

MASTER SERVICES AGREEMENT FOR GRANT MANAGEMENT SERVICES ("FEMA CONSULTING")

THIS MASTER SERVICES AGREEMENT FOR GRANT MANAGEMENT SERVICES (the "Agreement") is made on this date the ____ of ____, 202__ (the "Effective Date") by and between _____ (the "Contractor"), and Presque Isle Electric & Gas Cooperative (PIE&G) ("Cooperative"), each individually a "Party" or, collectively, the "Parties."

RECITALS

WHEREAS, Contractor has experience and expertise in the business of providing the services as set forth in Exhibit A;

WHEREAS, Cooperative desires to have Contractor provide such services in response to a major disaster or emergency; and,

WHEREAS, Contractor desires to supply such services to Cooperative on the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the Parties agree as follows:

[remainder of the page left blank]

TABLE OF CONTENTS

RECITALS	1
TABLE OF CONTENTS	2
Section 1. DEFINITIONS	4
Section 2. SCOPE OF SERVICES.....	5
Section 3. TASK RELEASES.....	5
Section 4. PAYMENT TERMS	6
Section 5. TAXES.....	7
Section 6. NO QUANTITY GUARANTEE	7
Section 7. CONTRACTOR’S PERSONNEL.....	8
Section 8. SUBCONTRACTING	8
Section 9. INDEMNIFICATION	8
Section 10. INSURANCE	8
Section 11. PROFESSIONAL STANDARDS	10
Section 12. LICENSES AND PERMITS.....	10
Section 13. COMPLIANCE WITH LAWS	10
Section 14. DEBARMENT AND SUSPENSION.....	11
Section 15. BYRD ANTI-LOBBYING AMENDMENT	11
Section 16. CONTRACT WORK AND SAFETY STANDARDS.....	12
Section 17. ENVIRONMENTAL COMPLIANCE.....	14
Section 18. DOMESTIC PREFERENCE REQUIREMENTS	14
Section 19. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT	15
Section 20. AMENDMENTS AND CHANGE ORDERS	17

Section 21.	TERM	17
Section 22.	TERMINATION FOR CONVENIENCE BY COOPERATIVE.....	18
Section 23.	TERMINATION FOR CAUSE BY COOPERATIVE	18
Section 24.	REMOVAL OF CONTRACTOR-OWNED EQUIPMENT AND MATERIALS.....	19
Section 25.	INDEPENDENT CONTRACTOR	19
Section 26.	FORCE MAJEURE	19
Section 27.	SEVERABILITY	20
Section 28.	ENTIRE AGREEMENT	20
Section 29.	APPLICABLE LAWS	20
Section 30.	NOTICES.....	20
Section 31.	CAPTIONS.....	21
Section 32.	NON-WAIVER	21
Section 33.	INSPECTIONS AND AUDITS.....	21
Section 34.	AMBIGUITIES.....	22
Section 35.	SURVIVAL.....	22
Section 36.	PARTIES IN INTEREST	22
Section 37.	ASSIGNMENTS.....	22
Section 38.	REMEDIES CUMULATIVE.....	22
Section 39.	SIGNATURES.....	22
EXHIBIT A:	SCOPE OF SERVICES	24
EXHIBIT B:	TASK RELEASE.....	27
EXHIBIT C:	PRICE SCHEDULE.....	30
EXHIBIT D:	ADDRESSES FOR NOTICE.....	31

ADDENDUM A: CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS	32
--	----

ADDENDUM B: CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS	36
---	----

Section 1. DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below:

- A. "Agreement" means, in controlling order: (1) any written amendments to this contract executed by the Parties; (2) this contract between the Parties; (3) all exhibits to this contract; (4) Contractor's Proposal submitted in response to Cooperative's Request for Proposals.
- B. "Day(s)" means calendar day, including weekends and legal holidays, whether capitalized or not, unless otherwise specifically provided. In the case of plural "days," those days will be consecutive.
- C. "Effective Date" means the date first set forth above.
- D. "Party" or "Parties" means each Cooperative and Contractor who are bound by this Agreement, individually or collectively as indicated in the context by which it appears.
- E. "Services" means all services required by or reasonably inferable from the Agreement and Exhibit A, including all labor, tools, supplies, equipment, transportation, mobilization, insurance, subcontracts, supervision, management, reports, incidentals, quality control, and other items necessary or incidental by Contractor to fulfilling Contractor's obligations.
- F. "Subcontractor" means any person or entity with whom the Contractor contracts to provide any part of the goods, services, or work to be provided by Contractor under this Agreement, including subcontractors of any tier, suppliers, and material men, whether or not in privity with the Contractor.
- G. "Task Release" means written authorizations to commence work that will define the scope of work, objective, location, completion timeframe, rates, and other useful information necessary for the Contractor to begin work.
- H. "Term" means the entire period during which this Agreement is in effect, starting on the Effective Date and continuing through the final date of termination or expiration of this Agreement, including any renewals or extensions.

