

APPENDIX I

SAMPLE ELECTRICAL RESTORATION SERVICES CONTRACT

This Agreement for Electrical Restoration Services (the "Contract"), is made and entered into on the ____ day of August, 2021 ("Effective Date"), by and between Baldwin County Electric Membership Corporation ("BEMC"), and _____ ("Contractor") (collectively, the "Parties"). The Parties agree as follows:

ARTICLE I -DEFINITIONS

1.1. The term "Administrator" shall mean the Administrator of the Rural Utilities Service of the United States of America and his or her duly authorized representative or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

1.2. The term "Engineer" shall mean the Engineer employed by BEMC, to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives.

1.3. The term "Completion of Construction" shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof except the Contractor's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof, (2) the inventory referred to in Article III, Section 1 hereof, and (3) other final documents. The term "Completion of the Project" shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion signed by the Engineer and approved in writing by BEMC shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

1.4. The term "Project" shall consist of Electrical Distribution System Restoration Services for Underground Line repair, Right of Way removal of hazardous trees and limbs, Overhead Line repair, and/ or Streetlight Repair, as explained in more detail at Exhibit A.

ARTICLE II -- GENERAL

Section 1. Offer to Construct.

1.1. The Contractor hereby agrees to receive and install such materials and equipment as may hereinafter be specified to be furnished by BEMC, and to furnish all other materials and equipment, all machinery, tools, labor, transportation and other means required to construct the Project in strict accordance with the Plans, Specifications and Construction Drawings for the prices hereinafter stated. The Contractor understands and agrees that the Project will consist of Electrical Distribution System Restoration Services for Underground Line repair, Right of Way removal of hazardous trees and limbs, Overhead Line repair, and/ or Streetlight Repair, which is explained in greater detail at Exhibit A, all located within the area served or ultimately to be served by BEMC and that the exact location and scope of individual sections of the Project (hereinafter called "Sections") will be made known to the Contractor from time to time as provided in Article II, Section 1 hereof.

Section 2. Materials and Equipment.

2.1. The Contractor understands and agrees that BEMC will furnish to the Contractor the materials needed to perform the scope of work detailed at Exhibit A. For those items not yet delivered, the Contractor will, on behalf of BEMC, accept delivery of such of the materials as may be subsequently delivered and will promptly forward to BEMC for payment the supplier's invoice. The Contractor will acknowledge in writing the receipt of all materials received. The materials referred to are on hand at, or will be delivered to, the worksite locations and the Contractor will use such materials in constructing the Project.

2.2. The value of such materials shall be computed on the basis of the unit prices paid by BEMC. Materials, if any, not required for the Project, which have been furnished to the Contractor by BEMC or delivery of which has been accepted by the Contractor on behalf of BEMC, shall be returned to BEMC by the Contractor upon completion of construction of the Project. The value of all materials not installed in the Project nor returned to BEMC shall be deducted from the final payment to the Contractor.

2.3. BEMC shall not be obligated to furnish materials in excess of the quantities, size, kind, and type set forth in the attached Lists. If BEMC furnishes, and the Contractor accepts, materials in excess thereof the values of such excess materials shall be their actual cost as stated by BEMC.

2.4. Information on the shipping schedules of materials will be furnished to the Contractor as necessary during progress of the work.

2.5. Upon delivery, the Contractor shall promptly receive, unload, transport and handle all materials and equipment on the "List of BEMC Furnished Materials" at its expense and shall be responsible for demurrage, if any.

2.6. The Contractor will purchase all other materials and equipment (other than BEMC Furnished Materials), if any, outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein. All such materials and equipment shall be new and shall become the property of BEMC when erected in place.

Section 3. Contractor's Compensation.

3.1. The Contractor understands and agrees that Contractor's compensation under this Contract will be on a unit basis, and that BEMC may specify any number or combination of Construction Units that BEMC may deem necessary for the construction of the Project. Separate Construction Units are designated for each different arrangement which may be used in the construction of the Project. Compensation under this Contract is based on a consideration of each unit in place and includes only the materials listed on the corresponding Construction Drawings or description of unit where no drawing exists.

Section 4. Description of Contract.

4.1. The RFP, Plans, Specifications, and Construction Drawings, which by this reference are incorporated herein, together with the Respondent's Proposal and Acceptance, constitute the Contract.

Section 5. Due Diligence.

5.1. The Contractor has made a careful examination of the site of the Project to be constructed and of the Plans, Specifications, Construction Drawings, and bonding requirements, and has become

informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, federal, state, and local laws, rules, and regulations applicable to its performance.

