

**SERVICES PURCHASE AGREEMENT (“Agreement”) between Dixie Electric Membership Corporation (“Cooperative,” “DEMCO” or “Owner”) and **VENDOR NAME (“VENDOR NAME,” “Supplier,” or “Contractor”)****

**DESCRIPTION OF SERVICES AND PRODUCTS:**

This Agreement between Dixie Electric Membership Corporation (“DEMCO” or “Cooperative”) and **VENDOR NAME** (“Supplier” or “Contractor”) shall take place on the June 1, 2022 and, subject to the parties’ termination rights in this Agreement, shall continue for no less than (365) days, giving an initial expiration date of May 31, 2023 (the “Initial Term”). The specific terms and conditions of the services to be performed and provided by **VENDOR NAME** are as follows and incorporated into the Agreement:

INSERT SCOPE DETAILS HERE: Emergency Storm Restoration work and services with Rates.

Contractor shall provide a certificate of general liability coverage in the amounts set forth below to the Owner prior to the commencement of this Agreement, which shall be attached hereto as Exhibit C. Additionally, Cooperative will notify Contractor as soon as reasonably practical if Contractor’s services are needed beyond the Initial Term, and in such event, the Agreement shall automatically be extended with the same terms herein until notification of termination by Cooperative.

Therefore, in consideration of the considerations herein, which are made a contractual part hereof and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Cooperative and Contractor hereby agrees as follows:

**ARTICLE I – GENERAL**

**Section 1. Offer to Perform Service Scope.**

Contractor hereby agrees to furnish all labor and equipment that is required to satisfy the requested scope of work requirements for DEMCO’s project (hereinafter referred to as the “Project”) pursuant to this Agreement, which is to commence on June 1, 2022, and is effective until the contract time and amendments have been met. DEMCO may terminate this Agreement at any time, without cause and without penalty, upon twenty-four (24) hours written notice (email notice is effective for termination and the appropriate Contractor email notification is **vendor email**).

**ARTICLE II – PAYMENT and COMPENSATION**

**Section 1. Payments to Contractor.**

- (a) All invoices must be “Approved Invoices” in order to be paid. DEMCO, in its sole reasonable discretion, determines whether an invoice is classified as an “Approved Invoice.”
- (b) Invoices should be submitted weekly to [apinvoices@demco.org](mailto:apinvoices@demco.org) and DEMCO will make reasonable attempts to pay invoices no later than thirty days (30) days after receipt of Approved Invoices (see Section 1(e) for discussion on “Approved Invoice” process).
- (c) Invoices shall be based upon the completed quantity by the rates established in this contract.
  - a. If applicable, Rates for storm restoration will be paid at the Overtime Rate (See Article V, Section 10). Double overtime will not be allowed.
  - b. If applicable, per diem while traveling from Portal to Portal will be reimbursed at the Federal General Services Administration (“GSA”) Rates for Louisiana, as follows:
    - Lodging - \$96/day/person;
    - Meals - \$55/day/person
  - c. Materials and equipment are included in the rate. Any purchases for materials and equipment must be approved in advance in writing by DEMCO. The Contractor will bill at cost, not be allowed to invoice on a Cost-plus basis.
- (d) Contractor shall maintain auditable records to be able to provide timesheet backup for five (5) years.
- (e) Only Approved Invoices will be paid by DEMCO. Approved Invoices are those which are submitted with sufficient and accurate detail so as to allow DEMCO to file for adequate and complete recovery from any applicable state and/or federal agencies. Contractors/Consultants will receive a timely notification from DEMCO or DEMCO representative if an invoice does not qualify as an “Approved Invoice” along with an explanation of deficiencies. It is Contractor’s responsibility to review/update/edit their invoice to correct any deficiencies and resubmit the corrected invoice for review/approval in the following billing cycle.
- (f) Equipment reimbursement for work done will be based on the equipment hourly billing rates in Exhibit A. Equipment Reimbursement is only applicable for equipment actually used to assist in the rebuild/restoration of the Cooperative’s infrastructure in support of the Project. There will be no reimbursement for equipment that sits idle.
- (g) No payment shall be due while Contractor is in default with respect to any of the provisions of this Agreement and DEMCO may withhold from Contractor in the amount of any claim by a third party against either Contractor or DEMCO based upon an alleged failure of Contractor to perform the work hereunder in accordance with the provisions of the Agreement.

