

**PARTICIPATING ADDENDUM
UNDER THE
NASPO VALUEPOINT
WIRELESS COMMUNICATION SERVICES AND EQUIPMENT
MASTER AGREEMENT NUMBER: MA149-1**

PARTICIPANT: STATE OF MICHIGAN

This Participating Addendum (the "PA") is made this 18th day of December, 2020 (the "PA Effective Date"), between Michigan ("Participating Entity" or "State"), and AT&T Corp. ("Contractor") (Participating Entity and Contractor are, at times, referred to individually as a "Party" or together as the "Parties").

Section 1. Recitals.

1.1 Contractor and the State of Utah, acting through its Department of Administration, Purchasing Division, and the participating members of the NASPO ValuePoint, a division of the National Association of State Procurement Officials ("NASPO"), are parties to that certain wireless communication services and equipment contract #MA 149-1, dated December 6, 2019 (the "Contract" or "Master Agreement").

1.2 Participating Entity wants to participate in the Contract pursuant to the terms and conditions of the PA.

Section 2. Agreement. In consideration of the recitals set forth in §1 above, which are hereby re-stated and agreed to by the Parties, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, Participating Entity and Contractor hereby agree to the terms and conditions of the PA (the Contract and the PA, together with all valid Purchase Orders submitted to Contractor by Participating Entity, collectively, the "Agreement."). Unless otherwise defined, capitalized terms in the PA have the meanings ascribed to them in the Master Agreement.

Section 3. Authorized Purchasing Entities. Participating Entity hereby designates Michigan MiDEAL members, which include local units of government, school districts, universities, community colleges, and nonprofit hospitals as authorized Purchasing Entities under the Agreement. A current list of MiDEAL members is available at www.michigan.gov/mideal.

Section 4. Purchase Orders. Purchasing Entity must issue Purchase Orders hereunder that reference both Master Agreement #MA149-1 and the PA. Upon issuance of any such valid Purchase Order, Purchasing Entity will be bound by the terms and conditions of the Agreement including, without limitation, the obligation to pay Contractor for Service, Equipment, and related Products provided. Notwithstanding the foregoing, any Purchase Order submitted that does not properly reference the Master Agreement number and/or the PA may be accepted, at Contractor's sole discretion, if Contractor can reasonably ascertain that such Purchase Order was properly authorized and intended for use with the PA. In such instances, the corresponding Purchase Order will be similarly valid and binding. Except as expressly provided in the Agreement, terms and conditions inconsistent with, contrary or in addition to the terms and conditions of the Agreement will not be added to or incorporated into the Agreement by any Purchase Order; and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of the Agreement will prevail and govern in the case of any such inconsistent or additional terms.

Section 5. Primary Contacts.

Participating Entity:

Name: Steven Motz
Title: Category Specialist
Address: Central Procurement-Enterprise Sourcing
State of Michigan
Telephone: 517 331 6086
Fax Number: N/A
E-Mail: motzs1@michigan.gov

Lead State:

Name: Christopher Jennings
Title: Assistant Director
Address: 3140 State Office Bldg
Salt Lake City, UT 84114
Telephone: 801-538-3157
Fax Number: 801-538-3882
E-Mail: ctjennings@utah.gov

Contractor Account Team:

Name: Jamie Laskey
Title: Client Solutions Executive
Address: 23500 Northwestern Highway - Bldg W
Southfield, MI 48075
Telephone: 248 686 8792
E-Mail: jv279a@att.com

Contractor Main:

Name: Bethani Cross
Title: Client Solutions Executive
Address: 311 S Akard St.
Dallas, TX 75202
Telephone: 214-979-9053
E-Mail: bethani.cross@att.com

Section 6. Authority. By signing below, the corresponding Party's representative represents that he or she is duly authorized by Contractor or Participating Entity, as applicable, to execute the PA on behalf of the respective Party, and that the Contractor and Participating Entity agree to be bound by the provisions hereof. In addition, Participating Entity represents that it has received the requisite approvals from the applicable Chief Procurement Official and NASPO to participate in the Master Agreement.