Section 6. License.

6.1. The Contractor warrants that a Contractor's License (check one) is ____, is not ____ required, and if required, it possesses Contractor's License No. ____ for the State of _____ in which the Project is located and said license expires on _____, 2021.

Section 7. Financial Resources.

7.1. The Contractor warrants that it has or will obtain the financial resources necessary to ensure completion of the Project.

7.2. The Contractor agrees to execute a payment bond and performance bond, both of which must be in the amount of 100% of the Contract price identified in Section 3.

Section 8. Taxes.

8.1. The unit prices for Construction Units in this Contract include provisions for the payment of all monies which will be payable by the Contractor or BEMC in connection with the construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof to be incorporated in the Project as part of such Construction Units. The Contractor agrees to pay all such taxes, except taxes upon the sale, purchase or use of BEMC Furnished Materials and it is understood that, as to BEMC Furnished Materials, the values stated in the attached "List of BEMC Furnished Materials" include taxes upon the sale, purchase or use of BEMC Furnished Materials, if applicable. The Contractor will furnish to the appropriate taxing authorities all required information and reports pertaining to the Project, except as to BEMC Furnished Materials.

ARTICLE III -- CONSTRUCTION

Section 1. Time and Manner of Construction.

1.1. The Contractor agrees to commence construction of the Project within 11 days of the Effective Date (the "Commencement Date"). However, in no event may Contractor commence construction of the Project more than 19 days from the Effective Date. Commencement of construction after this period will result in a breach of this Contract. The Contractor further agrees to prosecute diligently and to complete construction in strict accordance with the Plans, Specifications and Construction Drawings within 180 (60 for Streetlight Unit Repair) calendar days after Commencement Date. Provided however, that the Contractor will not be required to dig holes, set poles, install anchors, install underground conduit, perform any plowing for the installation of underground cable, or dig trenches if there are more than six (6) inches of frost on the ground nor to perform any construction on such days when in the judgment of the Engineer snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any operation of construction; provided further that the Contractor will not be required to perform any plowing for the installation of underground cable on public roads or highways if there are more than two (2) inches of frost in the ground. To the extent of the time lost due

to the conditions described herein and approved in writing by the Engineer, the time of completion set out above will be extended if the Contractor makes a written request therefore to BEMC as provided in subsection b of this Section 1.

1.2. The time for Completion of Construction shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Contractor, including Acts of God, fires, floods, inability to obtain materials and acts or omissions of BEMC with respect to matters for which BEMC is solely responsible: Provided, however that no such extension of time for completion shall be granted the Contractor unless within ten (10) days after the happening of any event relied upon by the Contractor for such an extension of time the Contractor shall have made a request therefore in writing to BEMC, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of BEMC, shall result in any liability on the part of BEMC.

1.3. The sequence of construction shall be as set forth below, the number or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth below, the sequence of construction shall be as determined by the Contractor, subject to the approval of the Engineer.

1.4. BEMC, acting through the Engineer, may from time to time during the progress of the construction of the Project make such changes, additions or subtractions from the Plans, Specifications, Construction Drawings, List of Materials and sequence of construction provided for in the previous paragraph which are part of this Contract as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Contractor shall make a written request therefore to BEMC within (10) days after any such change is made. And provided further, that if the cost to the Contractor of construction of the Project shall be materially increased by any such change or addition, BEMC shall pay the Contractor for the reasonable cost thereof in accordance with a Construction Contract Amendment signed by BEMC and the Contractor, but no claim for additional compensation for any such change or addition will be considered unless the Contractor shall have made a written request therefore to BEMC prior to the commencement of work in connection with such change or addition.

1.5. It is understood and agreed that, notwithstanding any other provisions of this Contract, the Contractor will not be required to commence any construction after the expiration of 1 year following the Effective Date.

Section 2. Environmental Protection.

2.1. The Contractor shall perform the work in compliance with all applicable Federal, State, and local Environmental Laws. For purposes of this Agreement, the term "Environmental Laws" shall mean all Federal, state, and local laws including statutes, regulations, ordinances, codes, rules, and other governmental restriction and requirements relating to the environment or solid waste, hazardous substances, hazardous waste, toxic or hazardous material, pollutants or contaminants including, but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, et seq., and the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq., now or at any time hereafter in effect. Requirements in this provision are in addition to any other requirements described in Article VII, Section 7 of this Contract.

Section 3. Tools, Equipment, and Qualified Personnel.