## **Section 2. Compensation.**

Compensation for work being performed under this contract will be a not to exceed amount of **\$1,000,000.00**. Payment for work performed will be in accordance with Section 1, Payments to Contractor.

## **ARTICLE III – WORKMANSHIP**

### **Section 1. Time and Manner of Work.**

- (a) Contractor agrees to commence work on a date mutually agreeable to both parties and in accordance with the Agreement and to make all efforts diligently to complete the work in a timely manner and according to the Project schedule of DEMCO, if one exists (otherwise, commercially reasonable standards apply). Time is of the essence and Contractor will take all reasonable efforts to complete the scope of work in a timely and professional manner.
- (b) **FORCE MAJEURE.** Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, fires, floods, work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, terrorism, epidemic, court judgment, telecommunications, or debilitating software failure.

### **Section 2. Environmental Protection.**

Contractor shall perform work in such a manner as to maximize preservation of beauty, conservation of natural resources, and minimize marring and scarring of the landscape and silting of streams. Contractor shall deposit trash in appropriate containment devices for discard and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways, pastures, or fields.

### **Section 3. Supervision and Inspection.**

- (a) DEMCO reserves the right to require the removal from the Project of any employee, representative, agent, or subcontractor of Contractor if, in the judgment of DEMCO, such removal shall be necessary in order to protect the interest of DEMCO and/or the Project. Contractor shall remove from the work site and shall not allow to return to the work site any employee, representative, agent, or subcontractor who in DEMCO's sole opinion is incompetent, disorderly, abusive, dangerous, insubordinate or who in any way attempts to interfere with the employees of DEMCO or other contractors, or who DEMCO, at its sole discretion, determines is in DEMCO's best interest to be removed. Contractor will not be paid for work that is not suitable, appropriate, or up to the correct standards (a determination which is to be made in DEMCO's sole opinion and determination).

- (b) DEMCO reserves the right to inspect all work performed, and services rendered. If any of the work performed, and/or the services rendered by Contractor is determined not to be suitable, appropriate, or up to the correct standards (a determination which is to be made in DEMCO's sole opinion), Contractor will remedy the issue at Contractor's sole cost and in a timely (commercially reasonable) fashion.

#### **Section 4. Unsuitable Workmanship.**

The acceptance of any workmanship by DEMCO shall not preclude the subsequent rejection thereof if such workmanship shall be found to be unsuitable, incorrectly done, and/or not up to the correct standards (state, federal, or otherwise). Workmanship found unsuitable, incorrectly done, and/or not up to the correct standards (state, federal, or otherwise) before and/or after final acceptance of the work shall be remedied by and at the sole expense of Contractor. Contractor shall not be entitled to any payment hereunder so long as any unsuitable workmanship exists in respect to the Project as a whole, of which Contractor shall have had notice, and was not remedied in a timely and reasonable standard.

#### **Section 5. Notice.**

For a party to provide the legal or financial Notice(s), the parties agree to address notice to the other as provided herein and as may be updated from time to time. Notice to DEMCO is to be sent via fed-ex or UPS mail to Peggy Maranan, 16262 Wax Road, Greenwell Springs, LA 70739 with a copy sent by email to the following representatives (an email version of the notice does not constitute formal notice for DEMCO): Peggy Maranan – [peggym@DEMCO.org](mailto:peggym@DEMCO.org); Tommy Gildersleeve - [tommy.gildersleeve@taylorporter.com](mailto:tommy.gildersleeve@taylorporter.com). Notice to Contractor shall be sent via fed-ex or UPS to **VENDOR NAME AND ADDRESS** to the attention of **VENDOR POINT OF CONTACT**, a copy emailed to **VENDOR POC EMAIL**. As stated above, email notification is sufficient for termination of this Agreement.

#### **Section 6. Subcontracts.**

Due to the nature of emergency response, and the intense need for the same services usually in the same areas, **NAME OF VENDOR** may enter into any subcontract to fulfill its duties and responsibilities under this agreement subject to the terms stated herein. Contractor will notify in writing the Cooperative, at least forty-eight (48) hours in advance, of its intent to subcontract and provide the name of the provider, prior to entering into agreement with the subcontractor. The Cooperative will have the right to terminate the contract immediately at the time of notification if the subcontractor does not meet the Cooperative's approval, which is at the Cooperative's sole discretion. For avoidance of doubt, Contractor will be responsible for the acts and omissions of its subcontractors and shall require its subcontractors to comply with the terms of this Agreement to the extent applicable.