Section 7. Miscellaneous.

7.1 Employee Benefit Program. Participating Entity will participate with Contractor in efforts to obtain eligible Employees' participation in the Employee Benefit Program.

Section 8. Notice of Administrative Fees. All Participating Entities are hereby on notice of the following charges being paid by Contractor under the Contract.

- **Contract Fees Under the Master Agreement,** Contractor is being charged an Administrative Fee of:
(i) 0.25% of all CRUs' Total Wireless Spend; and (ii) 0.10% of all IRUs' Total Wireless Spend of the Total Wireless Spend, pursuant to the schedule of payments set forth in the Contract.

Section 9. Order of Precedence. Notwithstanding the Order of Precedence set forth in the Master Agreement, the Parties acknowledge and agree that in the event of a conflict between the terms contained in the various documents comprising the Agreement, the following order of precedence will control: (a) the PA, including any Additional Terms as set forth in Exhibit 1 of this PA; (b) the Master Agreement; and (c) any valid Purchase Order issued in connection therewith.

Section 10. Intentionally Omitted.

Section 11. Entire Agreement. Master Agreement and this PA, including any Additional Terms as set forth in Exhibit 1 of this PA, sets forth the entire agreement between the Parties with respect to its subject matter, and it supersedes all previous communications, representations or agreements, whether oral or written, with respect thereto.

IN WITNESS WHEREOF, the Parties have executed the PA as of the PA Effective Date.

STATE OF MICHIGAN

By: _____
 , duly authorized

Name: _____

Title: _____

Date: _____

AT&T CORP.

By: _____
 , duly authorized

Name: _____

Title: _____

Date: _____

**Exhibit 1 to Participating Addendum for Michigan
Additional Terms**

1. Duties of Contractor.

Contractor must be clearly identifiable while on State property performing work under the PA by wearing identification issued by the State. All voice and data traffic on legacy Contractor networks (**i.e., Contractor-owned or managed physical infrastructure**) that cannot be protected using IP network encryption software must be encrypted by the contractor.

PUBLIC SAFETY/WIRELESS PRIORITY SERVICES AND ACCESS: Contractor shall provide only authorized Emergency Response Providers, as stated in section 2.1.8 of Master Agreement, access to Public Safety Wireless Priority Services (WPS) and associated equipment. Contractor will also have a documented process of verifying potential users to ensure only emergency response providers, authorized by the Department of Homeland Security’s Office of Emergency Communications <https://www.dhs.gov/cisa/wireless-priority-service-wps>; have access to WPS and associated equipment.

The State has established Information Technology (IT) PSPs to protect IT resources under the authority outlined in the overarching State 1305.00 Enterprise IT Policy. Contractor materially complies with all the applicable information security policies published by the State and available at https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html.

- 2. Insurance Requirements.** Contractor, at its sole expense, must maintain the insurance coverage identified below. The required Commercial General Liability and Automobile Liability insurance must: (i) protect the State from claims caused, in whole or in part, by Contractor's or subcontractor's performance; and (ii) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State. The insurance policies required below must be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate	Contractor must have its policy endorsed to add the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04.
Automobile Liability Insurance	
If a motor vehicle is used in the performance of the Contract, Contractor must maintain motor vehicle liability coverage for bodily injury and property damage, as required by law.	
Workers' Compensation Insurance	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimum Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	

If any required policies provide claims-made coverage, the Contractor must: (i) provide coverage with a retroactive date before the PA Effective Date or the beginning of contract activities; (ii) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the contract activities; and (iii) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the PA Effective Date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (i) provide insurance certificates to the Participating Entity Contract Administrator, containing the agreement or delivery order number, at PA execution and within ten (10) calendar days of the expiration date of the applicable policies; (ii) intentionally omitted; (iii) notify the Participating Entity Contract Administrator with at least thirty (30) days prior written notice if any required coverage is cancelled and not replaced; and (iv) waive all rights against the State for damages covered by insurance, up to the amounts of the required coverage. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this PA (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

3. **Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% (one percent) on all CRUs' Total Wireless Spend under the PA including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities) that purchase pursuant to this PA. Administrative fee payments must be made online by check or credit card at: <https://www.thepayplace.com/mi/dtmb/adminfee>.

