

Attachment M

Required Contract Provisions Related to the Build America, Buy America Act (BABA)

A provision substantially like the below will be included in each procurement contract when such contract involves compliance with BABA requirements. The SRF Applicant shall remain responsible for compliance with applicable law (including BABA). Such SRF Applicant has been encouraged to consult with its advisors and counsel regarding such matters and, in any event, understands that the use of the following does not relieve the SRF Applicant from its obligation to comply with applicable law (including BABA) and related provisions of any financial assistance agreement entered into with the Indiana Finance Authority, nor will the State Revolving Fund Loan Programs, the Indiana Finance Authority or the State of Indiana be responsible for or limited by any SRF Applicant's use of the following provision.

The Contractor hereby acknowledges to and for the benefit of the _____ (“Owner”) and the Indiana Finance Authority (the “Authority”) that it understands the work, goods and services under this Agreement are being funded with monies made available by the State Revolving Fund Loan Program and such appropriation contains provisions commonly known as “Build America, Buy America” that requires all of the iron and steel products, manufactured products, and construction materials, permanently incorporated in the project be produced in the United States (“Build America, Buy America Requirements”) including iron and steel products, manufactured products, and construction materials provided by the Contactor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and the Authority, and agrees that (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials permanently incorporated in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner or the Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner and the Authority to recover as damages against the Contractor (and the Contractor shall indemnify and hold the Owner and the Authority harmless against) any loss, expense or cost (including without limitation attorney’s fees) incurred by the Owner or the Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Authority or any damages owed to the Authority by the Owner). While the Contractor has no direct contractual privity with the Authority, as a lender to the Owner for the funding of its project, the Owner and the Contractor agree that the Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Authority.