The following additional requirement apply to any subcontract entered into by Contractor:

- A. The Contractor shall not enter into any subcontract with any subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contacting programs by any agency of the United States Government or the State of Louisiana.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.
- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- D. Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

#### **Section 7. Indemnification.**

Contractor agrees to indemnify, defend, and hold harmless DEMCO, its subsidiaries, affiliates, entities, agents, representatives, directors, attorneys and employees, successors or assigns (together "DEMCO"), from liability for any and all damages, fines, penalties, regulatory agency actions, or losses of whatever type or nature, which may be suffered by any person, including Contractor and DEMCO, directly arising out of the negligent or willful misconduct of Contractor in connection with performance of any of the obligations assumed by Contractor under this Agreement. Contractor further agrees that in the event DEMCO incurs any costs or expenses of any type or nature, as a result of any claim, cause of action, suit, regulatory or governmental action, or proceeding being asserted against it and for which Contractor is obligated in this Agreement to indemnify, defend, and hold DEMCO harmless, including but not limited to, any judgments, fines, penalties, levies, assessments, regulatory agency actions, settlements, attorney's fees, professional fees, interest, expert witness fees, and court costs, Contractor will immediately upon demand and proof by DEMCO of such cost and/or expense, fully reimburse DEMCO for such costs or expenses. DEMCO shall have the right, in its sole discretion, to compromise and settle any claim, cause of action, suit or proceeding commenced against it and for which Contractor has agreed to provide indemnity and defense, without any advance notice to, or concurrence from, Contractor.

DEMCO shall not be liable for injury to Contractor for any loss of Contractor's income, business interruption, business opportunity, consequential damages, or for damage to the goods, wares, merchandise or other property of Contractor or any other person on or about DEMCO's property, or at any other location, whether movable, immovable, tangible, intangible, corporeal, incorporeal, public, non-owned, or leased (hereinafter collectively referred to as "DEMCO's property" for the purposes of this Section), and regardless of whether DEMCO is lessee or lessor

with respect to any such leased property. Nor shall DEMCO be liable for damage or injury to Contractor and its employees regardless of the cause or the manner in which such injury occurs and regardless of whether the said damage or injury results from the condition of DEMCO's property and regardless of whether the means of repairing the cause of such damage or injury is inaccessible or unavailable to Contractor. DEMCO shall not be liable to Contractor for any consequential damages, only such direct damages resulting solely from the fault or negligence of DEMCO.

Neither Party shall be liable to the other Party for any incidental, indirect, special, punitive, or consequential damages (including without limitation any damages relating to lost profits, business interruption, or lost business opportunity) ("Consequential Damages") arising in connection with this Agreement.

#### **ARTICLE IV - INSURANCE**

Contractor is required to obtain and maintain, throughout the period of this Agreement or any other agreement or contract entered into between DEMCO and Contractor, insurance of the types, and in the minimum amounts, as follows:

##### **Section 1. Worker's compensation and employer's liability insurance.**

As required by law, covering all of Contractor's employees who perform any of the obligations of Contractor under this Agreement or any other agreement or contract entered into between DEMCO and Contractor. If Contractor or any of its employees are not subject to the worker's compensation laws of the State of Louisiana or any other state with jurisdiction, DEMCO, in its sole discretion, may require Contractor to obtain insurance to provide worker's compensation coverage for Contractor or any such employee(s).

##### **Section 2. Public liability insurance.**

Covering all aspects of the performance of this Agreement or any other agreement or contract entered into between DEMCO and Contractor shall have limits for bodily injury or death of not less than \$1 million per occurrence, limits for property damage of not less than \$1 million per occurrence, and \$1 million aggregate for accidents occurring during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy of policies of insurance, primary and excess, including the umbrella or catastrophe form.

##### **Section 3. Automobile liability insurance.**

On all motor vehicles used in connection with this Agreement or any other agreement or contract entered into between DEMCO and Contractor, whether owned, non-owned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million per occurrence, and property damage limits of \$1 million for each occurrence. This required

insurance may be in a policy or policies of insurance, primary and excess, including the umbrella or catastrophe form.