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the Purchasing Entity and the total dollar volume in sales. Reports should be mailed to MiDeal@michigan.gov.

The administrative fee will be calculated after each calendar quarter and AT&T will pay the quarterly amount due no later than sixty (60) days following the end of each calendar quarter. The administrative fee reporting shall be submitted forty-five (45) days following the end of the quarter.

End of Quarter	Reporting Date	Pay Date
March 31st	May 15th	May 31st
June 30th	August 15th	August 30th
September 30th	November 15th	November 30th
December 31st	February 15th	February 28th (29th)

4. **Background Checks.** If applicable to the services provided pursuant to this Contract and PA, pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. To the extent that background checks are required by Michigan law based on the services provided to this PA, such a requirement will be noted in an engagement specific Statement of Work and appended to that Statement of Work (or, at the Parties' election, this PA) at a later date.

5. **EFT Terms of Payment.** To the extent set forth in Mich. Comp. Laws Serv. § 18.1283a (Payroll and payments by electronic funds transfer; implementation), payment by the State for the purchase of goods and services under this PA shall be made by electronic funds transfer.

6. **Termination for the Public Interest.** The State may immediately terminate this PA in whole or in part without penalty for any reason upon sixty (60) days' prior written notice. In addition, if it is terminated for appropriation or budget shortfalls, it may be terminated immediately on prior written notice, provided that the State shall provide as much advance written notice as it is reasonably able to provide. The termination notice will specify whether Contractor must: (a) cease performance of the contract activities immediately, or (b) continue to perform the contract activities in accordance with the PA. For the avoidance of doubt, Contractor shall not be required to provide any tangible or intangible goods and/or services without the expectation of receiving payment as required by Michigan law.

7. **Indemnification Procedure Supplement.** In any circumstance where the State is entitled to be indemnified under the Agreement, the following procedures shall supplement any procedures found elsewhere in the Agreement:

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel, at the expense of the State, for matters pertaining to the validity or

interpretation of State of Michigan statutes, the State of Michigan Constitution, or the liability of any State employee; and to (iv) retain control of all or the applicable portion of the defense if the State deems necessary for matters pertaining to the validity or interpretation of State of Michigan statutes, the State of Michigan Constitution, or the liability of any State official or employee, and the State will consent to remove or dismiss AT&T from any portion of any matter so controlled by the State. Contractor will not, without the State's written consent (not to be unreasonably withheld, conditioned or delayed), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General (not to be unreasonably withheld, conditioned or delayed), and appointed as a Special Assistant Attorney General (not to be unreasonably withheld, conditioned or delayed). For avoidance of doubt, the Michigan Attorney General's standard vetting of proposed Special Assistant Attorneys General will not be considered an "unreasonable condition" by AT&T.

8. Records Maintenance, Inspection, Examination, and Audit.

- a. To the extent set forth in Mich. Comp. Laws Serv. § 18.1470 (Procurement contract for services; audit of vendor to verify compliance; provision; availability; exemption; "auditor general" defined), with respect to the services provided to State Agencies pursuant to this PA (only), during the term of this PA, and for three (3) years after the latter of termination, expiration or final payment under this PA ("Financial Audit Period"), Contractor must maintain complete and accurate financial and accounting records associated with the PA, as and to the extent described in Mich. Comp. Laws Serv. § 18.1470. Subject to Contractor's security requirements, during the Financial Audit Period, upon the Michigan Auditor General's request, Contractor must make such financial and accounting records, available during normal business hours for inspection and audit by the Michigan Auditor General or its designee, provided that the State: a) provides Contractor with at least fifteen (15) days prior notice of any audit, and b) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations.
- b. The State may take copies and abstracts of materials audited, subject to Contractor's security requirements.
- c. The foregoing shall not limit the applicability of Section 4 (Maintenance of Records) of the Master Agreement or the obligation described in such provision to promptly correct any billing error that is revealed in a billing review.

