# 2016-P00043 COMMONWEALTH OF PUERTO RICO PUERTO RICO ELECTRIC POWER AUTHORITY

# PROFESSIONAL SERVICES CONTRACT

#### -----APPEAR------

IN CONSIDERATION of the mutual covenants and agreements contained in this Contract, and other good and valuable consideration, the Parties agree themselves, their personal representatives and successors as follows:-----

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WHEREAS: On November 24, 2015, PREPA's Governing Board authorized the Executive Director, by Resolution number 4279, to sign a Contract for Professional Services with Consultant to provide PREPA consulting services related to PREPA's Integrated Resource Plan and Rate Revision and on other matters involving the operational reforms currently being considered in the restructuring and transformation of PREPA.-----

Therefore: In consideration of the mutual covenants hereinafter; both PREPA and the Consultant herein convene and agree to this Contract under the following:-----

-----TERMS AND CONDITIONS------

# Article 1. Contract Documents and Definitions

- 1.1 The "Contract" shall mean, collectively, all the covenants, terms and stipulations included in this Contract.-----
- 1.2 The "Contract Price" shall mean the maximum amount to be paid for the work that shall be performed by Consultant and described in Article 2 of this Contract.-

1.3 The "Effective Date" shall mean the date in which both Parties sign this Contract.

# Article 2. <u>Scope of Services</u>

- 2.1 In accordance with the terms and conditions set forth herein, Consultant shall provide to PREPA consulting services (Services) in regards to, among others, the following:
  - Legal counsel concerning the development, documentation, and support for new electric service rates in connection with the presentation of those rates to the Puerto Rico Energy Commission ("PREC").
  - Advocacy of PREPA's legal interests before PREC (this contract does not, however, include services defined as lobbying under the laws of the Commonwealth of Puerto Rico or the United States).
  - Legal counsel concerning the development of Oral and Written Testimony or other forms of reports and presentations to be presented before PREC, as well as representing advisors / witnesses on behalf of PREPA appearing in those proceedings.
  - Legal counsel to PREPA in connection with the Integrated Resource Plan proceeding pending before PREC and regulatory issues raised in that proceeding.
  - Legal counsel to PREPA with respect to other regulatory orders issued by PREC during the term of the Agreement.
  - > Legal counsel to PREPA and its witnesses in legal proceedings related to regulatory issues pending before PREC.
  - Legal counsel to PREPA concerning its responses to data and information requests from PREC and other parties to PREC proceedings, and assisting in the review and processing of those responses.
- 2.2 PREPA will provide Consultant's personnel all necessary information to perform

the Services and will ensure that the required information is made available to

Consultant in a timely manner.-----

Article 3. Payment

3.1 In accordance with the terms and conditions contained herein, PREPA agrees and Consultant accepts that the Contract Price shall not exceed a

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cumulative amount of five hundred thousand dollars (\$500,000). All payments to be made under this Contract will be charged to account number 01-4019-92320-556-673. PREPA will only pay for Services already rendered before the submitted invoice date. PREPA will not be required to make advance payments for any future service to be rendered by Consultant under the Contract. In accordance with the terms and conditions contained herein, PREPA agrees to pay Consultant for the Services described in the Contract, as set forth in Section

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3.3, plus reimbursable expenses as set forth in Article 4 of this Contract.-----PREPA will pay for the Services rendered by Consultant according to the hourly rates as provided in the proposal dated November 16, 2015, made part of this Contract as Appendix B. It is agreed that the rates for the team group are based on the seniority and skills required, and will range from \$110 to \$450, as defined by category as follows:

Lead Attorney	\$450.00 / hour
Senior Attorney	\$365.00 / hour
Associate Attorney	\$235.00 / hour
Paraprofessional	\$110.00 / hour

3.4 "Lead Attorney" includes named partners John Rooney, John Ratnaswamy, and E. Glenn Rippie, as well as Michael Guerra, a senior utility regulatory executive who will be joining R3 in early December. "Senior Attorney" includes other R3 partners and those lawyers designated as "Counsel" or "Of Counsel" with at least 10 years of prior legal experience. "Associates" are all other licensed attorneys. "Paraprofessionals" include paralegals and junior attorneys who are accredited law school graduates, but who have not yet been admitted to the bar in any jurisdiction.-----

The Consultant shall immediately notify PREPA when the billing under the present Contract amounts seventy-five percent (75%) of the maximum amount under the Contract. Once this notification has been issued, the Consultant, in coordination with PREPA, will ensure that no services will be rendered in excess of the Contract Price, except that a written amendment is agreed upon by both

Parties. In addition, the Consultant shall present an itemized list of the remaining billable works under the Contract.-----