- I. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.
- J. The word “shall” is always mandatory and not merely permissive.

Section 2. SCOPE OF SERVICES

In consideration of the payments specified in this Agreement, Contractor agrees to provide all labor, material as requested, and supervision necessary to perform the services as described in **Exhibit A** (the “Services”), as requested by Cooperative. Cooperative may request performance of Services by issuing a Task Release as described in Section 3, below.

Section 3. TASK RELEASES

- A. This Agreement describes the terms and conditions under which Services will be performed by Contractor. Contractor will be authorized to commence the provision of Services by Cooperative’s issuance of one or more Task Releases to Contractor.
- B. Each Task Release will describe the specific scope of Services to be performed, specify the rates to be charged consistent with this Agreement, include a price ceiling the Contractor exceeds at its own risk if the work is performed on an hourly rate basis, and specify the time period for performance, among other things. Unless otherwise directed by Cooperative in writing, Contractor shall not commence work under this Agreement until Cooperative and Contractor have executed a Task Release.
- C. Each Task Release shall take the form substantially similar to **Exhibit B** attached hereto. Upon execution by Cooperative and Contractor, each Task Release shall become a part of this Agreement and subject to the terms and conditions herein. Any changes or modifications to an executed Task Release, including to the Services to be performed or method, price, or schedule of same may only be in accordance with Section 20, Amendments and Change Orders.
- D. Where the terms of a Task Release conflict with the terms of this Agreement, the Task Release prevails.
- E. In situations where Cooperative has established agreements with multiple contractors performing the same work or services described in this Agreement, Cooperative may give preference to one or more contractors based on a determination of best value to Cooperative, which will include an evaluation of factors as described in the Request for Proposals under which the agreements were awarded. Cooperative reserves the right to issue a Task Release to a contractor other than the lowest priced offeror based on such determinations.

Section 4. PAYMENT TERMS

- A. Cooperative shall pay, and Contractor shall accept, the fees set forth in **Exhibit C** as full compensation for all Services rendered by Contractor pursuant to a Task Release issued under this Agreement. Cooperative will strive to make payment within 60 days of Cooperative's receipt and approval of Contractor's detailed invoice showing services provided during the invoice period. Invoices shall be submitted to Cooperative's designated employee monthly unless otherwise indicated in the applicable Task Release. All invoices must be submitted in a form acceptable to Cooperative, with an electronic copy (Microsoft Excel format) of the invoice detail. Invoice details will be verified by Cooperative's designated employee before being paid.
- B. Unless otherwise agreed by the Parties, in writing, Cooperative will withhold a 10% retainage from each invoice until the Contractor's completion of the work described in the applicable Task Release. In order to release the retainage, Contractor must successfully complete the scope of the applicable Task Release and receive a letter of completion from Cooperative. Retainage will be held until final reconciliation is complete. Portions of the retainage may be held by Cooperative to repair damages caused by the Contractor to Cooperative's property.
- C. Cooperative may reject a payment request or invoice in writing within 20 business days after the date on which the payment request or invoice is stamped as received, which shall specify the deficiency and the action necessary to correct the deficiency to make the payment request or invoice proper. Payment of a corrected payment request or invoice, or rejection thereof, shall be made 20 business days after the date the corrected payment request or invoice is stamped as received.
- D. Cooperative may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts it previously paid to Contractor, to protect Cooperative from loss because of:
 - i. Defective work not remedied by the Contractor or, in the opinion of Cooperative, not likely to be remedied by the Contractor;
 - ii. Claims of third parties against Cooperative or the Cooperative's property;
 - iii. Failure by Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - iv. Evidence that the balance of the work cannot be completed in accordance with the Agreement or at the agreed rates in **Exhibit C**;
 - v. Evidence that the work will not be completed in the time required as indicated in the applicable Task Release;

