

**GOVERNMENT OF PUERTO RICO  
PUBLIC SERVICE REGULATORY BOARD  
PUERTO RICO ENERGY BUREAU**

**NEPR**

**Received:**

**Feb 17, 2021**

**5:48 PM**

**IN RE:** COORDINATION OF SYSTEM  
PLANNING EFFORTS – FRONT  
END TRANSITION OF T&D  
SYSTEM OPERATION AND  
MAINTENANCE

**CASE NO.:** NEPR-MI-2020-0008

**SUBJECT:** Resolution and Order  
Regarding Burns and McDonnell's Contract

**MOTION IN COMPLIANCE WITH RESOLUTION AND ORDER  
ENTERED ON FEBRUARY 2, 2021 REGARDING REQUEST FOR INFORMATION ON  
BURNS & MCDONNELL CONTRACT**

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") through its legal representation and respectfully sets forth and prays:

1. On February 2, 2021, the Puerto Rico Energy Bureau for the Public Service Regulatory Board ("Energy Bureau") entered Resolution and Order ("February 2 Order") requesting PREPA to provide information regarding its federal funds program management contract with Burns & McDonnell.

2. More specifically, the Energy Bureau requested PREPA the following:

- (1) File with the Energy Bureau a copy of the Burns and McDonnell contract, including all amendments, exhibits and annexes.
- (2) Provide a detailed explanation of Burns and McDonnell's tasks and duties under the contract.
- (3) Provide a detailed explanation as to any overlaps of the Burns and McDonnell's contract with LUMA's obligations under the OMA. PREPA and LUMA must explain in detail why the Burns and McDonnell contract is not a duplicative of LUMA's obligation under the OMA.<sup>1</sup>

2. The February 2 Order stated that the description of the tasks to be performed by Burns and McDonnell "are very similar" to the description of LUMA Energy, LLC<sup>2</sup> ("LUMA")

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<sup>1</sup> February 2 Order, pag. 2.

<sup>2</sup> Capitalized terms used but not otherwise defined shall have the meaning specified in the O&M Agreement.

obligations under the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“O&M Agreement”) entered among LUMA, PREPA and the Puerto Rico Public-Private Partnership Authority (“P3A”) on June 22, 2020.

3. The Energy Bureau cited Section 5.5(a)(vi) of the O&M Agreement for the proposition that the Burns & McDonnell contract seemed duplicative of the efforts that LUMA should be performing as part of the O&M Agreement. Section 5.5(a)(vi) states, among other things that LUMA shall "perform and supervise Capital Improvements, including engineering and related design and construction management services."

4. As will be provided and explained in the specific responses below, the scope of services provided by Burns & McDonnell are not duplicative of the efforts or services that LUMA is to provide PREPA during the Front-End Transition period. In general, Section 5 of the O&M Agreement defines the scope of services that are to be provided by LUMA *once* the Service Commencement Day begins. Accordingly, all implementation dispositions from Section 5.5 cited by the Energy Bureau are to become effective *after* Service Commencement Date.

5. Accordingly, and in compliance with the February 2 Order, PREPA responds to the Energy Bureau’s request as follows:

**1. File with the Energy Bureau a copy of the Burns & McDonnell contract, including all amendments, exhibits and annexes.**

PREPA has included contract 2021-P00048 with Burns & McDonnell, with proposed amendments, exhibits and annexes (*see*, Exhibits A to C) as requested by the Energy Bureau. However, PREPA deems it necessary to provide some much-needed context on the importance of the Burns & McDonnell contract and the reasons this contract is valuable to Puerto Rico’s transformation and restoration efforts at this juncture. As the Energy Bureau is cognizant, the devastating effects of hurricanes Irma and Maria during September 2017 resulted in Puerto Rico

experiencing the longest electrical blackout in modern U.S. history. The aftermath resulted in a series of collaborations that prompted PREPA to work closely with several local and federal agencies as well as utility partners, contractors, and the Federal Emergency Management Agency (“FEMA”) to restore electric service. The restoration efforts were successful in the short run, but the grid remains vulnerable to future catastrophic events in the long run. As a result, Governor Ricardo A. Rosselló requested federal declarations for Puerto Rico related to the impact of Hurricane María. Subsequently, President Donald J. Trump (President) approved Puerto Rico’s Emergency Declaration (EM-3391) and Major Disaster Declaration (DR-4339) associated with the impact of María. The President’s action qualified Puerto Rico for Federal disaster assistance funds. Disaster assistance can include but is not limited to FEMA Public Assistance (PA), Individual Assistance (IA), and Hazard Mitigation Grant Program (HMGP) funds, as well as other federal disaster assistance programs. In addition to this, Congress appropriated money to the U.S. Department of Housing and Urban Development for Puerto Rico through the Community Development Block Grant Disaster Recovery (CDBG-DR) program and Bipartisan Budget Act.