DEMCO shall have the right at any time to require public liability insurance and property damage liability insurance greater than the limits set forth in paragraphs (b) and (c) of this section. In such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the contract price, if applicable.

The minimum requirement of \$1 million of public liability insurance does not apply to any independent contractor performing maintenance work, janitorial-type services, meter reading services, rights-of-way mowing, and jobs of a similar nature. However, DEMCO, in its sole discretion, may require that any such independent contractor take out and maintain public liability coverage at a level determined by DEMCO to be appropriate.

All insurance policies required herein shall be "occurrence" type policies which provide the requisite insurance coverage for damages resulting from occurrences during the term of this Agreement as it may be extended or amended from time to time.

Contractor shall furnish to DEMCO a certificate evidencing compliance with the insurance requirements set forth herein. This certificate shall name DEMCO as an additional insured and shall contain the obligation to provide DEMCO with not less than thirty (30) days prior written notice of any cancellation or material change in the insurance. DEMCO may, in its sole discretion, and subject to the terms and conditions of this Section, obtain and maintain any such insurance policy on behalf of Contractor and deduct the cost of such insurance from any amounts due to Contractor.

Contractor agrees that in the event any such insurance policy procured by or on behalf of Contractor does not provide coverage for any claim being made against DEMCO and/or its employees, or Contractor, or any other insured under such policy, or in the event that any such insurance company providing coverage becomes insolvent or financially unable to pay any claim(s) levied or adjudged against any such policy for any reason or becomes financially unable to defend DEMCO or Contractor or any other insured under the policy, then in any of those events, Contractor agrees to indemnify and hold DEMCO harmless to the extent, and in the manner specified, in Article III, Section 8 of this Agreement.

Appropriate insurance certificates satisfying the above requirements shall be attached to this agreement.

## **ARTICLE V - COMPLIANCE WITH FEMA PROCUREMENT AND CERTAIN OTHER FEDERAL REQUIREMENTS**

### **Section 1. Non-Discrimination.**

The parties to this Agreement shall comply with Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act (ADA) and any other applicable federal or state laws regarding discrimination based on gender, race, national origin, age, religion, pregnancy status, military status, or persons with disability.

## **Section 2. Equal Opportunity Provisions.**

- (a) During the performance of this Agreement, Contractor agrees to comply with Equal Opportunity laws as modified.
1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure the applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not to 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.
  2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  3. Contractor will allow reasonable access to its books, records and accounts of the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with applicable rules, regulations, and orders.
  4. In the event of Contractor's noncompliance with the Equal Opportunity Clause of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts 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 the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
  5. Contractor will include this Equal Opportunity Clause 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. 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 Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Certificate of Non-segregated Facilities. Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Agreement.

### **Section 3. Extension to Successors and Assigns.**

Each and all of the covenants and agreements contained in the Agreement affected by the acceptance of the Proposal shall extend to and be binding upon the successors and assigns of the parties thereto. Rights under this Agreement may not be assigned without mutual written consent of the parties.

### **Section 4. Binding Agreement.**

This Agreement shall be construed in a neutral manner. This Agreement reflects the complete and full terms of agreement that is binding between the parties. The pages may be signed on separate pages, in counterparts and together are deemed to be one document. A true electronic copy is deemed an original.

### **Section 5. Governing Law.**

All disputes relating to the execution, interpretation, construction, performance, or enforcement of the Agreement and the rights and obligations of the parties hereto shall be governed by the laws of the State of Louisiana and resolved in a District Court of Louisiana or applicable Federal Court of Louisiana. Contractor hereby consents to and waives any objection to venue and jurisdiction in such courts.

### **Section 6. Severability.**

If any term of this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

### **Section 7. Clean Air Act and Federal Water Pollution Control Act.**

Contractor shall comply with all applicable standards, orders or regulation issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671A) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

#### **Section 8. Debarment and Suspension.**

Contractor shall be registered and maintain an active registration throughout the entire period of performance of this contract within the federal System for Award Management (SAM) in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension.

Sam.gov website is a national database for all recipients of federal funds. The website for SAM system is at [www.sam.gov](http://www.sam.gov). The Owner will verify contractor eligibility of award of contract.