# Article 4. <u>Reimbursable Expenses</u>

Consultant shall be reimbursed for all out-of-pocket expenses, including travel expenses, incurred on PREPA's behalf, in accordance with Appendix A, Reimbursable Expenses. Travel expenses are defined as the expenses incurred by Consultant's specialists when traveling to and from PREPA's offices or other locations necessary to fulfill Consultant's obligations under this Contract. These travel expenses will be subject to PREPA's prior written approval. Such approval shall be obtained by Consultant in writing and prior to being incurred. When travel is urgently required, PREPA will approve or reject the proposed trip within seven (7) calendar days, following email notification of the necessity and business purpose of the travel. PREPA shall not pay for travel time, except for travel time spent on work related to the Services. Payment for travel time shall be made only if the invoice details the Services and the time billed on each matter as specified in Appendix A. Each invoice shall be duly certified by an authorized representative of the Consultant. Consultant's reimbursable expenses shall not exceed eight percent (8%) of the Contract Price.----

Article 5. Invoices

5.1 Consultant shall submit its invoices on a monthly basis for the work already performed and the reimbursable expenses incurred during the preceding month, together with any documents or receipts which evidences the expenses incurred. Consultant will provide to PREPA two itemized (2) invoices for each billing period. The first will be for professional services. This invoice will be detailed and specific and will be substantiated with a description in detail of the Services rendered and the number of hours spent on each matter by each member of the team group working on the Projects. PREPA will pay such services invoices within thirty (30) calendar days of its approval by PREPA.------

- 5.2 The second invoice will be for reimbursable expenses. In accordance with the terms and conditions contained in this Contract, PREPA agrees to reimburse Consultant for all reasonable out-of-pocket expenses incurred by Consultant and directly related to the matters contemplated by this Contract as per Appendix A. Payment will be made upon submission to PREPA of an invoice duly certified by Consultant and approved by an authorized officer of PREPA, as established in Article 5.5 of this Contract. -----
- 5.3 PREPA will review the invoices and conduct the necessary audits within fifteen (15) business days after the receipt of an invoice before approving its payment. If PREPA believes that it's necessary to make any adjustment to invoices, it shall send written notice to Consultant detailing the nature and basis of the requested adjustment within fifteen (15) business days of receipt of the invoice. If no written notice is given, the invoice shall be deemed accepted and approved by PREPA.
  - All invoices submitted by Consultant shall include the following Certification in order to proceed with its payment:-----

No Interest Certification:

Under penalty of absolute nullity, I hereby certify that no employee, official or director of PREPA is a party or has been granted any interest or payment by Consultant in the profits or benefits to be obtained under this Contract by Consultant or if any employee, official or director of PREPA has any interest in the profits or benefits under this Contract a waiver has been previously obtained. I, also certify that the only consideration to provide the services under this Contract to Consultant is the payment agreed with PREPA's authorized representative. The total amount of this invoice is fair and correct. The services were provided and no payment has been received for said concept.

## Consultant's Representative

This is an essential requirement and those invoices without this Certification will not be processed for payment. In order to comply with the certification requirements set forth above, Consultant shall require that subcontractors providing Services also make the certification set forth above in any invoices submitted in connection with the Services.-----

Consultant shall submit separate invoices to PREPA for the work performed in 5.5 the United States and the work performed in Puerto Rico. For the work

performed in the United States, invoices will be submitted to PREPA clearly stating the dollar amount of work performed in the United States so that PREPA pays said amount in full with no deduction of withholding taxes, as stated in Article 6 of the Contract. For the work performed in Puerto Rico, invoices will be submitted to PREPA clearly stating the dollar amount of work performed in Puerto Rico so that PREPA pays the invoice amount after deduction of withholding taxes, as stated in Article 6 of the Contract.------

Article 6. Puerto Rico Treasury Department Withholding

6.1 PREPA will deduct or withhold at source any amounts from its payment for services rendered under this Contract as required by the Internal Revenue Code for a New Puerto Rico, Law 1-2011, as amended ("IRC"). Provided, however, that if Consultant furnishes as soon as practicable and prior to the issuance of the first invoice under this Contract a Release Letter (Total Waiver Certificate) to be issued by the Puerto Rico Treasury Department to the effect that Consultant is not subject to withholding at source under Section 1062.03 of the Puerto Rico 962 40-Internal Revenue Code of 2011, as amended, PREPA will honor said Release Letter or Waiver and not withhold at source the corresponding released or waived amount for payment of services rendered under this Contract. Consultant shall be responsible to submit a copy of said Release Letter to PREPA for every calendar year; otherwise, payments under the Contract shall remain subject to withholding at source. All invoices shall be segregated by concepts (services, materials, equipment, etc.), to identify the amounts subject to withholding, and avoid undue deductions, if applicable. In addition, if a certificate documenting exemption from the withholding requirements on foreign corporations or partnerships under Section 1062.08 and 1062.11 of the IRC is provided by Consultant to PREPA establishing that it is a resident foreign corporation or partnership in accordance with the requirement of the IRC and its regulations, then PREPA will honor said certificate and not withhold at source any amounts under Section 1062.08 and Section 1062.11 of the IRC, for payment of services rendered under this Contract.-----