9. Warranties and Representations. Contractor represents and warrants: Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606.

10. Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#), Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this PA.

11. Unfair Labor Practice. Under MCL 423.324, the State may void any contract with a contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

12. Governing Law. This PA is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this PA are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this PA must be resolved in Michigan Court of Claims. Each of Contractor and State consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. PA must appoint agents in Michigan to receive service of process.

13. Non-Exclusivity. Nothing contained in this PA is intended nor will be construed as creating any requirements contract with Contractor. This PA does not restrict the State or its agencies from acquiring similar, equal, or like contract activities from other sources.

- 14. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the PA or any project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State. The foregoing shall not be construed to limit the discretion of Purchasing Entities to issue news releases or of AT&T to collaborate with Purchasing Entities to issue news releases about such Purchasing Entities or their activities in connection with this PA (in each case, with the prior written consent of the applicable Purchasing Entity).
- 15. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated into this PA. The Contractor is not bound by any content on State's website unless expressly incorporated into this PA.
- 16. Contract Modification.** This PA may not be amended except by signed agreement between the parties (a "Contract Change Notice").

Exhibit A

Pricing

Michigan State-Wide AT&T Pricing

Bundled plans (Voice/data/messaging)		
	MiDEAL Price Unlimited Data	MiDEAL Price Unlimited Data with Tethering
Bundled Gov pooled voice/unlimited data/unlimited text		
100	\$44.99	\$54.99
400	\$46.99	\$56.99
600	\$58.99	\$68.99
Unlimited	\$49.99*	\$59.99
Voice plans	MiDEAL price	MiDEAL price
National Flat Rate**	\$5.00	\$0/.06 per min
Gov Data Only		
100 includes unlimited mobile to mobile & 5000 night & weekends	\$10.00	
400 includes unlimited mobile to mobile & unlimited night & weekends	\$23.99	
600 includes unlimited mobile to mobile & unlimited night & weekends	\$35.99	
Add a line (1:1 ratio)	\$35.99	
Unlimited voice	\$50.00	
Data Only		
Gov Data Only	MiDEAL Price	
Unlimited - AirCard/Tablet	\$34.99	
Unlimited - Tablet Only*	\$20.00	
5GB - AirCard/Tablet	\$32.00	
1GB - AirCard/Tablet	\$20.00	

*May throttle at 22GB during times of network congestion

**Existing National Flat Rate lines will remain \$0 at \$0.06/min

Michigan State-Wide FirstNet Pricing

FN Responder Plans	List	MiDEAL Rates	List	MiDEAL Rates
Voice and Pooled Plans	In Contract	In Contract	Out of Contract	Out of Contract
Voice Only - Feature Phones	\$ 31.00	\$ 22.99	\$ 19.00	\$ 13.00
FN Unlimited Voice + 0 GB	\$ 39.00	\$ 35.88	\$ 19.00	\$ 15.88
FN Unlimited Voice + 2 GB	\$ 48.50	\$ 44.62	\$ 28.50	\$ 24.62
FN Unlimited Voice + 5 GB	\$ 61.00	\$ 56.12	\$ 41.00	\$ 36.12
FN Unlimited Voice + 50 GB	\$ 247.00	\$ 227.24	\$ 227.00	\$ 207.24
FN Unlimited Voice + 100 GB	\$ 432.00	\$ 397.44	\$ 412.00	\$ 377.44
FN Unlimited Voice + 500 GB	\$1,937.00	\$1,782.04	\$ 1,917.00	\$ 1,762.04
FN Unlimited Voice + 1,000 GB	\$3,702.00	\$3,405.84	\$ 3,682.00	\$ 3,385.84
Unlimited Data Plans				
Unlimited Smartphone NO tethering		\$39.99		
Unlimited Smartphone WITH tethering		\$44.99		
Unlimited Data Only (or tablet with tethering)		\$34.99		