Aware of the implications the grant of such funds would have in Puerto Rico’s embattled infrastructure and economic reality, in December of 2019 PREPA moved forward with a Request for Proposals (RFP) to solicit proposals from responsible and qualified firms to provide Federal Program Management Services to PREPA’s Disaster Funding Management Office (DFMO). Federal financial assistance would be used to fund the contract awarded pursuant to the RFP. Given that the use of federal funds is time sensitive, it was important for PREPA to commence the process of securing coherent program management services with world class consultants long before any grants were to be assigned to PREPA or the Government of Puerto Rico. The competitive procurement process resulted in PREPA choosing Burns & McDonnell as the most qualified proponent from among other proponents including Integra Design Group; Sargent and Lundy; Tidal Basin and TRC Solutions.

Burns & McDonnell Caribbean is a professional limited liability company that has an intercompany agreement with Burns & McDonnell Engineering, Company, Inc. enabling both organizations to offer an integrated project delivery solution to their clients. They have more than 7,000 professionals (in a wide range of scientific, architectural and engineering disciplines) and have completed more than \$30 billion of capital spend program management services in the past

10 years and have managed multibillion-dollar projects across the US for both public and private sectors and have subcontracted Witt O'Brien, a world recognized disaster management state side firm, as well as local companies like CSA Group and CMA Architects & Engineers, LLC to perform their services.

**2. Provide a detailed explanation of the Burns and McDonnell contract including all amendments, exhibits and annexes.**

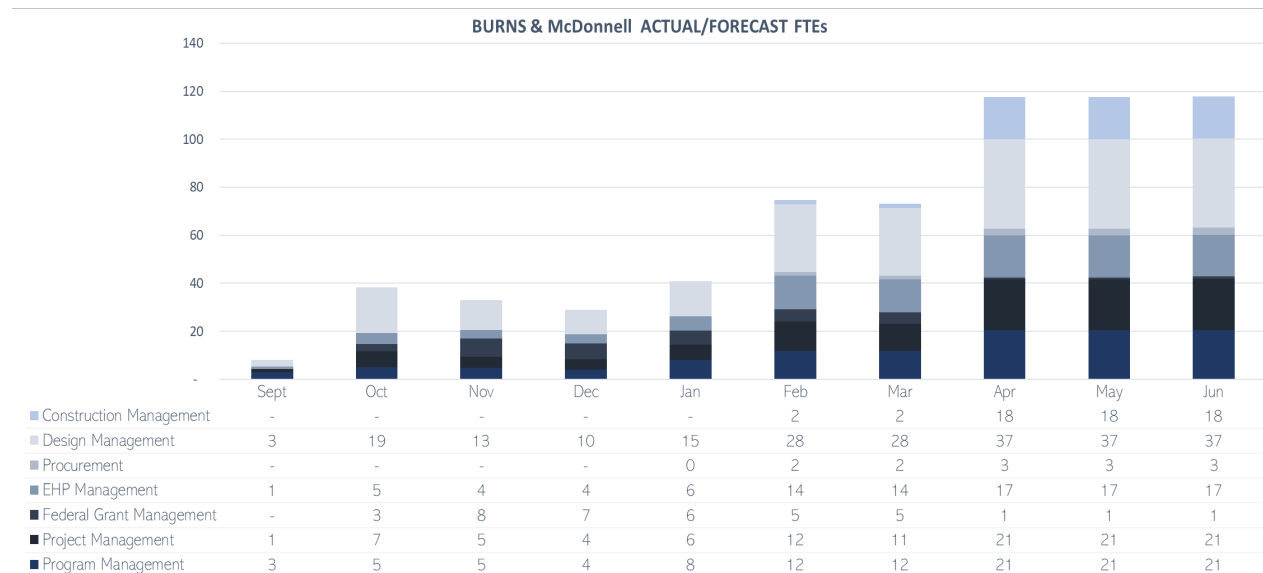
The original scope of the Burns & McDonnell contract, signed on August 21, 2020, contemplated having a program manager ready to tackle near-term project requirements without having, at the time, a definite outline on the types, quantity and amounts of funds to be awarded. Meanwhile, PREPA pursued a \$9MM contract given that the services for program management contemplated an intrinsically complex electrical system reconstruction program. On September 2020 FEMA announced its plans to award two of its largest grants ever to rebuild Puerto Rico's electric system. As a part of this plan, a funding obligation of \$10.7 billion was earmarked for PREPA to repair and/or replace its electrical systems including thousands of miles of transmission and distribution lines, electrical substations, power generation systems, office buildings, and other grid improvements under FEMA's Public Assistance Alternative Procedures, pursuant to Section 428 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. FEMA and Puerto Rico's Central Office for Recovery, Reconstruction and Resiliency ("COR3") required PREPA to submit a workplan including the proposed scope of work and HMPs as well as updates every ninety (90) days thereafter. In compliance with this requirement, PREPA started working on the 10-Year Infrastructure Plan, to be submitted within 90 days of the funding obligation announcement (the "10 Year-Plan"). The workplan is a requirement for PREPA to be eligible to receive the \$10.7 billion funding obligation.