6.2 PREPA will deduct and withhold a Special Contribution to Consultant the equivalent of one point five percent (1.5%) from payment for Services under this Contract, in compliance with Article 1, Law 48-2013. PREPA shall forward such amounts to the Department Treasury of Puerto Rico and, within thirty (30) days after paying any amount to the Department of Treasure of Puerto Rico, PREPA shall deliver evidence satisfactory to the Consultant of such payments.-----

Article 7. Contract Term

7.1 Subject to Article 8, Contract Termination, this Contract shall be in effect for a period of one (1) year beginning on the date on which Parties sign the Contract (the "Original Term".).-----

Article 8. Contract Termination

- 8.1 Notwithstanding anything to the contrary in this Contract regarding its term, PREPA or Consultant may, at any moment, terminate, cancel or accelerate its expiration, after giving the other Party a not less than thirty (30) days prior notice, for any or no reason, when in the terminating Party's judgment such action responds to its best interests.-----
  - Notwithstanding the foregoing, in the event PREPA fails to comply with any of its material obligations under the Contract and PREPA does not cure such failure (to the extent curable) within fifteen (15) days following receipt of written notice from Consultant describing the alleged failure, Consultant may declare termination of the Contract by sending written notice to PREPA including the details of the alleged failure.-----
  - In the event of Consultant's material and grossly negligent discharge of its duties and responsibilities under this Contract or breach of the confidentiality clause, and Consultant does not cure such failure within fifteen (15) days following receipt of written notice from PREPA describing the alleged grossly negligent discharge or breach of confidentiality, PREPA may declare termination of the Contract by sending written notice to Consultant including the details of the alleged failure.-----

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- 8.4 If notice is given, this Contract shall terminate upon the expiration of the thirty (30) day period or the expiration of the fifteen (15) day cure period, as the case may be, and PREPA shall be obligated to pay all fees and expenses incurred up to the day of effective termination, in accordance with the terms of this Contract and the Parties shall be released from their respective obligations hereunder as of the date of termination. Notwithstanding the foregoing, PREPA shall not pay any fees and expenses when the expired fifteen (15) day cure period was caused by the Consultant's material and grossly negligent discharge of its duties and responsibilities under this Contract.-----
- 8.5 The exercise of its right to terminate, cancel or rescind the Contract shall not be understood as a waiver by either party to any other remedy it may have under this Contract or under the law for delays or breach incurred by the other Party in the performance of its obligations or compliance with its requirements under the

Contract.-----

### Article 9. Certifications or documents required by law

- The Consultant certifies that at the execution of this Contract it does not have, and has not had, to submit income tax returns, or Sales and Use tax returns, in Puerto Rico during the past five (5) years, and that it has no outstanding debts with the Commonwealth of Puerto Rico for income taxes, real or chattel property taxes. The Consultant further certifies that it does not have outstanding debts regarding its treatment of unemployment insurance premiums, workers' compensation payments, Social Security for chauffeurs in Puerto Rico or the Administration for the Sustenance of Minors (known by its Spanish acronym as ASUME).-----
- Accordingly, Consultant shall obtain any and all Government Certifications 9.2 necessary to confirm the aforementioned information as required by Puerto Rico statutes, case law and regulations. These certifications must be appended hereto and made part of this Contract.-----

- 9.3 Prior to the signing of this Contract, or as soon thereafter, but not later than thirty (30) days after the signing of the Contract, the Consultant shall submit the following documents or certifications: -----
  - A. An Income Tax Return Filling Certificate, issued by the Treasury Department of Puerto Rico, Area of Internal Revenues, assuring that Consultant has filed his Income Tax Return for the last five (5) years. In addition, Consultant shall submit a Certification of Debt issues by the Area of Internal Revenues. ------
  - B. Certification issued by the Municipal Revenues Collection Center (MRCC), assuring that Consultant does not owe any tax to such governmental agency.
  - C. Certification, issued by the Department of Labor and Human Resources of Puerto Rico, assuring that Consultant has paid to the Department of Labor and Human Resources of Puerto Rico his employees' contribution, in accordance with the Puerto Rico Employment Security Act (unemployment, temporary disability or sickness, or social security for chauffeurs); or is paying such contribution by an installment plan in full compliance with its terms. It shall be Consultants' responsibility, also, to require all subcontracted third parties to comply with all the previous Certifications and agrees to notify PREPA of such compliance within ten working days of subcontracting such third party.------
  - D. Certification, issued by the Child Support Administration, assuring that the Consultant is in compliance with the withholdings required by law as an employer.-----
  - E. Copy of the Merchant's Registration Certificate.-----
  - F. A sworn statement to the effect that, as of the effective date, neither Consultant nor any of its partners, directors, officials, employees, parent company, subsidiaries or any entity that constitutes the alter ego of Consultant have been convicted of, nor have they pled guilty to, any crime as enumerated in Article 3 of Act 458-2000, as amended. In accordance with Article 6 of Act 458-2000, as amended, Consultant acknowledges that its conviction or guilty plea for any of the crimes as enumerated in Article 3 of

such Act shall entail, in addition to any other applicable penalty, the automatic rescission of this Contract. In addition, but only to the extent required by Act 458-2000, PREPA shall have the right to demand the reimbursement of payments made pursuant to this Contract that directly result from the committed crime.-----