3.1. The Contractor agrees it will make available for use in connection with the proposed construction all necessary tools and equipment and qualified supervisors and workers.

Section 4. Changes in Construction.

4.1. The Contractor agrees to make such changes in construction previously installed in the Project by the Contractor as required by BEMC for prices arrived at as follows:

a. For substations and other units where only a portion of the complete unit is affected by the change, the compensation for such change shall be as agreed upon in writing by the Contractor and BEMC prior to the commencement of work in connection with such change.

b. For all other units, the compensation for such change shall be the reasonable cost thereof as agreed upon by the Contractor and BEMC, but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit. (If a new or replacing unit is installed, payment for such new or replacing unit shall be made as shown in the final inventory)

4.2. No payment shall be made to the Contractor for materials or labor involved in correcting errors or omissions on the part of the Contractor which result in construction not in accordance with the Plans and Specifications.

Section 5. Additional Construction.

5.1. The Contractor also agrees that when it is necessary to construct units not shown in the RFP, in absence of other mutual agreement, it will construct such units for a price arrived at as follows:

a. The cost of materials shall be determined by the invoices.

b. The cost of labor shall be the reasonable cost thereof but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total material costs in the section of the Proposal involved, and multiplying the cost of materials for the unit in question by this ratio.

Section 6. Supervision and Inspection.

6.1. The Contractor shall give sufficient supervision to the work, using its best skill and attention. The Contractor will carefully study and compare all drawings, specifications and other instructions and will at once report to BEMC any error, inconsistency or omission which it may discover. The Contractor shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Contractor shall also employ, in connection with the construction of the Project, capable, experienced and reliable supervisors and such skilled workers as may be required for the various classes of work to be performed. The Contractor shall be solely responsible for the means and methods of construction and for the supervision of the Contractor's employees.

6.2. BEMC reserves the right to require the removal from the Project of any employee of the Contractor if in the judgment of BEMC such removal shall be necessary in order to protect the interest of BEMC. BEMC shall have the right to require the Contractor to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to BEMC; but the failure of BEMC to give any such directions shall not relieve the Contractor of its obligations to complete the work within the time and in the manner specified in this Contract, if any.

6.3. The construction of the Project and all materials and equipment used therein, shall be subject to the inspection, tests, and acceptance by BEMC and the Administrator and the Contractor shall furnish all information required by BEMC or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. All Contractor procedures and records pertaining to the work shall be made available to BEMC and the Administrator for review prior to such inspections and tests. The Contractor shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project, with telephone service where obtainable and at least one office employee to whom communications from BEMC may be delivered. Delivery of such communications in writing to the employee of the Contractor at such office shall constitute delivery to the Contractor. The Contractor shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by BEMC, when any other inspection is made. The performance of such inspections or tests by BEMC or the Administrator shall not relieve the Contractor of its obligations to perform the work in accordance with the requirements of this Contract.

6.4. In the event that BEMC, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Contractor and the Contractor's Surety or Sureties, if any, to have an inspection made by an engineer approved by BEMC and the Administrator, if approval by the Administrator is required, for the purpose of determining the exact nature, extent and location of such defects.

6.5. The Engineer may recommend to BEMC that the Contractor suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for satisfactory prosecution of the work or because of the failure of the Contractor to comply with any of the provisions of the Contract: Provided, however, that the Contractor shall not suspend work pursuant to this provision without written authority from BEMC so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Contractor to comply with any of the provisions of this Contract. In the event that work is suspended by the Contractor with the consent of BEMC, the Contractor before resuming work shall give BEMC at least twenty-four (24) hours' notice thereof in writing.

Section 7. Defective Materials and Workmanship.

7.1. The acceptance of any materials, equipment (except BEMC Furnished Materials) or any workmanship by BEMC or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Contractor. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Contractor at the Contractor's expense. The Contractor shall not be entitled to any payment

hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Contractor shall have had notice, shall not have been replaced or remedied, as the case may be.

7.2. Notwithstanding any certificate which may have been given by BEMC or the Engineer, if any materials, equipment (except BEMC Furnished Materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Contractor shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by BEMC. If any such defective materials, equipment, or workmanship so replaced or repaired is found to be defective within one year after the completion of the replacement or repair, the Contractor shall replace or remedy such defective materials, equipment, or workmanship. If the Contractor shall be called upon to replace any defective materials or equipment or to remedy defective workmanship as herein provided, BEMC, if so requested by the Contractor shall deenergize that section of the Project involved in such work. In the event of failure by the Contractor so to do, BEMC may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Contractor shall pay to BEMC the cost and expense thereof.