Accordingly, PREPA had the responsibility to coordinate with its consultants as soon as possible and draft the workplan within the 90-day period allotted by the Federal Government. The expertise provided by Burns & McDonnell was essential for this purpose and with the effective coordination of other consultants, Burns & McDonnell proceeded with the development of the draft 10-year plan which identified and prioritized projects to be executed under the Federal grant programs and other funding sources. The scope of services included working closely with other consultants to provide program management support, EHP support, and conceptual scoping,

estimating, scheduling, sequencing, prioritization, risk identification for transmission, distribution, substation, generation, dams/hydro assets, buildings and telecom/IT/OT asset categories. The allocated budget for the Burns & McDonnell contract was spent earlier than expected given the fact that the contract was awarded prior to the FEMA obligation and work related to the drafting of the work plan needed to be submitted within the time constraints required by FEMA.

Further, the submittal to FEMA of the 10-year Plan in December 2020, set in motion new milestones that required continued work to comply with time sensitive metrics, including work streams associated with the ninety (90) day updates to the work plan. Accordingly, on January 2021, PREPA requested an amendment to the Burns & McDonnell contract for work to be performed during the remaining Fiscal Year with an additional budget of \$21MM. The amendment is necessary given the unexpected scope of work that resulted from a post contract award obligation, the fact that PREPA needed to comply with near term post obligation deadlines and that there are necessary scopes of work that need to be performed and implemented in the immediate outlook. Specifically, Burns & McDonnell's tasks will include, among others, 1) submittal of project scopes of work for priority and procurement ready projects including site visits for near-term projects; 2) integration of hazard mitigation measures and environmental and historic preservation (EHP) compliance into recovery scopes; 3) initiation of project-specific collaborative meetings with EHP and Hazard Mitigation; 4) initiation of procurement-specialized designs studies; 5) initiation of A&E design and technical studies to expand on SOWs submitted and have construction approved; 6) establishment of internal accounting and reporting mechanisms alongside a detailed governance structure for project deliveries; 7) development of system study criteria (e.g., protection coordination, system impact study, etc.) for project planning and outage coordination and 8) development of a program wide EHP support structure including a public notification program to meet FFAST and EHP requirements. To support these tasks through the end of their contracting period of June 30, 2021, their not-to-exceed fee needs to be increased to \$30M. The proposed amendment is currently under review by the Fiscal Oversight Management Board. Current forecasts for near-term projects FY2021, which include no-regrets and procurement ready scopes, are targeted at \$1 billion and thus will require a comprehensive execution through our program managers. As of January 31, 2021, a total of 41 resources are currently engaged in various workstreams to ultimately execute program management services for

PREPA's near-term project portfolio. However, to meet the demands established in PREPA's 10-year plan, resource count is forecasted to increase to over 100 FTEs.



Furthermore, cumulative program management fees are aligned to overall industry established benchmarks<sup>3</sup> which places Burns & McDonnell contracts within 2.8% of overall project portfolio execution.