- 9.4 In the case any of the required Certifications shows a debt, and Consultant has requested a review or adjustment of this debt, Consultant shall certify that it has made such request at the time of the execution the Contract. If the requested review or adjustment is denied and such determination is final, Consultant shall provide, immediately, to PREPA a proof of payment of this debt; otherwise, Consultant accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments.-----
- 9.5 Consultant recognizes that submittal of the aforementioned certifications and documents is an essential condition of this Contract; and even in the case that they are partially incorrect, there will be sufficient cause for PREPA to terminate, cancel or rescind the Contract, and Consultant have to refund all payments received.-----

# Article 10. Legal and Regulatory Compliance

- 10.1 Consultant shall comply with all laws and regulatory requirements applicable to the Services it provides under this Contract. In particular, Consultant shall comply with those laws and regulatory requirements that apply to Consultant as a company authorized to conduct their relevant business in the United States.-----
- 10.2 In consideration that none of Consultant's attorneys currently holds a license to practice law in the Commonwealth of Puerto Rico, one or more partners of the Consultant licensed to practice law in other jurisdictions shall apply, obtain and maintain an Admission by Courtesy from the Supreme Court of Puerto Rico as established by Rule 12(f) of the Supreme Court of Puerto Rico Rules. The Admission by Courtesy is of the essence and during the performance of the Services Consultant shall comply with all the obligations and requirements as established in said Rule. The Parties herein shall not assert any of the rights

and obligations under this Contract from the other until one or more partners of the Consultant licensed to practice law in other jurisdictions obtains his or her Admission by Courtesy, except for the legal services which can be provided as established in section 5(d) of said Rule 12(f).-----

- 10.3 PREPA, its officers, agents and employees shall comply with all laws and regulatory requirements to which it is subject.-----
- 10.4 The Parties agree to indemnify and hold harmless the other Party to the Contract for those damages and claims, up to an amount not exceeding the fees paid to Consultant in this engagement, which may arise from gross negligence or willful misconduct and results in the failure of its obligations to perform and comply with this Contract, or breaches any applicable laws and regulatory requirements.-----

### Article 11. Governmental Approval

11.1 PREPA shall cooperate with Consultant in all actions to obtain and maintain all authorizations, consents, and approvals of any governmental or other regulatory body or authority and such other authorities as are deemed necessary to enable Consultant to provide the Services on the terms set out herein and such other terms as may be agreed between the Parties and to engage in the transactions and carry on the activities in respect of which Consultant's Services are provided. PREPA and Consultant shall comply with the terms of any such authorizations, consents, approvals, and authorities.

Article 12. Information and Material Facts

12.1 PREPA shall promptly provide to Consultant all information under the control of PREPA and necessary for Consultant to perform the Services under this Contract and those material facts that Consultant may reasonably require in order to provide its Services to PREPA. PREPA will ensure, to the best of its knowledge and belief, that the documents, data, and other information and material facts provided to Consultant, which are under its control, are true and complete, and does not constitute misleading or inaccurate information and Consultant shall be entitled to rely on the accuracy and completeness of the documents, data, and other information and material facts.

- 12.2 PREPA will advise in writing Consultant of any developments of which PREPA becomes aware, and which PREPA considers may have a material effect with respect to the information and/or facts provided to Consultant.-----
- 12.3 PREPA will also ensure, to the best of its knowledge and belief, that the statements contained in any document or announcement issued or to be issued in connection with any matter in respect of which Consultant is advising and which are based on information produced by or under the direct control of PREPA, (whether or not issued or approved by Consultant) are to the best of its knowledge and belief true and not misleading and all expressions of opinion, intention or expectation expressed therein are made on reasonable grounds and there are no facts known the omission of which would make any of such statements or expressions misleading.-----

Article 13. Liability

- 13.2 To the fullest extent permitted by law, neither party nor its subsidiaries or affiliates shall be liable to the other party or its clients, customers, agents, contractors or subcontractors, or their shareholders, officers, directors, employees, affiliates and subsidiaries for any loss of profit or revenue, loss of use, loss of opportunity, loss of goodwill, cost of capital, or any special, indirect, consequential, incidental, exemplary, or punitive damages arising out of or in connection with this Contract. In no event will the liability of either party, or their shareholders, officers, directors, employees, affiliates and subsidiaries, exceed the amount of fees paid or payable under this Contract.