- vi. Recurring or persistent failure to carry out the Services in accordance with the Agreement;
 - vii. Damage to Cooperative or a third party to whom Cooperative is, or may be, liable; or
 - viii. Recurring or persistent failure to submit required reports or other information requested by Cooperative.
- E. In the event that Cooperative makes written demand upon Contractor for amounts previously paid by Cooperative as contemplated in this Section, Contractor shall promptly comply with such demand.
- F. Cooperative shall have no duty to third parties to withhold payment to Contractor and shall incur no liability for a failure to withhold funds.
- G. If Cooperative disputes an invoice submitted by Contractor for any reason, including lack of supporting documentation (as may be required by Cooperative in its sole discretion), Cooperative may temporarily delete the disputed item and pay the remainder of the invoice. Cooperative shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the settled amount, if any, on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.
- H. Cost-plus-percentage of cost fee structures are strictly prohibited. Cooperative will not pay costs calculated on a cost-plus-percentage-of-cost basis.

Section 5. TAXES

Contractor shall be solely responsible for paying all sales taxes on materials and equipment furnished by Contractor as part of the Services and shall not seek reimbursement from Cooperative for any such sales taxes paid by Contractor. Cooperative will not be liable for any expenses other than those expressly authorized in this Agreement.

Section 6. NO QUANTITY GUARANTEE

- A. This Agreement does not create an exclusive right in Contractor to perform all services concerning the subject of this Agreement. Cooperative may procure and execute contracts with other firms for the same, similar, or additional services as those set forth in this Agreement or any Task Release.
- B. Cooperative makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of services will be procured or purchased from Contractor through this Agreement or any Task Release; nor does Cooperative make any express or implied representations, warranties, or

guarantees, whatsoever for the amount or value of revenue that Contractor may ultimately derive from or through this Agreement or any Task Release.

Section 7. CONTRACTOR'S PERSONNEL

Contractor shall replace any of its personnel or Subcontractors whose performance, work, or work product under a Task Release is deemed unsatisfactory at Cooperative's discretion.

Section 8. SUBCONTRACTING

- A. If Contractor enters into subcontracts for any portion of the work under this Agreement, Contractor may take steps described in 2 C.F.R. § 200.321, as compliant with current Federal laws, regulations, and executive orders. Contractor shall require written subcontracts or purchase orders with all Subcontractors and suppliers.
- B. Contractor is responsible for payment to all Subcontractors utilized to render Services under a Task Release. Contractor shall execute release waivers with all Subcontractors to release Cooperative from payment to Subcontractors directly. The release waivers for all Subcontractors shall be provided to Cooperative prior to payment to Contractor.

Section 9. INDEMNIFICATION

- A. Contractor agrees to indemnify and save Cooperative, its officers, agents, and employees harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogations, and expenses, including court costs and reasonable attorneys' fees arising from this Agreement, or the services performed or goods delivered under this Agreement, which are claimed or made by any person, firm, association or corporation, including employees, workmen, servants or agents of Contractor and its subcontractors, whether or not due in whole or in part to conditions, acts or omissions done or permitted by Cooperative. Contractor further agrees to promptly assume full responsibility for the defense of any and all such suits, actions, or proceedings which may be brought against Contractor or against Cooperative. In the event Cooperative's machinery or equipment is used by Contractor in the performance of any work that might be required under a Task Release, such machinery or equipment shall be considered as being under the sole custody and control of Contractor during the period of such use by Contractor.

Section 10. INSURANCE

- A. Prior to execution of the Agreement, Contractor shall submit one original certificate of insurance, signed by an authorized representative of the insurance company, demonstrating compliance with the following specifications. Notwithstanding any other provision of this Agreement, Cooperative shall have no obligation to issue a Task Release or make any payment to Contractor until all insurance requirements are met.