Burns & McDonnell Actuals and Forecasted contract costs										
	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
	Actuals					Forecast				
Incurring/Forecast \$	137,158	1,573,984	1,115,804	1,119,585	1,335,356	2,299,087	2,250,930	3,575,072	4,468,839	3,584,732
Accumulative \$	137,158	1,711,142	2,826,946	3,946,530	5,281,886	7,580,973	9,831,903	13,406,975	17,875,814	21,460,546
FTE	8	38	33	29	41	75	73	118	118	118
Blended Rate \$	231	209	205	203	203	193	193	190	190	190

As a direct result of the work provided through Burns & McDonnell, effective January 31, 2021, PREPA was able to submit 29 FEMA Public Assistance funded projects with an estimated total cost of \$740 million.

<sup>3</sup> Byrne, J. P. (1999). Project management: how much is enough? *PM Network*, 13(2), 49–52.

As will be further explained in item 3, the work currently performed by Burns & McDonnell is not duplicative of work that LUMA is responsible for performing during the Front-End Transition Period. Federally funded grants are met with regulatory milestones and deadlines which precede the Service Commencement Date and PREPA expects program management services to be required beyond June 2021 to work with the remaining Generation project tasks. PREPA expects that the transition to LUMA will proceed as scheduled for June 1, 2021 and that LUMA will continue to perform program management services on T&D assets and those that will aid in executing the O&M Agreement. Notwithstanding, and given the fact that LUMA is not permitted by the O&M Agreement to perform the work currently done by Burns & McDonnell, PREPA must comply with its duty and make sure that all time sensitive work related to securing timely disbursement of federal funds is not detained.

**3. Provide a detailed explanation as to any overlaps of the Burns and McDonnell's contract with LUMA's obligations under the OMA. PREPA and LUMA must explain in detail why the Burns & McDonnell contract is not duplicative under the OMA.**

During the Front-End Transition Period there are no overlaps between the services provided by the Burns & McDonnell contract and LUMA's obligations under the O&M Agreement. Pursuant to article 4.1 of the O&M Agreement LUMA "shall not provide the O&M services or otherwise be responsible for the T&D System but shall, subject to and conditioned upon Owner providing funding pursuant to Section 4.6(b) (Front-End Transition Period Compensation – Front-End Transition Service Fee), solely provide the Front-End Transition Services as described in the front-end transition plan set forth in Annex II (Front-End Transition Plan) (the "Front-End Transition Plan"). The Front-End Transition Services are intended to ensure an orderly transition of the responsibility for the management, operation, maintenance, repairs, restoration and replacement of the T&D System to Operator by the Target Service Commencement Date, without disruption of customer service and business continuity, and shall be provided in a manner consistent with the Front-End Transition Plan and Applicable Law."

Accordingly, until the Service Commencement Date, LUMA is not allowed to provide services related to the Federal Emergency Management Agency ("FEMA") grant, but PREPA has the responsibility to continue, without disruption, the operation of the corporation as well as the implementation of those plans which are essential for the transformation of the electric system.

Initially, after the execution of the O&M Agreement, there were ongoing conversations between PREPA Management and LUMA Senior Leadership regarding PREPA's intent to use the services of IEM for federal grant management. However, LUMA Senior Leadership informed that their legal counsel had advised against providing those services during the Front-End Transition Period. PREPA agreed. Accordingly, PREPA used the Burns & McDonnell contract to secure a sub-contractor to provide grant management services in connection with the work to be performed for the development and implementation of the work plan required by the FEMA obligation.

Notwithstanding the above, and aware of the cooperative nature of the transition to LUMA, PREPA is working closely with LUMA to allow for the revision of work performed by Burns & McDonnell for LUMA to be able to make informed decisions on program management work once the Service Commencement Date begins. Until PREPA's operations and management are fully transferred to LUMA, PREPA will need of the services of Burns & McDonnell to comply with FEMA requirements as related to federal program management. The implementation of the strategic and long-term planning functions for which PREPA currently relies on Burns & McDonnell will be transferred to LUMA pursuant to the dispositions of the O&M Agreement which contemplates such responsibilities for LUMA once the Service Commencement Date becomes effective. PREPA anticipates that beginning on June 1, 2021 there will be a phase off from work performed by PREPA to LUMA estimated at 70%. This transition will continue and LUMA will have the opportunity to assume or terminate those System Contracts it chooses. The Burns & McDonnell contract has a 30-day termination clause (Section 5) as well as an assignment clause (Section 5.3) in which Burns & McDonnell acknowledges PREPA's right to assign the contract to an operator resulting from a Partnership Contract pursuant to Act 120-2018. The O&M Agreement also allows for LUMA to assume all rights and obligations of System Contracts which would permit LUMA to terminate the contract at will. Accordingly, there is no duplicative work that LUMA would perform as part of its responsibilities during the Front-End Transition Period and both the structure of the O&M Agreement and the Burns & McDonnell contract allow for termination or assumption by LUMA once the Service Commencement Date begins.