- 13.3 Each party agrees to release, indemnify, defend, save and hold harmless the other from and against any and all claims, damages, injuries, losses, expenses (including reasonable attorney's fees and legal costs) and other liabilities of any kind, up to an amount not exceeding the fees paid to Consultant in this engagement, and arising in any manner out of gross negligence or willful misconduct, related to this Contract or the performance, non-performance of the Services, to the extent that such claims, damages, injuries, losses, expenses (including reasonable attorney's fees and legal costs) and other liabilities are in excess of or outside the scope of the limitations or exclusions of liability to which Consultant is entitled under this Contract.-----
- 13.4 Consultant shall make, use, provide, and take all proper, reasonably necessary and sufficient precautions, safeguards, and protection against the occurrence or happenings of injuries, death and/or damages to any person or property during the progress of the work.-----
- 13.5 Notwithstanding the liabilities limits established herein, Consultant shall save and hold harmless and to indemnify PREPA for all reasonable expenses and costs of any nature (including reasonable attorney's fees) incurred by PREPA and arising out of or from its fault, negligence or willful misconduct and thereby results in a claim made by any third person for physical injuries, including death, or for property damage, due to the fault or negligence of Consultant, in the performance of its obligations under the Contract.

Article 14. Other Services

14.1 PREPA will be responsible for engaging the services of such other advisers as those may be required in connection with matters in which Consultant is advising, including, but not limited to legal advisers, stockbrokers, solicitors, accountants, taxation advisers, and public relations consultants, and Consultant shall not be responsible for the actions, errors or omissions of such advisers or any of their respective employees, contractors, subcontractors or agents or any claims, damages, injuries, losses or other liabilities resulting there from.-----

# Article 15. Independent Contractor

- 15.1 Consultant shall be considered as an independent contractor, for all material purposes under this Contract, and all persons engaged or contracted by Consultant for the performance of its obligations herein, shall be considered as its employees or agents, and not as employees or agents of PREPA.-----
- 15.2 As an independent contractor, Consultant shall not be entitled to any fringe benefits, such as, but not limited to vacation, sick leave, and to which PREPA's employees are entitled.-----

### Article 16. Warranty

- 16.1 Consultant warrants that it shall perform the Services in accordance with the applicable standards of care and diligence at the time of performance of the Services, and which are normally practiced and recognized in performing services of a similar nature (the "Standard"). Should any of the Services provided by Consultant not fulfill the above established Standard, Consultant shall take all necessary corrective measures to rectify such deficient Services, at its own and exclusive cost, whenever such course of action is possible or desirable. The rectification of deficient Services by Consultant shall not be understood as a waiver by PREPA to any other remedy it may have under this Contract or under the law or equity for any damages that Consultant's may have caused to it by rendering such deficient Services.-----
- 16.2 No other warranty, express or implied, is made or intended by this Contract, by furnishing oral or written reports of findings made, or by any other act of Consultant.

Article 17. Information Disclosure and Confidentiality

17.1 The Parties shall take all reasonable steps to keep confidential and use only for the purposes contemplated by the terms of the Contract the information provided by PREPA and/or Consultant, and take all reasonable steps to ensure that such information is not disclosed or distributed by its employees or agents in violation of the terms of this Contract.-----

- 17.2 The Parties also agree that, except as agreed to in writing by both Parties, they will not, at any time after termination of this Contract, disclose any confidential information to any person whatsoever, or permit any person whatsoever to examine and/or make copies of any reports prepared by Consultant or under its control by reason of its consulting services, and that upon termination of this Contract each party will turn over to the other all documents, papers, and other matters in its possession or under its control that relate to the other party. Consultant may retain one file copy for its records.-----
- 17.3 The term "confidential information" shall include, but not be limited to, all information provided to Consultant by PREPA or at PREPA's direction regarding its facilities or operations and any and all information gathered or developed by Consultant regarding the same. The Parties further agree that proprietary records and documents related to Consultant's business operations are confidential to Consultant, and will not be disclosed to PREPA or other Parties, except as ordered by the court. The Parties agree that PREPA will resist any attempt by opposing counsel or other Parties to obtain Consultant's proprietary information. The term "confidential information", however, will not include information that:-----
  - (i) is or becomes public other than through a breach of this Contract;
  - (ii) is known to the receiving party prior to the date of this Contract and with respect to which the receiving party does not have any obligation of confidentiality; or
  - (iii) is independently developed by the receiving party without use of, or reference to, confidential information.
  - 17.4 The Parties acknowledge that disclosure of any confidential information by either party will give rise to irreparable harm to the injured party inadequately compensable in damages. Accordingly, either party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies, which may be available.----

17.5 If this Contract terminates for any reason, Consultant shall maintain in strictest confidence both; during the term of this Contract and subsequent to termination of this Contract, and shall not during the term of this Contract or thereafter disclose or divulge to any person, firm, or corporation, or use directly or indirectly, for its own benefit or the benefit of others, any information which in good faith and good conscience ought to be treated as confidential information including, without limitation, information relating to PREPA's operations or trade secrets relating to the business or affairs of PREPA which Consultant may acquire or develop in connection with or as a result of the performance of the Services hereunder. In the event of an actual or threatened breach by Consultant of the provisions of this paragraph, PREPA shall be entitled to injunctive relief for such breach. Nothing herein shall be construed as prohibiting PREPA from pursuing any other legal remedies available, including the recovery of damages from Consultant.

