

INDEPENDENT CONTRACTOR AGREEMENT

WHEREAS Dixie Electric Membership Corporation (hereinafter “DEMCO”) is a non-profit electric membership cooperative authorized to do and doing business in the State of Louisiana;

WHEREAS DEMCO routinely engages independent contractors for the provision of goods or services (hereinafter collectively referred to as “services” for the purposes of this Independent Contractor Agreement);

WHEREAS DEMCO desires to clarify the rights and obligations existing between DEMCO and said independent contractors and to set forth certain terms and conditions in connection with the engagement of said independent contractors;

WHEREAS DEMCO has retained or intends to retain the services of the undersigned independent contractor (hereinafter “Independent Contractor”);

WHEREAS Independent Contractor acknowledges that the execution of this Independent Contractor Agreement (hereinafter “Agreement”) is a condition precedent to the provision of services to DEMCO, regardless of whether Independent Contractor was engaged by DEMCO prior to the execution of this Agreement;

WHEREAS DEMCO and Independent Contractor acknowledge the foregoing recitations and agree as follows:

Section 1. Status

Independent Contractor, its agents, representatives, directors, officers, employees, contractors, guests, customers or invitees (for the purposes of this Agreement hereinafter collectively referred to as “Independent Contractor”) acknowledge that it is providing services or will provide services to DEMCO in the course of Independent Contractor’s self-employment and at no time, and under no circumstances, shall Independent Contractor be considered an employee or mandatory of DEMCO. Independent Contractor further agrees that it will not perform any action or inaction with the intention of binding DEMCO as employer or principal and further, that it has no authority to take any action, the effect of which is to bind or otherwise obligate DEMCO.

Section 2. Scope of Work

The parties acknowledge, understand and agree that DEMCO has contracted with Independent Contractor, through this Agreement, to acquire from Independent Contractor the

materials, goods or equipment, or to receive the services of Independent Contractor as more fully described and set forth in Exhibit A hereto, as that Exhibit may be amended in writing from time to time.

Section 3. Payment

DEMCO agrees to pay Independent Contractor for the materials, goods or equipment provided or services rendered, based upon the schedule of payment set forth more fully on Exhibit A hereto, as it may be amended in writing from time to time.

Section 4. Business Relationship

Independent Contractor acknowledges that it is not receiving a wage or salary from DEMCO but rather a sum of money in payment for the provision of service to DEMCO. Independent Contractor agrees that it shall be solely responsible for withholding and making payment of any and all local, state, or federal income taxes or any other taxes or fees due in connection with the receipt of payment from DEMCO or the general operation of Independent Contractor's business.

DEMCO reserves the right, in its sole discretion, to reject any employees or subcontractors of Independent Contractor. All subcontractors must be approved by DEMCO in advance. Independent Contractor agrees to use best efforts to identify and notify DEMCO in advance, if Independent Contractor intends to use any person as a direct employee or employee of any subcontractor who it knows or reasonably believes may have been previously employed by DEMCO to perform or directly supervise any services under this Agreement. At anytime after any such notification, DEMCO may reject any such employee to perform any work or services or directly supervise any work or services under this Agreement.

Section 5. Indemnification and Hold Harmless Provisions

Independent 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 Independent Contractor and DEMCO, directly arising out of the negligent or willful misconduct of Independent Contractor in connection with performance of any of the obligations assumed by Independent Contractor under this Contract.. Independent 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 Independent 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, Independent 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 Independent Contractor has agreed to provide indemnity and defense, without any advance notice to, or concurrence from, Independent Contractor.

DEMCO shall not be liable for injury to Independent Contractor for any loss of Independent Contractor's income, business interruption, business opportunity, consequential damages, or for damage to the goods, wares, merchandise or other property of Independent 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 Independent 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 Independent Contractor. DEMCO shall not be liable to Independent 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.

Section 6. Insurance

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

- a. Worker's compensation and employer's liability insurance, as required by law, covering all of Independent Contractor's employees who perform any of the obligations of Independent Contractor under this Agreement or any other agreement or contract entered into between DEMCO and Independent Contractor. If Independent 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 Independent Contractor to obtain insurance to provide worker's compensation coverage for Independent Contractor or any such employee(s).
- b. Public liability insurance covering all aspects of the performance of this Agreement or any other agreement or contract entered into between DEMCO and Independent 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.
- c. Automobile liability insurance on all motor vehicles used in connection with this Agreement or any other agreement or contract entered into between DEMCO and Independent 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.
- d. 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.
- e. 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.
- f. 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.