State of Michigan Activation Credit Eligible AT&T Plans		Activation Credits 120 Days from Contract Start Date*		State of Michigan Activation Credit Eligible FirstNet Plans		Activation Credits 120 Days from Contract Start Date*	
Bundled plans (Voice/data/messaging)		One Time Credit Amount		Voice and Pooled Plans		One Time Credit Amount	
Bundled Gov pooled 400		\$125		Voice Only - Feature Phones		\$	75.00
Bundled Gov pooled 600		\$125		FN Unlimited Voice + 5 GB		\$	150.00
Bundled Gov pooled Unlimited		\$125		FN Unlimited Voice + 50 GB		\$	150.00
Voice Only Plans		One Time Credit Amount		FN Unlimited Voice + 100 GB		\$	150.00
Gov Data Only		Gov Data Only		FN Unlimited Voice + 500 GB		\$	150.00
600 includes unlimited mobile to mobile & unlimited night & weekends		\$50		FN Unlimited Voice + 1,000 GB		\$	150.00
Unlimited voice		\$50					
Data Only		One Time Credit Amount		Unlimited Data Plans		One Time Credit Amount	
Gov Data Only		Gov Data Only		Unlimited Smartphone NO tethering		\$	150.00
Unlimited - AirCard/Tablet		\$50		Unlimited Smartphone w/tethering		\$	150.00
				Unlimited Data Only		\$	75.00

*Applies to State of Michigan CRU FANs only, excludes eLearning offer.

Federal Provisions Addendum

This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law. As used below in this addendum, the term "Contract" refers to the PA to which this addendum is attached.

AT&T shall not engage in "construction work" in a manner that would cause this Contract to be a "federally assisted construction contract," as defined in 41 C.F.R. § 60-1.3.

1. Contract Work Hours and Safety Standards Act

If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable, and during performance of this Contract the Contractor agrees as follows:

- (1) 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.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) 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 (1) of this section, in the sum of \$26 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 (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The State 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 (2) of this section.
- (4) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) 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 (1) through (4) of this section.

2. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 USC 1251-1387](#)), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

3. Debarment and Suspension

A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement [Executive Orders 12549 \(51 FR 6370; February 21, 1986\)](#) and [12689 \(54 FR 34131; August 18, 1989\)](#), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s 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).
- (2) The 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.
- (3) This certification is a material representation of fact relied upon by the State. If it is later determined that the 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, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder 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 bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

4. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **\$100,000 or more** shall file the required certification in Exhibit 1 – Byrd Anti-Lobbying Certification below. 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 who in turn will forward the certification(s) to the awarding agency.

5. Procurement of Recovered Materials

Under [2 CFR 200.322](#), Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

- (1) In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - a. Competitively within a timeframe providing for compliance with the Contract performance schedule;
 - b. Meeting Contract performance requirements; or
 - c. At a reasonable price.
- (2) Information about this requirement, along with the list of EPA- designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

6. Additional FEMA Contract Provisions.

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

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

See the provisions regarding modifications or change notice in the Contract terms.
- (3) DHS Seal, Logo, And Flags.

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

(4) Compliance with Federal Law, Regulations, and Executive Orders.

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

(5) No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract.

(6) Program Fraud and False or Fraudulent Statements or Related Acts.

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

[NO FURTHER TEXT ON THIS PAGE]

Exhibit 1 - Byrd Anti-Lobbying Certification

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than \$100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date