The above provisions do not apply with respect to information, which Consultant is requested to disclose under applicable law and regulations, court order, subpoena or governmental directives, in which case Consultant shall provide PREPA prompt notice of such request in order to procure for PREPA a reasonable opportunity to oppose such disclosure. Consultant agrees to expeditiously notify and submit to PREPA a copy of any court order or subpoena and to the extent possible provide any assistance to PREPA (in the form of documents) regarding the submission of such information.-----

17.7 With respect to this Contract and any information supplied in connection with this Contract and designated by the disclosing party as confidential, the recipient agrees to: (i) protect the confidential information in a reasonable and appropriate manner and in accordance with applicable professional standards; (ii) use confidential information only to perform its obligations under this Contract; and (iii) reproduce confidential information only as required to perform its obligations under this Contract.------

#### Article 18. Rights and Titles

- 18.1 All rights, titles and interest in any reports, documents, analyses, investigations and any other by-product conceived or developed by the Consultant exclusively for PREPA as a result of performing its obligations under this Contract shall be the exclusive property of PREPA. The Consultant shall retain all right, title, and interest in and to proprietary works of authorship, pre-existing or otherwise, that have not been created specifically for PREPA under this Contract. With the exception of items marked as "CONFIDENTIAL" by the Consultant, PREPA shall retain the right to use, refer, share, or provide to any third party, as PREPA may determine, the results of any reports, documents, analyses, investigations or any other by-product of the Services performed by the Consultant under this Contract.------
- 18.2 Consultant shall retain all right, title, and interest in and to proprietary works of authorship, pre-existing or otherwise, that have not been created specifically for PREPA under this Contract.-----
- 18.3 PREPA shall retain the right to use, refer, share, or provide to any third party, as PREPA may determine, the results of any study, report, investigation or any other by-product of the Services performed by Consultant under this Contract provided that such use, reference or sharing with third Parties will be done at the sole risk of PREPA and without any liability to Consultant. PREPA shall also retain the right to coordinate the performance of said studies, reports or investigations in those situations where the performance of said studies, reports or investigations may be required by any other of PREPA's contractors and may include the same objective or scope.------

### Article 19. Employees not to Benefit

19.1 No officer, employee or agent of PREPA, nor of the Government of the Commonwealth of Puerto Rico or its Municipal Governments shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.-----

### Article 20. Conflict of Interest

- 20.1 Consultant certifies that none of its representatives under this Contract receive payment or compensation of any nature, for the services regularly rendered through an appointment in another government agency, body, public corporation or municipality of Puerto Rico. Consultant also certifies that it may have other consulting services contracts with other governmental agencies or bodies, but such condition does not constitute a conflict of interest for Consultant.------
- 20.2 Consultant acknowledges that in executing the consulting services pursuant to this Contract it has a duty of complete loyalty towards PREPA which includes not having adverse interests to those of PREPA related to the Projects. Those adverse interests include representation of clients which have or may have opposed interests to those of PREPA in relation to the Projects. Also, Consultant shall have the continuous obligation to disclose to PREPA all information and circumstances of its relations with clients and third persons and any interest which could reasonably influence PREPA when executing this Contract or during its term.-----
  - The Parties understand and agree that a conflict of interest exists when Consultant must advocate a position or outcome on behalf of any existing or future client that is contrary to PREPA's interests. Also, any conduct defined in the Illinois Rules of Professional Conduct regarding conflict of interests shall apply to Consultant and its personnel.-----
  - In the event that any of the partners, directors, agents or employees of Consultant engaged in providing services under this Contract should incur in the conduct described herein, said conduct shall constitute a violation of the prohibitions provided herein.---
- Consultant's partners, directors, agents or employees and personnel shall avoid 20.5 even the appearance of the existence of conflicting interests.-----
- 20.6 Consultant acknowledges that the Executive Director of PREPA shall have the power to intervene with the acts of Consultant and/or its agents, employees, and subcontractors regarding the enforcement of the prohibitions contained herein.