#### **Section 9. Byrd Anti-Lobbying Amendment and Certification.**

Contractor must certify that it will not and has not used Federal 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. See attached Byrd Anit-Lobbying Amendment Certification – **Exhibit B**.

#### **Section 10. Procurement of Recovered Materials.**

Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Contractor shall procure items designated in 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. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

#### **Section 11. Contract Work Hours and Safety Standards Act.**

Contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be 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.

### **Section 12. DHS Seal, Logo, and Flags.**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

### **Section 13. No Obligation By Federal Government.**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

### **Section 14. Program Fraud and False or Fraudulent Statements or Related Acts.**

Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

### **Section 15. Access to Records.**

The following access to records requirements apply to this Agreement:

- (a) The Contractor agrees to provide the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (c) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (d) In compliance with the Disaster Recovery Act of 2018, the (write in name of the non-federal entity) and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

### **Section 16. Changes.**

To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement and/or this Agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or Agreement, and reasonable for the completion of project scope. All changes will be approved in writing by Cooperative prior to occurring or Contractor may not be paid for work performed.

## **Section 17. Compliance with Federal Law, Regulations, and Executive Orders.**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Agreement. Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

## **Section 18. Termination For Cause.**

The Cooperative shall submit a written notice to the Contractor and surety (if applicable) which justifies placement of the Contractor in default if:

- (a) The work, duties, and services related to the Project and/or contemplated by the Agreement do not begin within the time specified in this Agreement.
- (b) The work, duties, and services, contemplated by the Agreement and/or Project is performed with insufficient workmen or employees; inadequate facilities; inadequate completion of services (including but not limited to reefer trucks, ice); and/or inadequate equipment or materials to assure satisfactory completion of the scope of Contractor's services. Any and all determinations of the sufficiency in this provision are at the Cooperative's sole determination.
- (c) The Contractor provides unsuitable, neglected, or rejected work, and/or refuses to remove materials (determined at the Cooperative's sole determination).
- (d) The work and duties contemplated by the Agreement is discontinued by Contractor.
- (e) The work, duties, and services contemplated by the Agreement and/or Project are not completed within the specified amount of time in the Agreement, or as otherwise agreed to amongst the parties.
- (f) The work, duties, and services contemplated by the Agreement and/or Project is not resumed within a reasonable time after receiving a notice to continue by the Cooperative.
- (g) Contractor becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency.
- (h) Contractor allows any final judgment to stand unsatisfied for a period for a period of ten (10) days.
- (i) Contractor makes an assignment for the benefit of creditors.
- (j) The work contemplated by the Agreement is not performed in an acceptable manner (as determined solely by Cooperative).

If problems or issues are discovered by Cooperative, the Cooperative may provide written notice to Contractor. In the event such written notice is provided and Contractor or surety (if applicable) does not remedy all conditions cited in the written notice by Cooperative of a problem or issue within ten (10) days after receiving such a notice, the Contractor is placed into default. The Cooperative may obtain the necessary labor, services, materials, and equipment (if necessary) from a third party. If the Cooperative enters into a new contract or agreement in order to complete the work, duties, and services that are the subject of this Agreement on behalf of Cooperative, any and all costs incurred by the Cooperative will be deducted from the payment

due to the Contractor by Cooperative. If such expense exceeds the sum payable under the new contract/agreement, the Contractor and surety (if applicable) shall be completely liable to pay the Cooperative the difference. For avoidance of doubt, Contractor will be liable to make Cooperative whole for any costs incurred by Cooperative in the event Cooperative enters into a contract/agreement for the services (including new lodging accommodations) covered by the Agreement due to termination of this Agreement.

#### **Section 19. Termination For Convenience.**

Cooperative may, at any time, terminate this Agreement or any portion thereof, for Cooperative's convenience, upon providing twenty-four (24) hour advance written notice to the Contractor. In such case, Contractor shall be paid for all work completed through the date notice was provided (less payments already received). In no event shall the Contractor be entitled to payment of overhead and profit on work not performed.

#### **Section 20. Equal Employment Opportunity.**

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

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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.

- B. 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.
- C. 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.

- D. 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 commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, 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 others.
- G. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, 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 by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through H 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 administering agency may be 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 interest of the United States.