7.3. This Section shall in no way be interpreted to limit BEMC's right to pursue and obtain any and all other available legal or equitable remedies against Contractor.

ARTICLE IV -- PAYMENTS AND RELEASE OF LIENS

Section 1. Payments to Contractor.

1.1. On or before the fifth (5) day of each calendar month, the Contractor will make application for payment, and BEMC, on or before the fifteenth (15) day of such month, shall make partial payment to the Contractor for construction accomplished during the preceding calendar month on the basis of completed Construction Units furnished and certified to by the Contractor, recommended by the Engineer and approved by BEMC solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by BEMC to the Contractor prior to Completion of a Section. Upon completion by the Contractor of the construction of a Section, the Engineer will prepare an inventory of the Project showing the total number and character of Construction Units and, after checking such inventory with the Contractor, will certify it to BEMC. Upon the approval by BEMC of a Certificate of Completion in the form attached hereto, showing the total cost of the construction performed, BEMC shall make payment to the Contractor of all amounts to which the Contractor shall be entitled thereunder which shall not have been paid: Provided, however, that such final payment shall be made not later than ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate Of Completion, unless withheld because of the fault of the Contractor.

1.2. The Contractor shall be paid on the basis of the number of Construction Units actually installed at the direction of BEMC shown by the inventory based on the staking sheets or structure lists; Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project, unless such excess shall have been approved in writing by BEMC.

1.3. It is understood and agreed that this maximum Contract price is \$ _____. It is also agreed that the Contractor shall not be entitled to any claim for damages on account of any reasonable

additions to or subtractions from the Project, or of any delay occasioned thereby, or of any changes in the routing of the lines.

1.4. Interest at the rate of 0 percent¹ (0%) per annum shall be paid by BEMC to the Contractor on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Contractor. The due date for purposes of such monthly payment or interest on all unpaid balances shall be the fifteenth (15) day of each calendar month provided (1) the Contractor on or before the fifth (5) day of such month shall have submitted its certification of Construction Units completed during the preceding month and (2) BEMC on or before the fifteenth (15) day of such month shall have approved such certification. If for reasons not due to the Contractor's fault, such approval shall not have been given on or before the fifteenth (15) day of such month, the due date for purposes of this subsection c shall be the fifteenth (15) day of such month notwithstanding the absence of the approval of the certification.

1.5. Interest at the rate of 0 percent² (0%) per annum shall be paid by BEMC to the Contractor on the final payment for the Project or any completed Section thereof commencing fifteen (15) days after the due date. The due date for purposes of such final payment or interest on all unpaid balances shall be the date of approval by BEMC of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

1.6. No payment shall be due while the Contractor is in default in respect of any of the provisions of this Contract and BEMC may withhold from the Contractor the amount of any claim by a third party against either the Contractor or BEMC based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of this Contract.

1.7. BEMC and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Contractor and of any subcontractor, relevant to the construction of the Project.

Section 2. Release of Liens and Certificate of Contractor.

2.1. Upon the completion by the Contractor of the construction of the Project (or any Section thereof if the Contractor shall elect to receive payment in full for any Section when completed as provided above) but prior to final payment to the Contractor, the Contractor shall deliver to BEMC, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, material suppliers, and subcontractors furnishing services or materials for the Project or such Section and a certificate in the form attached hereto to the effect that all labor used on or for the Project or such Section has been paid and that all such releases have been submitted to BEMC.

Section 3. Payments to Material Suppliers and Subcontractors.

¹ BEMC shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

² See Footnote 4.

3.1. The Contractor shall pay each material supplier, if any, within five (5) days after receipt of any payment from in BEMC, the amount thereof allowed the Contractor for and on account of materials furnished or construction performed by each material supplier or each subcontractor.

ARTICLE V -- PARTICULAR UNDERTAKINGS OF THE CONTRACTOR

Section 1. Protection to Persons and Property.

1.1. The Contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of federal, state, and local laws, rules, and regulations and building and construction codes, in addition to the safety rules and procedures of BEMC.