- B. Contractor's insurance shall be written for the following types and limits and shall be maintained, at its expense, for the life of the Agreement.
- C. Commercial General Liability
- i. Combined Single Limit: \$1,000,000 Each Occurrence; \$3,000,000 Aggregate
 - ii. Coverage Required: Premises-Operations; Explosion; Collapse Underground; Products/Completed Operations; Independent Contractors; Blanket Contractual Liability; Broad Form Property Damage; Personal Injury Liability
 - iii. Coverage shall include per project aggregate endorsement.
 - iv. Primary Additional Insurance: The following wording must appear on the certificate. We will not accept an endorsement attached to the certificate.
 - v. Cooperative and the United States of America are additional insureds under Contractor's general liability policy. Coverage under such policy shall be primary with Cooperative and any Cooperative insurance policies, or loss coverage, being in excess over the Contractor's coverage.
- D. Commercial Automobile Liability
- i. Combined Single Limit: \$1,000,000 Each person and \$3,000,000 Each accident
 - ii. Coverage Required: All owned automobiles, non-owned automobiles, and hired automobiles.
 - iii. If Contractor does not own any vehicles, the certificate must show Hired and Non-Owned Automobile Liability and must attach a letter stating that Contractor does not own any vehicles.
- E. Workers Compensation: in accordance with statutory requirement and Employers' Liability Insurance, with a limit of \$1,000,000 for each occurrence.
- F. Professional Liability (if required): \$1,000,000 annual aggregate
- G. The foregoing policies shall contain a provision that coverages afforded under the policies will not be cancelled or not renewed until at least 30 days written notice has been given to Cooperative.
- H. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting Cooperative's interest shall not

be effective (1) for such period as the laws of the State of Michigan prescribe, or (2) until 30 days after the insurer or the Contractor gives written notice to Cooperative, whichever period is longer.

- I. The Contractor shall comply with all applicable provisions of federal, state, and local safety laws, insurance requirements, standard industry practices, the requirements of the operations, and the awarded contract.
- J. Cooperative's failure to demand either a certificate of insurance or written endorsement required by this provision is not a waiver of Contractor's obligations to obtain the required insurance.

Section 11. PROFESSIONAL STANDARDS

- A. Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to, its employees on the job, and others. Contractor shall comply with all applicable provisions of federal, state, and local safety laws, insurance requirements, standard industry practices, the requirements of the operations, and the Agreement. Contractor, directly or through its subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the work, necessary safeguards for safety and protection of the public, including securing areas, posting danger signs, placards, labels, or posting other forms of warnings against hazards. When use of hazardous materials or equipment or unusual methods are necessary for execution of the work, or when the work includes the cleanup, remediation and/or removal of bio-solids, biohazards waste, or any hazardous or toxic materials, trash, debris, refuse, or waste, Contractor, its subcontractor(s), and their employees shall be trained and certified as required in the proper handling, use, and care of equipment, materials, and hazardous operations, and shall exercise utmost care and perform such activities under the supervision of properly qualified and competent personnel.
- B. Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor, its Subcontractors of every tier, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable.

Section 12. LICENSES AND PERMITS

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation for performance of the Services. Contractor shall immediately notify Cooperative of any suspension, revocation, or other detrimental action against any such license, permit, or certificate.

Section 13. COMPLIANCE WITH LAWS

- A. Contractor acknowledges that Federal Emergency Management Agency (“FEMA”) financial assistance will be used to fund this Agreement. Contractor shall not use the U.S. Department of Homeland Security (“DHS”) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- B. Contractor shall comply with all applicable local, state, and federal laws and regulations, executive orders, FEMA policies, procedures, and directives.
- C. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to Cooperative, Contractor, or any other party pertaining to any matter resulting from the Agreement.
- D. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor’s actions pertaining to this Agreement.

Section 14. DEBARMENT AND SUSPENSION

- A. The Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. Contractor shall comply with 2 C.F.R. pt. 180, subpart C and 2C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. Contractor has provided a certification included in Addendum A regarding debarment and suspension to Cooperative. This certification is a material representation of fact relied upon by Cooperative. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Cooperative, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

Section 15. BYRD ANTI-LOBBYING AMENDMENT

- A. Contractor has signed and provided to Cooperative a Certification Regarding Lobbying in the form set out in Addendum B.
- B. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also

disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

Section 16. CONTRACT WORK AND SAFETY STANDARDS

To the extent this Agreement involves the employment by Contractor or any of its Subcontractors of mechanics or laborers, the following provisions apply:

- A. Overtime requirements. No contractors or subcontractors contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in this section, the Contractor and any subcontractors responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of this clause, in the sum of \$33 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this section.
- C. Withholding for unpaid wages and liquidated damages.
 - i. The federal awarding agency or Cooperative may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clause set forth in this paragraph, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in 29 C.F.R. § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the

same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

- ii. The Department has priority to funds withheld or to be withheld in accordance with the above provisions over claims to those funds by:
 - a. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
 - b. A contracting agency for its re-procurement costs;
 - c. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
 - d. A contractor's assignee(s);
 - e. A contractor's successor(s); or
 - f. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.
- D. Subcontracts. Contractor or subcontractors shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractors or lower tier subcontractors with the clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
- E. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
 - i. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
 - ii. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
 - iii. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