Pursuant to the above, PREPA respectfully requests that the Energy Bureau find PREPA in compliance with the February 2 Order.



WHEREFORE, the Authority respectfully requests the Energy Bureau to note PREPA's compliance with the February 2 Order.

In San Juan Puerto Rico, this 17<sup>th</sup> day of February 2021.

s/ Maralíz Vázquez-Marrero

Maralíz Vázquez-Marrero

TSPR 16187

[mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law)

s/ Katuska Bolaños Lugo

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**CERTIFICATE OF SERVICE**

It is hereby certified that this motion has been filed with the Clerk of the Energy Bureau using <https://radicacion.energia.pr.gov/> and a copy has been forwarded to [Legal@lumamc.com](mailto:Legal@lumamc.com), [mario.hurtado@lumamc.com](mailto:mario.hurtado@lumamc.com) and [wayne.stensby@lumamc.com](mailto:wayne.stensby@lumamc.com).

In San Juan Puerto Rico, this 17<sup>th</sup> day of February 2021.

s/ Maralíz Vázquez-Marrero  
Maralíz Vázquez-Marrero

Exhibit A: Professional Services Contract

GOVERNMENT OF PUERTO RICO  
PUERTO RICO ELECTRIC POWER AUTHORITY  
**PROFESSIONAL SERVICES CONTRACT**

-----APPEAR-----

**AS FIRST PARTY:** The Puerto Rico Electric Power Authority (PREPA), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of May 2, 1941, as amended (Act 83), represented in this act by its Interim Chief Executive Officer/Executive Director, Efran Paredes Maisonet, of legal age, married, and resident of Bayamon, Puerto Rico. -----

**AS SECOND PARTY:** Burns & McDonnell Caribbean (Puerto Rico), P-LLC (Consultant), a professional limited liability corporation organized and existing under the laws of Puerto Rico, and registered to do business in Puerto Rico, represented in this act by its member, Gabriel Hernandez, of legal age, married, and resident in Kansas, USA, authorized by virtue of Corporate Resolution. -----

Both PREPA and Consultant are herein individually referred to as a Party and collectively referred to as the Parties. -----

-----WITNESSETH-----

WHEREAS, PREPA, by virtue of Act 83 has the authority to engage those professional, technical and consulting services necessary and convenient to the activities, programs and operations of PREPA;-----

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Contract, hereinafter stated, the Parties agree themselves, their personal representatives, and successors to enter into this Contract under the following:



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

**Article 1. Scope of Services**

1.1 Consultant will provide authorized professional services, including those set forth in Exhibit A (the "Services"). Program management Services undertaken by Consultant shall be comprised of planning, administrative, advisory, or consultancy assistance. It is the intent of the parties that Consultant shall not be at risk to PREPA for, or assume any liability for the work or equipment provided by others under direct contract, purchase order, or otherwise employed by, or working directly or indirectly for PREPA (the "Third Party Contractors"). In this limited role, Consultant may direct PREPA's Third Party Contractors as requested by PREPA, but Consultant shall not have any duty or authority to provide means, methods, sequences, safety procedures, or programs. PREPA shall advise its Third Party Contractors and contractors regarding Consultant's authority.-----

1.2 At the direction of PREPA, the Consultant may be required to work with other consultants, or other type of firms. The Parties agree to discuss such assignment in advance, so that all the Parties have a clear understanding as to their responsibilities. The Consultant is not responsible for work performed by others.