1.2. The following provisions shall not limit the generality of the above requirements:

a. The Contractor shall at no time and under no circumstances cause or permit any employee of the Contractor to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Contractors.

b. The Contractor shall transport and store all material in facilities and vehicles which are designed to protect the material from damage. The Contractor shall ensure that all vehicles, trailers, and other equipment used comply with all applicable licensing, traffic, and highway requirements.

c. The Contractor shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

d. The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

e. The Contractor shall do all things necessary or expedient to properly protect any and all parallel, converging and intersecting lines, joint line poles, highways and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways or other property are damaged in the course of the construction of the Project the Contractor shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

f. Where the right-of-way of the Project traverses cultivated or grazing lands, the Contractor shall limit the movement of its crews and equipment so as to cause as little damage as possible to crops, orchards or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. Except as otherwise provided in the descriptions of underground plowing and trenching assembly units, the Contractor shall not be responsible for loss of or damage to crops, orchards or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Contractor. The Contractor shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project.

g. For overhead line repair, the right-of-way for purposes of this section shall consist of an area extending 10 feet on both sides of the center line of the poles along the route of the Project lines (5 feet on both sides for underground line repair), plus such area reasonably required by the Contractor for access to the route of the Project lines from Public roads to carry on construction activities.

h. The Project, from the commencement of work to completion, or to such earlier date or dates when BEMC may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Contractor and during such period of control by the Contractor all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Contractor by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Contractor's negligence.

1.3. To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless BEMC and BEMC's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Contractor's employees) and loss, damage to or destruction of BEMC's property or the property of any other person or entity (including but not limited to Contractor's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Contractor, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Contractor liable for any injury, death, loss, damage, or destruction caused by the sole negligence of BEMC

1.4. To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless BEMC and BEMC's directors, officers, and employees from all liens and claims filed or asserted against BEMC, its directors, officers, and employees, or BEMC's property or facilities, for services performed or materials or equipment furnished by Contractor, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Contractor shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify BEMC promptly when it has done so. If Contractor does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, BEMC shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Contractor.

1.5. Contractor shall provide to BEMC's satisfaction evidence of Contractor's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

1.6. Any and all excess earth, rock, debris, underbrush and other useless materials shall be removed by the Contractor from the site of the Project as rapidly as practicable as the work progresses.

1.7. Upon violation by the Contractor of any of the provisions of this section, after written notice of such violation given to the Contractor by the Engineer or BEMC, the Contractor shall immediately correct such violation. Upon failure of the Contractor so to do BEMC may correct such violation at the Contractor's expense: Provided, however, that BEMC may, if it deems it necessary or advisable, correct such violation at the Contractor's expense without such prior notice to the Contractor. The Contractor

shall submit to BEMC monthly reports in duplicate of all accidents, giving such data as may be prescribed by BEMC.

1.8. The Contractor shall not proceed with the cutting of trees or clearing of right-of-way without written notification from BEMC that proper authorization has been received from BEMC of the property, and the Contractor shall promptly notify BEMC whenever any land BEMC objects to the trimming or felling of any trees or the performance of any other work on its land in connection with the Project and shall obtain the consent in writing of BEMC before proceeding in any such case.

1.9. The Contractor will furnish, prior to the commencement of underground distribution construction, proof satisfactory to BEMC, of compliance with requirements of highway and road authorities having jurisdiction, including without limitation, the furnishing of a bond or other guaranty, and approval by such authorities of the equipment and methods of construction and repair to be used by the Contractor.

Section 2. Insurance.

2.1. The Contractor shall takeout and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employers' liability insurance, as required by law, covering all its employees who perform any of the obligations of the Contractor under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for accidents 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 or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million each occurrence, and property damage limits of \$1 million for each occurrence. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

2.2. BEMC shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

2.3. BEMC shall be named as Additional Insured on all policies of insurance required in subsections "b." and "c." of this Section.

2.4. The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to BEMC. The Contractor shall furnish BEMC a certificate evidencing compliance with the

foregoing requirements which shall provide not less than (30) days prior written notice to BEMC of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to BEMC.

3.1. Upon written request of BEMC the Contractor shall deliver to BEMC full possession and control of any portion of the Project provided the Contractor shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to BEMC, the risk and obligations of the Contractor as set forth in Article IV, Section 1 hereof with respect to such portion of the Project so delivered to BEMC shall be terminated; Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to defective materials and workmanship as contained in Article II, Section 7 hereof.

3.2. Where the construction of a Section as herein before defined in Article II, Section 1 shall have been completed by the Contractor, BEMC agrees, after receipt of a written request from the Contractor, to accept delivery of possession and control of such Section upon the issuance by the Engineer of a written statement that the Section has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Section to BEMC, the risk and obligations of the Contractor as set forth in Article IV Section 1 hereof with respect to such Section so delivered to BEMC shall be terminated: Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to defective materials or workmanship as contained in Article II, Section 7 hereof.