Independent 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 Independent Contractor and deduct the cost of such insurance from any amounts due to Contractor.

Independent Contractor agrees that in the event any such insurance policy procured by or on behalf of Independent Contractor does not provide coverage for any claim being made against DEMCO and/or its employees, or Independent 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 Independent Contractor or any other insured under the policy, then in any of those events, Independent Contractor agrees to indemnify and hold DEMCO harmless to the extent, and in the manner specified, in Section 5 of this Agreement.

Section 7. Default

In the event that Independent Contractor breaches any of the provisions of this Agreement, Independent Contractor shall be liable for DEMCO's damages, together with DEMCO's attorney's fees, court costs, expert witness fees, litigation expenses, and any and all other costs and expenses resulting from such breach of this Agreement. Independent Contractor shall pay DEMCO's reasonable attorney's fees, court costs, expert witness fees litigation expenses, and any and all other expenses in connection with Independent Contractor's request for DEMCO's consent to alter or modify the provisions of this Agreement.

Section 8. Audit

The Independent Contractor and all subcontractors shall, throughout the term of this Agreement and for at least three (3) years thereafter, keep and maintain complete and accurate time and other records or accounts of the Independent Contractor, its affiliates and any subcontractors as are necessary to verify and support any and all charges billed to DEMCO associated with this Agreement. This includes verification that any and all material, services, labor and other expenses incurred under this Agreement have been paid. All books and records shall be maintained in accordance with generally accepted accounting principles. Such books and records shall be made available at the Independent Contractor's office for verification, copying, audit and inspection by DEMCO or its representatives, including DEMCO-authorized third-party auditors and attorneys. Any such audit shall be at DEMCO's expense and conducted during the Independent Contractor's normal working hours; provided, however, that the Independent Contractor shall provide reasonable assistance necessary to enable DEMCO to conduct such audit, and shall not be entitled to charge DEMCO for any such assistance. For a period of three (3) years from the date of termination of this Agreement, if certain provisions in the Agreement are discovered, after payment to Independent Contractor, to have been incorrectly administered or

interpreted, or if any amounts are incorrectly or inappropriately invoiced to and paid by DEMCO, whether discovered prior to or subsequent to payment by DEMCO, such incorrect payments or invoices shall be reimbursed to DEMCO by the Independent Contractor within five (5) days of notification by DEMCO to the Independent Contractor of the error in the invoice. Independent Contractor shall include the provisions of this Section 8 in all of Independent Contractor's agreements with any subcontractors so as to insure that DEMCO has the same rights to audit and recovery of incorrect or inappropriately-administered invoices submitted by subcontractors. DEMCO's employees and representatives shall have full access to applicable records of any subcontractors and Independent Contractor shall include such a provision in any of its contracts with any subcontractor.

If services provided by Independent Contractor are eligible for FEMA reimbursement of all or a portion of the cost of services (Major Storm or other declared event), the following provision shall apply:

- a. The Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to FEMA reimbursement for the purpose of making audits, examinations, excerpts and transcriptions.
- b. Independent Contractor must comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act. Under section 102 of the Act, each contractor shall be required to compute the wages of every 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 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction and/or maintenance work and provides that no laborer shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

Independent Contractor represents and warrants that all financial settlements, billings, and reports rendered to DEMCO or its representatives shall reflect properly the facts about all activities and transactions handled for the account of DEMCO, which data may be relied upon as being complete and accurate in any further recordings or reporting made by DEMCO or its representatives for whatever purpose. Independent Contractor shall notify DEMCO promptly upon discovery of any instance where Independent Contractor fails to comply with the foregoing. If Independent Contractor discovers or is advised of any errors or exceptions related to its invoicing, Independent Contractor and DEMCO shall together review the nature of the errors or exceptions, and Independent Contractor will, if appropriate, promptly adjust the relevant invoice and refund overpayments.