20.4

In the event that the existence of adverse interests is discovered, the Executive Director shall inform Consultant in writing of PREPA's intention to terminate this Contract within a thirty (30) day period. During said period, Consultant may request a hearing with the Executive Director to present its arguments regarding the alleged conflict of interests. In the event that Consultant does not request such hearing during the specified thirty (30) day period or the controversy is not satisfactory settled during the hearing, this Contract shall be canceled.-----

# Article 21. Notices

21.1 All notices and other communications hereunder shall be in writing and shall be deemed given when delivered personally or sent by telecopy, or postage prepaid, by registered, certified or express mail (return receipt requested) or reputable overnight courier service and shall be deemed given when so delivered by hand, or telecopied, or if mailed, three days after mailing (one business day in the case of express mail or overnight courier service) to the Parties to the following addresses:-----

To PREPA:

Attention:

Puerto Rico Electric Power Authority PO Box 364267 San Juan, Puerto Rico 00936-4267

Rooney Rippie & Ratnaswamy LLP 350 W. Hubbard St., Suite 600

Sonia Miranda Vega Planning and Environmental Protection Director

To Consultant:

Attention:

E. Glenn Rippie Partner

Chicago, Illinois 60654

### Article 22. <u>Governing Law</u>

22.1 Except as provided in Article 13.1, this Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico and any federal law and/or regulation if applicable. To the extent appropriate, the Illinois Rules of Professional Conduct shall be applied. Also, the Parties expressly agree that only the United States District Court for the District of Puerto Rico will be the court of competent and exclusive jurisdiction to decide

over the judicial controversies that the appearing Parties may have among them regarding the terms and conditions of this Contract.-----

# Article 23. Change in Law

23.1 During the Original Term of this Contract, any change in law, including, but not limited to, changes in applicable tax law, which causes an increase in Consultant's costs when providing the Services to be acquired by PREPA, shall be Consultant's responsibility, and PREPA shall not be obliged to increase the Contract Price.-----

### Article 24. Force Majeure

24.3

- 24.1 The Parties shall be excused from performing their respective responsibilities and obligations under this Contract and shall not be liable in damages or otherwise, if and only to the extent that they are unable to perform, or are prevented from performing by a force majeure event.-----
- 24.2 For purposes of this Contract, force majeure means any cause without the fault or negligence, and beyond the reasonable control of, the party claiming the occurrence of a force majeure event.-----

Force majeure may include, but not be limited to, the following: Acts of God, industrial disturbances, acts of the public enemy, war, blockages, boycotts, riots, insurrections, epidemics, earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to the acts or failure to act of any governmental authority; provided that these events, or any other claimed as a force majeure event, and/or its effects, are beyond the reasonable control and without the fault or negligence of the party claiming the force majeure event, and that such party, within ten (10) days after the occurrence of the alleged force majeure, gives the other party written notice describing the particulars of the occurrence and its estimated duration. The burden of proof as to whether a force majeure event has occurred shall be on the party claiming the force majeure.

# Article 25. Novation

- 25.1 The Parties expressly agree that no amendment or change order, which could be made to the Contract during its term, shall be understood as a contractual novation, unless both Parties agree to the contrary, specifically and in writing.-----
- 25.2 The previous provision shall be equally applicable in such other cases where PREPA gives Consultant a time extension for the compliance of any of its obligations under this Contract, or where PREPA dispenses the claim or demand of any of its credits or rights under the Contract.-----

# Article 26. Contract Assignment

26.1 The Consultant shall not assign nor subcontract its rights and obligations under this Contract, except in the event PREPA give written authorization for such actions. Provided, that no subcontract shall be considered for PREPA's approval, except when the following requirements are met: (1) the Consultant delivers to PREPA a copy of the subcontract, not less than thirty (30) days prior to the effective date of the proposed subcontract; (2) the subcontract includes, as a condition for its legal validity and enforceability, a provision whereby PREPA has ron and the right to substitute, subrogate or assume Consultants' rights under the subcontract, in the event that PREPA declares the Consultant in breach or default of any of the Contract terms and conditions; and (3) the subcontract includes, as a condition for its validity and enforceability, a provision establishing for the subcontractor the obligation to comply with all Consultants' obligations under the Contract (mirror image clause), except for such obligations, terms and conditions which exclusively related with works or services not included under the subcontract. A request to subcontract shall specify the issues or matters that will be referred to the subcontractor. These services shall be paid as part of the maximum total amount to be paid under this Contract, as stated in Article 3.1.-----

#### Article 27. Code of Ethics

27.1 Consultant agrees to comply with the provisions of Act-84-2002, which establishes a Code of Ethics for the Contractors, Suppliers, and Economic

Incentive Applicants of the Executive Agencies of the Commonwealth of Puerto Rico. -----

### Article 28. <u>Severability</u>

28.1 If a court of competent jurisdiction declares any of the Contract provisions as null and void or invalid, such holding will not affect the validity and effectiveness of the remaining provisions of this Contract and the Parties agree to comply with their respective obligations under such provisions not included in the judicial declaration.-----