Section 4. Energizing the Project.

4.1. Prior to Completion of the Project BEMC, upon written notice to the Contractor, may test the construction thereof by temporarily energizing any portion or portions thereof. During the period of such test the portion or portions of the Project so energized shall be considered as within the possession and control of BEMC and governed by the provisions of Section 3 of this Article. Upon written notice to the Contractor by BEMC of the completion of such test and upon deenergizing the lines involved therein said portion or portions of the Project shall be considered as returned to the possession and control of the Contractor unless BEMC shall elect to continue possession and control in the manner provided in Section 3 of this Article.

4.2. BEMC shall have the right to energize permanently any portion or portions of the Project delivered to its possession and control pursuant to the provisions of Section 3 of this Article.

Section 5. Assignment of Guarantees.

5.1. All guarantees of materials and workmanship running in favor of the Contractor shall be transferred and assigned to BEMC prior to the time the Contractor receives final payment.

ARTICLE VI -- REMEDIES

Section 1. Completion on Contractor's Default.

1.1. If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this Contract, BEMC, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety or Sureties, if any, upon the required bonds a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless

within twenty (20) days after the service of such notice upon the Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to both BEMC and the Administrator shall be made by the Contractor or its Surety or Sureties, if any, BEMC may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Contractor, and the Contractor and its Surety or Sureties, if any, shall be liable to BEMC for any cost or expense in excess of the Contract price occasioned thereby. In such event BEMC may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the Project. BEMC in such contingency may exercise any rights, claims or demands which the Contractor may have against third persons in connection with this Contract and for such purpose the Contractor does hereby assign, transfer and set over unto BEMC all such rights, claims and demands.

Section 2. Cumulative Remedies.

2.1. Every right or remedy herein conferred upon or reserved to BEMC or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election.

ARTICLE VII -- MISCELLANEOUS

Section 1. Materials and Supplies.

1.1. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States or in any eligible country; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. For the purposes of this section, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and suppliers to the markets of that country, as determined by the United States Trade Representative. The Contractor agrees to submit to BEMC such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 2. Patent Infringement.

2.1. The Contractor shall hold harmless and indemnify BEMC from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 3. Permits for Explosives.

3.1. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Contractor.

Section 4. Compliance with Laws.

4.1. The Contractor shall comply with all federal, state, and local laws, rules, and regulations applicable to its performance under the contract and the construction of the Project. The Contractor acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the Anti Kick-Back Act of 1986 (41 U.S.C. 51 et seq), and 18 U.S.C. §§ 286, 287, 641, 661, 874, 1001, and 1366, as amended.

4.2. The Contractor represents that to the extent required by Executive Orders 12549 (3 CFR, 1985-1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR part 3017, it has submitted to BEMC a duly executed certification in the form prescribed in 7 CFR part 3017.

4.3. The Contractor represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, Section 319, 103 Stat. 701, 750-765 (31 U.S. C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and any rules and regulations issued pursuant thereto.

4.4. These requirements are in addition to those described in Article VII below.

Section 5. Equal Opportunity Provisions.

5.1. The Contractor represents that:

a. It has _____, does not have _____, 100 or more employees, and if it has, that it has _____, has not _____, furnished the Equal Employment Opportunity-Employers Information Report EEO-1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 of September 24, 1965, and Title VII of the Civil Rights Act of 1964.

b. The Contractor agrees that it will obtain, prior to the award of any subcontract for more than \$10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

c. The Contractor agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than \$10,000, the Contractor will file such report, as required by law, and notify BEMC in writing of such filing prior to commence of work on the Project.

5.2. Equal Opportunity Clause. During the performance of this Contract, the Contractor agrees as follows:

a. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

b. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

f. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

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

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

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

j. BEMC further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if BEMC so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

k. BEMC agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

l. BEMC further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, BEMC agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to BEMC under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Section 6. Franchises and Rights-of-Way.

6.1. The Contractor shall be under no obligation to obtain or assist in obtaining: Any franchises, authorizations, permits or approvals required to be obtained by BEMC from Federal, State, County, Municipal or other authorities; any rights-of-way over private lands; or any agreements between BEMC and third parties with respect to the joint use of poles, crossings, or other matter incident to the construction and operation of the Project.

Section 7. Non-assignment of Contract.