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

Where the Agreement is subject to the Contract Work Hours and Safety Standards Act, but not to subject to the other statutes in 29 C.F.R. § 5.1 where an additional contract provision is required, the following language applies:

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

- i. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- ii. Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Section 17. ENVIRONMENTAL COMPLIANCE

- A. Contractor shall comply with all applicable standards, ordered, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 § et seq.).
- B. Contractor shall report all violations to Cooperative and understands and agrees that Cooperative will, in turn, report each violation as required to assure notification to FEMA and the appropriate Environmental Protection Agency Regional Office.
- C. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Section 18. DOMESTIC PREFERENCE REQUIREMENTS

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this Section must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes

of this Section:

- A. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- B. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Section 19. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

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—

- A. Prohibitions.
 - i. 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.
 - ii. Unless an exception in paragraph 16.6.2 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:
 - a. 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;
 - b. 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;
 - c. 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

- d. 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.

B. Exceptions.

- i. This clause does not prohibit contractors from providing—
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - b. 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.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 - (1) Are not used as a substantial or essential component of any system; and
 - (2) Are not used as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

C. Reporting requirement.

- i. 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 8.6.3.2 of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- ii. The Contractor shall report the following information pursuant to paragraph 8.6.3 of this clause:
 - a. 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.

- b. Within 10 business days of submitting the information in 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.
- iii. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts and other contractual instruments.

Section 20. AMENDMENTS AND CHANGE ORDERS

- A. Unless otherwise specified elsewhere in this Agreement, all modifications of this Agreement may only be made by written amendment executed by the Parties.
- B. Changes to the work required under a Task Release may be made through issuance of a Change Order, in writing, by Cooperative. A Change Order may increase or decrease the scope of services or change plans and specifications, as Cooperative may find necessary to accomplish the general purposes of this Agreement.
 - i. Whenever a Change Order is issued and executed by the Parties, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order in accordance with the requirements of this Agreement and any special provisions, specifications, or instructions issued for the extra work.
 - ii. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. Cooperative's decision regarding a time extension is final.

Section 21. TERM

This Agreement is effective on the date of the Effective Date and expires three years after the Effective Date, unless sooner terminated in accordance with the terms and conditions of this Agreement. The Parties may agree to extend the term of the Agreement for up to two additional

years by executing an amendment pursuant to Section 20.

Section 22. TERMINATION FOR CONVENIENCE BY COOPERATIVE

- A. Cooperative may terminate this Agreement at any time by giving ten days' written notice to Contractor. Cooperative's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.
- B. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services to Cooperative under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit to Cooperative a final invoice marked "FINAL" showing in detail the Services performed under this Agreement up to the termination date.
- C. TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED, IF ANY, ARE CONTRACTOR'S ONLY REMEDIES FOR COOPERATIVE'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM COOPERATIVE'S TERMINATION FOR CONVENIENCE.

Section 23. TERMINATION FOR CAUSE BY COOPERATIVE

- A. If Contractor defaults under this Agreement, Cooperative may either terminate this Agreement or allow Contractor to cure the default as provided below. Cooperative's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:
 - i. Contractor fails to perform any of its material duties under this Agreement;
 - ii. Contractor becomes insolvent;
 - iii. All or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
 - iv. A receiver or trustee is appointed for Contractor.
- B. If a default occurs, Cooperative may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. Cooperative, at its sole option, may extend the termination date to a later date. If Cooperative permits Contractor to cure the default and Contractor does so before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then

Cooperative may terminate this Agreement on the termination date and pay Contractor for all Services performed to the satisfaction of Cooperative, if any, through such date.

- C. To effect final termination, Cooperative must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

Section 24. REMOVAL OF CONTRACTOR-OWNED EQUIPMENT AND MATERIALS

Upon expiration or termination of this Agreement, Contractor is permitted ten days within which to remove Contractor-owned material and equipment from Cooperative's premises or the job site. Cooperative shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by Cooperative. Cooperative reserves the right to deny any extension of time.

Section 25. INDEPENDENT CONTRACTOR

Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of Cooperative.