Payment for, inspection of, receipt of, or acceptance of services hereunder or under any invoice or purchase order shall not constitute a waiver by DEMCO of any breach of warranty by Independent Contractor, or of DEMCO's right to seek reimbursement during the three-year period for incorrect or improper payments to Independent Contractor as set forth in the first paragraph of Section 8.

Section 9. Miscellaneous Warranties

Independent Contractor warrants (a) that any and all work to be performed under this Agreement or any other agreement or contract entered into between DEMCO and Independent Contractor shall be performed in a good and workmanlike manner, (b) that it possesses adequate financial resources for the performance of the work covered by this Agreement or any other agreement or contract entered into between DEMCO and Independent Contractor, (c) that it will provide necessary tools and equipment and a qualified superintendent and other employees in the performance of this Agreement or any other agreement or contract entered into between DEMCO and Independent Contractor, and (d) that it has procured all necessary permits and/or licenses, to the extent any such permits and/or licenses may be required, prior to provision of services to DEMCO.

Section 10. Severability and Repealer Clauses

The provisions of this Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Agreement, or the invalidity of the application thereof to any person or circumstance not affect the validity of the remainder of this Agreement, or the validity of its application to other persons or circumstances.

In the event that this Agreement is in conflict with the provision(s) of any prior or subsequent agreement or contract entered into between DEMCO and Independent Contractor, DEMCO, in its sole discretion, shall have the right to enforce the provision of the agreement of its choosing, provided that the conflicting provisions shall be given effect upon the resolution of the conflict, to the extent possible, and to the extent that any of the conflicting provisions shall be held invalid or unenforceable, then the remaining provisions of this Agreement and/or the other agreement or contract shall be declared separate and severable as set forth in this Section.

Section 11. Compliance with Laws

The Bidder shall comply with all federal, state, and local laws, rules, and regulations applicable to its services under the contract.

Section 12. Miscellaneous Provisions

This document sets forth and contains the entirety of the agreement and understanding between the parties hereto and the parties shall not be bound by any other agreements, conditions, understandings, verbal alterations by any DEMCO or Independent Contractor representative(s) of work scope or billing procedures, or other representations unless expressly stipulated and set forth herein or in any written amendments hereto. Except as may otherwise be provided herein, no subsequent alteration, verbal understanding, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by both parties.

Failure of DEMCO to require strict performance by Independent Contractor of any of the covenants, provisions or conditions of this Agreement, on one or more occasions, shall not constitute a waiver by DEMCO of the right thereafter to require strict retroactive compliance with said covenants, provisions and conditions.

All of the provisions contained herein shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, administrators, successors, assigns, nominees, and parent corporations, if any.

This Agreement shall be deemed to be a contract made under the laws of the State of Louisiana and shall be construed in accordance with and governed by the laws of the State of Louisiana. Any dispute arising hereunder shall be heard by a court of competent jurisdiction in the State of Louisiana.

If Independent Contractor is a corporation or limited liability company, each person signing this Agreement on behalf of Independent Contractor represents and warrants that he has full authority to do so and that this Agreement binds such entity. In such even within thirty (30) days after this Agreement is signed, Independent Contractor shall deliver to DEMCO a certified copy of a resolution of the governing body of the Independent Contractor's authorizing the execution of this Agreement or such other evidence of such authority as may be reasonably acceptable to DEMCO. If Independent Contractor is a partnership, each person signing this Agreement for Independent Contractor represents and warrants that he is a general partner of the partnership, that he has full authority to sign for the partnership and that this Agreement binds the partnership and all general partners of the partnership. In such instance, Independent Contractor shall give written notice to DEMCO of any general partner's withdrawal or addition. Within

thirty (30) days after this Agreement is signed, Independent Contractor shall deliver to DEMCO a copy of Independent Contractor's recorded statement of partnership or certificate of limited partnership.

The Section captions and headings contained herein are for convenience of reference only and in no way shall be used to constitute or modify the provisions set forth in this Agreement.

THIS AGREEMENT made and entered into on this _____ day of _____, 20____, by and between DEMCO and _____, Independent Contractor.

WITNESS:

DIXIE ELECTRIC MEMBERSHIP CORPORATION

By: _____

Printed Name: _____

Date: _____

(Independent Contractor)

By: _____

Printed Name: _____

Date: _____