7.1. The Contractor shall perform directly and without subcontracting more than twenty-five percent (25%) of the construction of the Project, to be calculated on the basis of the total Contract price. The Contractor shall not assign the Contract or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of the Contractor's obligations hereunder or any part thereof without the approval in writing of BEMC and of the Surety or Sureties, if any, on any bond furnished by the Contractor for the faithful performance of the Contractor's obligations hereunder. If the Contractor, with the consent of BEMC and any Surety or Sureties on the required bonds, shall enter into a subcontract with any subcontractor for the performance

of any part of this Contract, the Contractor shall be as fully responsible to BEMC and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Contractor would be for its own acts and omissions and those of persons directly employed by it.

Section 8. Successors and Assigns.

8.1. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto. BEMC and Contractor acknowledge that this Contract is assigned to the Government, acting through the Administrator, for security purposes under BEMC's mortgage and security instrument.

Section 9. Independent Contractor.

9.1. The Contractor shall perform the work as an independent contractor, not as a subcontractor, agent, or employee of BEMC.

ARTICLE VIII -- REQUIRED CONTRACT PROVISIONS

The following provisions are applicable to all contracts funded in whole or in part with funding from the Federal Emergency Management Agency ("FEMA") funding. For any of the work to be covered by the Contract, that may be reimbursed, in whole or in part, through FEMA funding, the Parties agree as follows:

Section 1. FEMA Funding.

1.1. Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of this Contract.

Section 2. Compliance with Federal Laws.

2.1. Contractor shall comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

Section 3. Federal Government is not a Party to this Contract.

3.1. Contractor acknowledges that the Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to BEMC, Contractor, or any other party pertaining to any matter resulting from this Contract.

Section 4. Administrative Remedies for False Claims and Statements.

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

Section 5. Use of DHS Materials.

5.1. Contractor shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Section 6. Access to Records.

6.1. The following access to records requirements applies to this Contract:

6.2. Contractor agrees to provide BEMC, the FEMA Administrator, the Alabama 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 Contractor which are directly pertinent to this Contract 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 five years after this Addendum terminates or expires. This provision does not limit the applicable statute of limitations.

6.3. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6.4. Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this Contract, if applicable.

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

Section 7. Environmental Compliance.

7.1. 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.).

7.2. Contractor shall report all violations to BEMC, and understands and agrees that BEMC will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency and the appropriate Environmental Protection Agency Regional Office.

7.3. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Section 8. Contract Work Hours and Safety Standards Act.

8.1. All contracts entered into related to this Contract shall contain the following language:

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

b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. 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 watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

c. Withholding for unpaid wages and liquidated damages. FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or 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, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of 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 subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

Section 9. Termination for Cause.

9.1. If Contractor defaults under this Contract, BEMC may either terminate this Contract, withhold or suspend payment of all or any part of a request for payment, or allow Contractor to cure the default as provided below. BEMC's right to terminate this Contract and to withhold or suspend payment for Contractor's default are cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

- a. Contractor fails to perform any of its material duties under this Contract;
- b. Contractor becomes insolvent;
- c. all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- d. a receiver or trustee is appointed for Contractor.

9.2. To effect final termination, BEMC must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Contract, and promptly cancel all orders or subcontracts chargeable to this Contract.

Section 10. Termination for Convenience.

10.1. BEMC may terminate this Contract for convenience at any time upon three (3) days' notice in writing to the Contractor. Upon receipt of such notice, Contractor shall discontinue all services in connection with the performance of this Contract. As soon as practicable after receipt of notice of termination, Contractor shall submit a statement to BEMC showing in detail the services performed

and/or goods provided under Contract to date of termination for which payment has not yet been paid. BEMC agrees to pay such charges only up to the maximum amount of this Contract. Contractor waives any additional claims for damages from the termination without cause including, without limitation, any and all consequential claims, and as the sole right and remedy of Contractor, BEMC shall compensate Contractor for all authorized work satisfactorily and responsibly completed through the termination date.

Section 11. Suspension and Debarment.

11.1. Federal regulations restrict BEMC from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

11.2. This Contract 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 it, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are not excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

11.3. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.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.

11.4. This certification, found in Exhibit C, is a material representation of fact relied upon by BEMC. 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 the State of Alabama and BEMC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

11.5. The Contractor or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Section 12. Byrd Anti-Lobbying Amendment.

12.1. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification as set out in Exhibit D of this Contract. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. 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.

Section 13. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

13.1. If Contractor intends to subcontract any portion of the work covered by this Contract, Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Section 14. Domestic Preference Requirements.