Section 26. FORCE MAJEURE

- A. Timely performance by the Parties is essential to this Agreement. However, no Party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts Cooperative or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a Party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services required to perform the Services, floods, hurricanes, tornadoes, ice storms, and other natural disasters, explosions, war, terrorist acts against Cooperative or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn, or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to any reimbursement of expenses or any other payment whatsoever.
- B. This relief is not applicable unless the affected Party does the following:
 - i. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

- ii. provides the other Party with prompt written notice of the cause and its anticipated effect.
- C. Cooperative will review claims that a Force Majeure that directly impacts Cooperative or Contractor has occurred and render a written decision within seven days. The decision of Cooperative is final.
- D. Cooperative may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by Cooperative.
- E. If the Force Majeure continues for more than five days from the date performance is affected, Cooperative may terminate the applicable Task Release or the Agreement by giving seven days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.
- F. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

Section 27. SEVERABILITY

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices the Parties.

Section 28. ENTIRE AGREEMENT

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

Section 29. APPLICABLE LAWS

- A. This Agreement is subject to the laws of the State in which the majority of the work under a Task Release is to be performed, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.
- B. Venue for any litigation relating to this Agreement brought by or against Cooperative is the county in the State where Cooperative's principal place of business is located.

Section 30. NOTICES

All notices to any Party to the Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS, or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address set out in **Exhibit D** to this Agreement or other address the receiving Party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the noticing Party.

Section 31. CAPTIONS

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

Section 32. NON-WAIVER

- A. If any Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.
- B. An approval by Cooperative, or by any other employee or agent of Cooperative, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law.

Section 33. INSPECTIONS AND AUDITS

- A. Contractor shall provide Cooperative, the FEMA Administrator, the State Emergency Management Agency, 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 Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor shall keep its books, documents, papers, and records available for this purpose for at least ten years after this Agreement terminates or expires. This provision does not limit the applicable statute of limitations.
- B. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. Contractor shall provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.

- D. In compliance with the Disaster Recovery Reform Act of 2018, Cooperative and Contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Section 34. AMBIGUITIES

If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

Section 35. SURVIVAL

Contractor shall remain obligated to Cooperative under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

Section 36. PARTIES IN INTEREST

This Agreement does not bestow any rights upon any third party, but binds and benefits Cooperative and Contractor only.

Section 37. ASSIGNMENTS

- A. Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without Cooperative's prior written consent.
- B. Contractor shall not delegate any portion of its performance under this Agreement without the Cooperative's prior written consent which consent shall not be unreasonably withheld.

Section 38. REMEDIES CUMULATIVE

Unless otherwise specified in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. No Party may terminate its duties under this Agreement except in accordance with its provisions.

Section 39. SIGNATURES

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the others that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means

and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

Presque Isle Electric & Gas Cooperative

[CONTRACTOR NAME]

BY: _____

BY: _____

ITS: _____

ITS: _____

SAMPLE

EXHIBIT A: SCOPE OF SERVICES

Contractor will provide all technical, administrative, training support, and other related services to assist Cooperative with the development, submission, and closeout of grant applications and management of all disaster-related grants in response to a Federally declared disaster. Cooperative expects that grant funding will be primarily provided by FEMA, but Contractor should be familiar with all available funding sources that may be available (or become available) and must assist Cooperative in applying for and receiving all available funding as well as confirming no duplication between grants is occurring. Contractor will collaborate with Cooperative staff, representatives, or contractors to complete the scope of work.

Cooperative may select which specific services the Respondent will provide and to add or delete services within this scope throughout the term of this Agreement. Contractor must follow Federal Regulations applicable to procurement and services as amended and updated. This will include working with Federal agencies, State agencies, and various individuals within Cooperative. Contractor may be asked to perform all or some of the services below:

- Provide disaster claims consulting, including for FEMA and other Federal grant agencies' programmatic and regulatory requirements related to cost estimation, bid document preparation, and construction and budget oversight.
- Identify available funding sources and ensure avoidance of any duplication of benefit.
- Provide grant management advice related to FEMA and other Federal or State agency pass-through grants. Contractor will review Cooperative's current record-keeping strategy and assist Cooperative in developing guidelines for recording reimbursement expenditures and associated documentation. Contractor will provide all services to support disaster-related costs and reimbursement from appropriate agencies. Contractor will coordinate with Cooperative and its representatives to maximize Federal and State funding.
- Prepare and submit all grant applications to the correct governmental authority for reimbursement of eligible costs associated with applicable disasters.
- Meet all stated deadlines applicable to FEMA, any other applicable Federal agency, and the State's required timelines to recover full reimbursement.
- Meet with FEMA and State representatives to discuss Cooperative's disaster-related costs and expenditures.
- Review contracts, advise Cooperative on contracts for services or supplies related to recovery from the event, and advise on the scope of work development for said contracts.