PARISH	MIN. GOAL (%)	PARISH	MIN. GOAL (%)	PARISH	MIN. GOAL (%)	PARISH	MIN. GOAL (%)
Assumption	27.7	Evangeline	24.1	Orleans	31.0	St. Tammany	31.0
Avoyelles	29.3	Franklin	27.9	Ouachita	22.8	Tangipahoa	27.7
Beauregard	17.8	Grant	25.7	Plaquemines	27.7	Tensas	27.9
Bienville	29.3	Iberia	24.1	Pointe Coupee	30.4	Terrebonne	27.7
Bossier	29.3	Iberville	30.4	Rapides	25.7	Union	27.9
Caddo	29.3	Jackson	27.9	Red River	29.3	Vermilion	24.1
Calcasieu	19.3	Jefferson	31.0	Richland	27.9	Vernon	17.8
Caldwell	27.9	Jefferson Davis	17.8	Sabine	29.3	Washington	27.7
Cameron	17.8	Lafayette	20.6	St. Bernard	31.0	Webster	29.3
Catahoula	27.9	Lafourche	27.7	St. Charles	27.7	W. Baton Rouge	26.1
Claiborne	29.3	LaSalle	27.9	St. Helena	30.4	West Carroll	27.9
Concordia	30.4	Lincoln	27.9	St. James	27.7	West Feliciana	30.4
De Soto	29.3	Livingston	26.1	St. John the Baptist	27.7	Winn	29.3

C. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the sub-contract; and the geographical area in which the contract is to be performed.

D. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" may include the Parishes of Ascension, East Baton Rouge, East Feliciana, Livingston, St. Helena, Tangipahoa, and West Feliciana.

**Section 22. Certification of Non-Segregated facilities.**

Contractor certifies that he/she/it does not maintain or provide for his/her/its establishments, and that he/she/it does not permit employees to perform their services at any location, under his/her/its control, where segregated facilities are maintained. He/she/it certifies further that he/she/it will not maintain or provide for employees any segregated facilities at any of his/her/its establishments, and he/she/it will not permit employees to perform their services at any location under his/her/its control where segregated facilities are maintained. The bidder, offeror,



applicant, or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she/it further agrees that (except where he/she/it has obtained for specific time periods) he/she/it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she/it will retain such certifications in his/her/its files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

**Section 23. Section 109 of the Housing and Community Development Act of 1974.**

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

**Section 24. Section 3 of the Housing and Urban Development Act of 1968.**

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- A. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- B. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding,

if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

- C. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- D. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- E. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- F. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

**Section 25. Section 503 of the Rehabilitation Act of 1973.**

- A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat

qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- (1) Recruitment, advertising, and job application procedures;
  - (2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - (3) Rates of pay or any other form of compensation and changes in compensation;
  - (4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (5) Leaves of absence, sick leave, or any other leave;
  - (6) Fringe benefits available by virtue of employment, whether or not administered by the contractor;
  - (7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (8) Activities sponsored by the Contractor including social or recreational programs; or
  - (9) Any other term, condition, or privilege of employment.
- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The contractor must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting

obligations by posting such notices in an electronic format, provided that the contractor provides computers, or access to computers, that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

- E. The Contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, 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 Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
- G. The contractor must, 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 and will not be discriminated against on the basis of disability.

#### **Section 26. Section 504 of the Rehabilitation Act of 1973, as amended.**

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

#### **Section 27. Special Conditions Pertaining to Hazards, Safety Standards, and Accident Prevention.**

##### **A. Lead-Based Paint Hazards**

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and subcontractors shall comply with the provisions for the elimination of lead-based paint hazards under Subpart B of

said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14 (f) thereof.

B. Use of Explosives (Modify as required)

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

The Contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

C. Danger Signals and Safety Devices (Modify as Required)

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

**Section 28. Flood Disaster Protection.**

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain

and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

**Section 29. Conflict of Interest.**

- A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.
- B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

**Section 30. Executive Order 11246, as amended.**

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

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, 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.
- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. Contractors shall incorporate foregoing requirements in all subcontracts.

**Section 31. Patents.**

- A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance

manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.

- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent, or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

### **Section 32. Copyright.**

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

### **Section 33. Energy Efficiency.**

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

### **Section 34. Protection of Lives and Health.**

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Owner may determine to be reasonably necessary.

### **Section 35. Breach of Contract Terms.**

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

### **Section 36. Provisions Required by Law Deemed Inserted.**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

### **Section 37. Personnel.**

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

### **Section 38. Anti-Kickback Rules.**

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by the subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.