14.1. As appropriate and to the extent consistent with law, 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 paragraph must be included in all subcontracts and purchase orders for work or products under this Addendum. For purposes of this paragraph:

- 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 15. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

15.1. As used in this paragraph, 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 as used in this paragraph—

15.2. Prohibitions

a. 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.

b. Unless an exception in this paragraph applies, Contractor and its Subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from FEMA to:

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

ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

iv. Provide, as part of its performance of this Purchase Order or Addendum, 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.

15.3. Exceptions

a. This paragraph does not prohibit Contractor from providing—

i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

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

b. By necessary implication and regulation, the prohibitions also do not apply to:

i. Covered telecommunications equipment or services that:

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

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

15.4. Reporting requirement

a. In the event 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 performance of the Services set forth in this Addendum, or Contractor is notified of such by a Subcontractor at any tier or by any other source, Contractor shall report the information in the manner stated below to the recipient or subrecipient, unless elsewhere in this Addendum are established procedures for reporting the information.

b. Contractor shall report the following information pursuant to this paragraph:

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

ii. Within 10 business days of submitting the information above: Any further available information about mitigation actions undertaken or recommended. In addition, 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.

15.5. Subcontracts.

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

[Insert signature line]

The Contract must be signed with the full name of the Contractor. If the Contractor is a partnership, the Contract must be signed in the partnership name by a partner. If the Contractor is a corporation, the Contract must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

ACCEPTANCE

***BEMC hereby accepts the foregoing Proposal of the Bidder, _____
for the following: 2021 Hurricane Sally Repair Contract***

Accept Total Underground Section \$ _____

Accept Total Right of Way section \$ _____

Accept Total Overhead Section \$ _____

Accept Total Street Light Section \$ _____

The Total contract price is \$ _____

Owner

By _____
President

Secretary

Date of Contract

EXHIBIT A – SCOPE OF WORK

Specific scope of work will be included here.

EXHIBIT B - CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality Agreement (this "Agreement") is made effective _____ between _____ and BEMC, Summerdale, Alabama.

1. CONFIDENTIAL INFORMATION. The term "Confidential Information" means any information or material which is proprietary to BEMC, whether or not owned or developed by BEMC, which is not generally known other than by BEMC, and which _____ may obtain through any direct or indirect contact with BEMC.

A. Confidential information includes without limitation:

- Business records and plans
- Mapping information
- Electrical system information
- Financial statements
- Customer lists and records
- Trade secrets
- Technical information
- Methods of conducting research
- Any and all research findings
- Products
- Inventions
- Product design information
- Pricing structure
- Discounts
- Costs
- Computer programs and listings
- Source code and/or object code
- Copyrights and other intellectual property
- Other proprietary information

B. Confidential Information does not include

Matters of public knowledge that result from disclosure by BEMC and any other information that both parties agree in writing is not confidential.

2. PROTECTION OF CONFIDENTIAL INFORMATION. _____ understands and acknowledges that the Confidential Information has been developed or obtained by BEMC through the investment of significant time, effort, and expense, and that the Confidential Information is a valuable, special, and unique asset of BEMC which provides BEMC with a significant competitive advantage. Therefore, _____ agrees to hold in confidence and to not disclose the Confidential Information to any person or entity outside of

_____ without the prior written consent of BEMC.

3. **GENERAL PROVISIONS.** This Agreement sets forth the entire understanding of the parties regarding confidentiality. Any amendments must be in writing and signed by both parties. This Agreement shall be construed under the laws of the State of Alabama. This Agreement shall not be assignable by either party, and neither party may delegate its duties under this Agreement without the prior written consent of the other party.

Please sign, date, and return to BEMC.

Legal Corporate Name

Date

BEMC

Date

EXHIBIT C

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS

This Agreement is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Contractor is required to confirm that none of the Vendor, 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).

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this Certification, the Contractor (referred to herein as 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 which this Certification is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had 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, Contract, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Certification is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Certification 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 proposed for debarment under 48 CFR part 9, subpart 9.4, 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 submitting this Certification that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” 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 proposed for debarment under 48 CFR part 9, subpart 9.4,

debarred, suspended, ineligible, or voluntarily excluded from covered transactions, 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 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

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 proposed for debarment under 48 CFR part 9, subpart 9.4, 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 AN VOLUNTARY EXCLUSION—
LOWER TIER COVERED TRANSACTIONS

- (1) The prospective lower tier participant certifies, by submission of this Certification, that neither it nor its principals is 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 to this Certification.

CONTRACTOR Company Name

Contract Number

Name

Title

Signature

Date

EXHIBIT D

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any 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