- Prepare supporting documentation that must accompany the Project Worksheets, including working with Cooperative to gather details related to employee fringe benefits, overtime, etc., for labor rates to provide to FEMA or any other applicable agency.
- Work with appropriate Cooperative staff to assist the Federal or State Agency in providing the necessary information, e.g., insurance policies and personnel policies as requested by those or other agencies to complete necessary documentation for reimbursement and or grant application. Research as necessary to complete all forms.
- Assist in completing documentation for Federal and State reimbursement, and submit all eligible expenditures to the appropriate agencies, within required deadlines.
- Identify and quantify all eligible expenses for reimbursement.
- Assist in tracking documentation submitted and following outstanding expenditure(s) to ensure that eligible expenditures are credited through submitted reimbursements.
- Ensure that Cooperative understands why certain expenditures were disallowed or deobligated, if any, and ensure that all appeal avenues are utilized.
- Track expenditures and reimbursements to maintain high quality reconciliations of Cooperative expenditures submitted for reimbursements versus those actually received.
- Provide copies of all documentation transacted for reimbursement and offer any coordination ideas that may result in cost savings, efficiencies, or increased reimbursement.
- Compile and provide all necessary backup documentation, e.g., invoices, equipment usage documents, etc. to ensure full reimbursement and/or establish grant eligibility. Submitted documentation must withstand a FEMA, Federal, or State audit, and Contractor will support the work for which they are assisting Cooperative.
- Assist the specialized FEMA teams as they become necessary in the process. FEMA teams may be assigned to Cooperative to review the reimbursement in this particular area. Contractor would work with this team to assist in getting reimbursement for Cooperative.
- Maintain Cooperative's records submitted to any outside agency for reimbursement and provide Cooperative with said copies upon request at any point in the process.
- Assist with developing and implementation of closeout strategies and procedures.
- Assist with responding to any requests for audit information by any source.
- Provide miscellaneous services not otherwise described, but which Cooperative may require during the course of the contract, or any other tasks associated with FEMA

grant management or documentation reimbursement process as requested by Cooperative.

- Provide periodic reports as directed by Cooperative that summarizes work performed by Contractor as well as Contractor's budget updates.
- Contractor will provide Cooperative with a final report that will summarize the total reimbursement requested, total expenditures by Project Worksheet, and any special circumstances. Additionally, reporting requirements include the total number of Project Worksheets, total reimbursement requested by Category type, total reimbursement requested by small or large project, and any other relevant data.

EXHIBIT B: TASK RELEASE

WHEREAS, Presque Isle Electric & Gas Cooperative (“Cooperative”) and [Contractor] (the “Contractor”) are Parties to the Master Services Agreement for [Insert Scope] (Master Services Agreement No. XXXXX) with an effective date of [Effective Date] (“Agreement”), including all Exhibits and amendments to the Agreement; and

WHEREAS, Cooperative requires Contractor to perform the Services described below (“Services”);

NOW, THEREFORE, Cooperative hereby authorizes the Contractor to provide the Services under the terms and conditions set forth herein and in the Agreement, of which this Task Release becomes a part upon execution.

Task Release Number:	
Project Description:	
Services Requested:	
Deliverables (e.g., reports, plans, estimates):	
Compensation / Rates:	Cooperative shall pay Contractor for work performed in accordance with the rates set forth in Exhibit C of the Agreement.
Not-to-Exceed Amount (required for hourly work):	☐ Not Applicable ☐ In no event shall Contractor’s compensation under this Task Release exceed _____ dollars (\$_____.____). Contractor is at risk, and must bear all costs and expenses that exceed this amount for work performed under this Task Release, without compensation or reimbursement by Cooperative, unless Cooperative and Contractor agree in writing to an adjustment prior to Contractor performing Services that would cause the price ceiling to be exceeded.
Invoicing:	Contractor must submit invoices to Cooperative on a ☐ weekly ☐ monthly basis. Invoices are to be sent to the following email address(es): _____
Start Date:	Contractor will commence work as soon as possible within 24 hours of signing this Task Release, unless otherwise indicated herein: _____