### Article 29. Insurance

- 29.1 The Consultant shall secure and maintain at its sole expense, in full force and effect during the life of this Contract as provided herein, policies of insurance covering all operations engaged in by the Consultant, as follows:-----
  - A. <u>Commonwealth of Puerto Rico Workmen's Compensation Insurance</u>

The Consultant shall provide Workmen's Compensation Insurance, as applicable and required by the Workmen's Compensation Act of the Commonwealth of Puerto Rico. The Consultant shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents, and invitees, if any.-----

The Consultant shall furnish to PREPA a certificate from the Puerto Rico's State Insurance Fund showing that all personnel employed in the work are covered by the Workmen's Compensation Insurance, in accordance with this Contract. The Consultant may request exceptions for technical personnel as provided under the laws of Puerto Rico.-----

# B. Employer's Liability Insurance

The Consultant shall provide Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident, covering against the liability imposed by Law upon the Consultant as result of bodily injury, by accident or disease, including death arising out of and in the course of employment, and outside of and distinct from any

claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico.-----

C. Commercial General Liability Insurance

The Consultant shall provide a Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.-----

D. Commercial Automobile Liability Insurance

The Consultant shall provide a Commercial Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles. This insurance shall not apply to vehicles owned or furnished by PREPA.-----

# E. Professional Liability Insurance

The Consultant shall provide a certificate of insurance for Professional Liability Insurance with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate.—

# 29.2 Requirements under the Policies:

Specifically with respect only to the Commercial General Liability and the Automobile Liability Insurance required under this Contract, the respective policies shall be endorsed to include:-----

a. As additional insured

Puerto Rico Electric Power Authority Risk Management Office P0 Box 364267 San Juan, Puerto Rico 00936-4267

- b. Consultant will provide a 30 day cancellation or nonrenewable notice to be sent to the above address.-----
- c. The section of the Certificate of Insurance that reads: Description of Operations/Locations/Vehicles. . ., must include the phrase: Professional Services contract with the Puerto Rico Electric Power Authority.-----
- d. Waiver of Subrogation in favor of PREPA.-----
- 29.3 All required policies of insurance shall be in a form acceptable to PREPA and shall be issued only by insurance companies authorized to do business in Puerto Rico.-----

The Consultant shall furnish a certificate of insurance in original signed by an authorized representative of the insurer in Puerto Rico, describing the coverage afforded. This certification shall be in the "Acord" form, in general use by the insurers.-----

Article 30. Copyright

- 30.1 Consultant and PREPA shall jointly defend any suit or action brought against either party based on a claim that any document, report, study, analysis, copyrighted composition, article or any by-product of those, either used in the performance of the Services by Consultant or provided to PREPA by Consultant as part of its Services, or used in the performance of this Contract, including their use by PREPA, constitutes an infringement of any patents or copyrights of the United States. The Party of this Contract subject to the claim or that becomes aware of a potential claim shall promptly notify in writing the other Party of this Contract, and give the authority, information, and assistance reasonable and necessary for the defense of such claim. In the event a court of competent jurisdiction finds any of the Parties have infringed a copyrighted or patented material used in the performance of this Contract, the infringing Party shall pay damages and costs awarded therein against the other non-infringing Party up to a maximum amount of \$500,000 that arise solely due to errors or omissions by the infringing Party.-----
- 30.2 If, in such suit, the document, report, study, analysis, copyrighted composition, article or any by-product of those or any part thereof is held to constitute infringement and its use is enjoined, the infringing Party, shall rectify the part of the Services affected by such determination, as provided in Article 16 of this Contract.-----

Article 31. Transfer of Funds

31.1 If Consultant decides to assign or transfer an amount, due or payable, to which he is entitled for services rendered or goods provided during the term of this Contract, Consultant shall notify PREPA of such transfer of funds, in accordance to the provisions of Act 21-2012. Said notice shall clearly indicate the rights granted, including a copy of the contract under which the assignment or transfer of funds is made, the exact amount of funds to be assigned or transferred, and specific identification information regarding the assignee (full name of the person or company), address and any other contact information.-----

32.2 In case of discrepancy or in the event of conflict among the Terms and Conditions of this Contract and the dispositions in Consultant's Proposal (Appendix B), the Terms and Conditions of this Contract shall take precedence.

## Article 33. Entire Contract

33.1 The terms and conditions contained herein constitute the entire Contract between PREPA and Consultant with respect to the subject matter of this Contract, and supersede all communications, negotiations, and agreements of the Parties, whether written or oral, other than these, made prior to the signing of this Contract.

IN WITNESS THEREOF, the Parties hereto sign this Contract in San Juan, Puerto Rico this <u>23</u> day of December of 2015.-----

Puerto Rico Electric Power Authority

Javier A. Quintana Méndez Executive Director

Rooney Ripatie & Ratnaswamy, LLP. <del>Glenn</del> Ripp Partner