### **Section 39. Interest of Contractor.**

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

### **Section 40. Political Activity.**

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

### **Section 41. Compliance with the Office of Management and Budget**

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, *"Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"*, 2 CFR Part 200, as they relate to the use of Federal funds under this contract.

### **Section 42. Discrimination Due to Beliefs.**

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

### **Section 43. Confidential Findings.**

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

### **Section 44. Contracting with Certain Firms.**

The Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists:
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources:

- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

**Section 45. Davis-Bacon Act.**

Contractor will fully comply with the Davis-Bacon Act, as amended, and any rules or regulations promulgated pursuant to the Act. Contractor shall maintain payroll records as needed to demonstrate compliance with the Act.

**Section 46. Appendix II to Part 200.**

2 C.F.R. Pt. 200, App. II is incorporated into this Agreement by reference. Contractor agrees to review and comply with all requirements set forth therein to the extent that any of the requirements set forth in Appendix II are not addressed by a specific provision in this Agreement.

**Section 47. Prohibition on Contracting for Covered Telecommunications Equipment or Services.**

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a

substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities 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; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or 27 Contract Provisions Guide

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

- i. Are not used as a substantial or essential component of any system; and
- ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall

describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

## **ARTICLE VI – ADDITIONAL PROVISIONS**

### **Section 1. Exhibits.**

The exhibits to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. If there is a disagreement between the Exhibits and this Agreement, this Agreement prevails.

### **Section 2. Titles and Headings.**

Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement. For the “Description of Services and Products” are incorporated into this Agreement and made apart hereof.

### **Section 3. Conflict or Inconsistency.**

In the event of any conflict or inconsistency between the terms and provisions of an Addendum and the terms and provisions of the Agreement, contract, instrument, or other agreement between Contractor and Cooperative, the terms and provisions of the Addendum control.

### **Section 4. Dispute Resolution.**

In the event that any dispute, claim or controversy arising out of this Agreement remains unresolved, any party may request non-binding mediation upon written notice to the other party, and such matter will be submitted to a third-party mediator mutually agreeable to the defaulting party and the non-defaulting party within thirty (30) days after such written notice. Such mediation proceedings shall be conducted in Baton Rouge, Louisiana. Each party shall be responsible for any fees, costs, and expenses incurred by it in the mediation; provided, however, the mediator’s fee shall be borne equally by the parties. In addition to, and not in limitation of, any other confidentiality provisions of this Agreement, all aspects of the mediation shall be treated as confidential. Neither the parties nor the mediators may disclose the existence or results of the mediation, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties in order to afford such other parties a reasonable opportunity to protect their interests. Neither party may commence proceedings before a court of competent jurisdiction or

in relation to any dispute arising out of this Agreement unless and until it has pursued mediation in good faith and either (x) the mediation has terminated; or (y) the other party has failed to participate in the mediation (or agree to a mediator); providing always that a party's right to commence proceedings are not prejudiced by a delay. Each party hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of any state court of competent jurisdiction sitting in East Baton Rouge Parish, Louisiana, or the United States District Court for the Middle District of Louisiana, for any litigation arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, waives any objection to the laying of venue of any such litigation in such courts and agrees not to plead or claim in any such court that such litigation brought therein has been brought in any inconvenient forum. The prevailing party in any such litigation shall be entitled to its attorneys' fees and expenses from the other party. Notwithstanding the mediation provisions herein, any party may seek a preliminary injunction or other preliminary judicial relief if in its judgment such action is necessary to avoid irreparable damage.

**Attached Exhibits**

Exhibit A – Contractor's Hourly Labor and Equipment Schedule/Bid Proposal

Exhibit B – Byrd Anti-Lobbying Amendment Certification

Exhibit C – Contractor's Insurance Certificate(s)

THIS DONE AND EXECUTED by the following duly authorized representatives of the parties:

**Cooperative**  
**Dixie Electric Membership Corporation**

**Supplier/Contractor**  
**vendor name**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

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

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

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

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

**EXHIBIT B, 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:

1. 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 U. S. Department of Homeland Security Headquarters 500 C St SW Washington, D.C. 20042.

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.

2. 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.

3. 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. Code. 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.

Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, 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

\_\_\_\_\_  
Date