Estimated End Date:	The estimated duration of work or end date is as follows: _____ Contractor may request and Cooperative may grant, at its discretion, an extension of the time to perform. Any request for an extension and denial or grant thereof shall be in writing.		
Insurance:	Contractor shall provide Member with Certificates of Insurance evidencing compliance with insurance requirements in the Agreement.		
Bonding:	Do the Services Requested include construction or facility improvement? ☐ Yes ☐ No Is the Not-to-Exceed Amount or the total cost of the Task Release expected to exceed \$250,000? ☐ Yes ☐ No If BOTH questions are "Yes," Contractor shall provide proof of bonding as required by the Agreement.		
Designated Representatives. The following individuals have been designated by the Parties as their Designated Representatives for day-to-day communications and other issues identified in the Agreement and this Task Release: <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> Cooperative Designated Representative: Name: _____ E-mail: _____ Phone: _____ Address: _____ _____ _____ </td><td style="width: 50%; vertical-align: top;"> Contractor Designated Representative: Name: _____ E-mail: _____ Phone: _____ Address: _____ _____ _____ </td></tr> </table>		Cooperative Designated Representative: Name: _____ E-mail: _____ Phone: _____ Address: _____ _____ _____	Contractor Designated Representative: Name: _____ E-mail: _____ Phone: _____ Address: _____ _____ _____
Cooperative Designated Representative: Name: _____ E-mail: _____ Phone: _____ Address: _____ _____ _____	Contractor Designated Representative: Name: _____ E-mail: _____ Phone: _____ Address: _____ _____ _____		
Additional Requirements:			

Executed on the dates set forth below by the undersigned authorized representative of Cooperative and Contractor to be effective as of the Start Date.

Presque Isle Electric & Gas Cooperative

[CONTRACTOR NAME]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT C: PRICE SCHEDULE

[Insert appropriate Price Proposal information from RFP]

SAMPLE

EXHIBIT D: ADDRESSES FOR NOTICE

The initial addresses of the Parties for Notice, which one Party may change by giving written notice of its changed address to the other Party, are as follows:

Presque Isle Electric & Gas Cooperative

[CONTRACTOR NAME]

Attn: _____

Attn: _____

Address:

Address

ADDENDUM A: CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

“Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.” (2 CFR 200.212)

This certification is required by regulations implementing Executive Order 12549, Debarment and Suspension, for all lower-tier transactions meeting the threshold and tier requirements. (2 CFR 180.300)

Terms Defined

- *Nonprocurement Transaction*: A transaction under federal non-procurement programs, which can be either a primary covered transaction or a lower-tier covered transaction. (2 CFR 180.970)
- *Lower-Tier Covered Transaction*: (1) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction; (2) any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed \$25,000; (3) any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount
- *Participant*: Any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant. (2 CFR 180.980)
- *Principal*: An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or a consultant or other person, whether or not employed by the participant or paid with federal funds, who (1) is in a position to handle federal funds; (2) is in a position to influence or control the use of those funds; or (3) occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction. (2 CFR 180.995)
- *System for Award Management (SAM) Exclusions*: The list maintained and disseminated by the General Services Administration (GSA) containing names and other information about persons who are ineligible. (2 CFR 180.945).
- *Debarment*: Action taken by a debarring official to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred. (2 CFR 180.925)

- *Suspension*: Action taken by a suspending official that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (2 CFR 180.1015)
- *Ineligible or Ineligibility*: A person or commodity is prohibited from covered transactions because of an exclusion or disqualification. (2 CFR 180.960)
- *Person*: Any individual, corporation, partnership, association, unit of government, or legal entity, however organized. (2 CFR 180.985)
- *Proposal*: A solicited or unsolicited bid, application, request, invitation to consider, or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.
- *Voluntary Exclusion*: A person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect. (2 CFR 180.1020)
- *Voluntarily Excluded*: The status of a person who has agreed to a voluntary exclusion. (2 CFR 180.1020)

Instructions for Certification

1. By signing and submitting this proposal or agreement, the prospective lower-tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower-tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower-tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower-tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower-tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower-tier participant agrees by signing or certifying and submitting this proposal or agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower-tier participant further agrees by signing or certifying and submitting this proposal or agreement that it will include the clause titled Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower-Tier Covered Transactions, without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the non-procurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—
Lower-Tier Covered Transactions**

1. The prospective lower-tier participant certifies, by signing or certifying and submitting this proposal or agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation.

Contractor Name

Contract Number

Name

Title

Signature

Date

SAMPLE

ADDENDUM B: CERTIFICATION REGARDING LOBBYING 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 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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. § 3801 et seq., apply to this certification and disclosure, if any.

CONTRACTOR Name

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

SAMPLE