecommunications equipment or services” also include 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 Recipient and to the Agreement because the Agreement is a federally funded contract).

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. 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.

[ATTACH APPENDIX A - Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts)]

1. https://www.access-board.gov/tad/ev/ [↑](#footnote-ref-1)
2. https://driveelectric.gov/evchart [↑](#footnote-ref-2)