**Article 2. Services Coordination**

All the Services of Consultant in relation to the terms and conditions of this Contract will be coordinated through PREPA's Director of PREPA Disaster Funding Management Office or the person delegated by him.-----



**Article 3. Contract Assignment or Subcontract**

The Consultant shall not assign nor subcontract its rights and obligations under this Contract, except in the event PREPA gives written authorization for such actions, which authorization shall not be unreasonably withheld. 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 redacted copy of the unsigned subcontract showing the required flowdown provisions from Articles 3, 27, and 32, not less than thirty (30) days prior to the effective date of the proposed subcontract; (2) the subcontract includes a provision whereby PREPA has the right to substitute, subrogate or assume Consultants' rights under the subcontract through an assignment, in the event that PREPA terminates the Contract because the Consultant is in material breach or default of any of the Contract terms and conditions; and (3) the subcontract includes 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 Contract Amount, as stated in Article 6, Payment. \_\_\_\_\_

**Article 4. Contract Term**

This Contract shall be in effect from the date of its execution until June 30, 2021 (The Contract Period). The Contract may be extended, for an additional annual fiscal period,



at the exclusive option of PREPA and subject to the consent of Consultant and availability of funds, only by written amendment agreed upon by both Parties.-----

**Article 5. Contract Termination**

5.1 PREPA shall have the right to terminate this Contract, at any time, with thirty (30) days prior written notice by registered mail, return receipt requested, or overnight express mail to the Consultant. If notice is given, the Contract shall terminate upon the expiration of the thirty (30) days 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 travel and demobilization-related housing/lodging costs resulting from such termination after the day of effective termination. The rights, duties and responsibilities of the Parties shall continue in full force and effect during the thirty (30) day notice period. The Consultant shall have no further right to compensation except for what has been accrued for services rendered and expenses incurred under the Contract until said date of effective termination or for such travel and demobilization-related housing/lodging costs resulting from termination after the day of effective termination.-----

5.2 Each Party shall have the right to terminate this Contract immediately in the event:  
(1) the non-breaching Party has provided the breaching Party with ten (10) days' prior written notice of dereliction of duties or material breach by the breaching Party; and (2) the breaching Party has failed to: (i) make payment as required by Section 8.2; or (ii) provide a plan to cure such dereliction or noncompliance during the notice



period. Each Party may also terminate this Contract immediately in the event a Party assigns its rights under this Contract without the consent of the other Party. The termination rights under subsection (3) of Section 5.2 shall apply notwithstanding anything to the contrary (including Section 5.3). -----

- 5.3 The Parties acknowledge that PREPA is undergoing a transformation process, and therefore, both Parties agree that in the eventuality of the execution of a Partnership Contract, Sale Contract or any other PREPA Transaction (as these terms are defined in Act 120-2018), PREPA may sell, assign, convey, transfer, pledge, mortgage, sublease, delegate, hypothecate, or otherwise dispose (each, a "Transfer") any of its rights, title, or interest in this Contract as permitted by applicable law and at any time, and without Consultant's consent, but PREPA will not be liable to Consultant for lost anticipated revenue, to any future operator of Puerto Rico's electric power transmission and distribution system or any of its affiliates, or to any governmental agency, body, public corporation or municipality of Puerto Rico; provided, that PREPA shall notify Consultant no later than thirty (30) days before the effective date of any such Transfer.-----

The Consultant acknowledges that all his responsibilities and obligations under the Contract, such as work to be performed and services to be provided, etc., will continue in full force and effect until the expiration of the thirty (30) day period. ----





**Article 6. Payment**

6.1 In accordance with the terms and conditions contained herein, PREPA agrees and Consultant accepts that the total amount to be paid under the Contract shall not exceed a cumulative amount of Nine Million United States Dollars (\$9,000,000 USD), including reimbursable expenses (the "Contract Amount"). Consultant shall not be obligated to continue performance if to do so would exceed the Contract Amount, unless and until PREPA notifies the Consultant in writing that the Contract Amount has been increased and specifies in the notice a revised amount that shall constitute the new Contract Amount for performance under this Contract. 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. All payments performed will be charged to account 01-1747-17556-555-664.-----

6.2 Nothing herein shall preclude the Parties from agreeing to increase said amount in writing and signed by both Parties.-----

6.3 PREPA will pay for the Services rendered by Consultant according to Exhibit B (Schedule of Hourly Rates) and for the expenses incurred according to Exhibit C (Direct Expenses).-----

6.4 Should the Consultant assign another person to attend to PREPA's matters pursuant to this Contract, the Consultant shall promptly send PREPA an amended schedule to include such person's name, position and rate, as well as request approval from PREPA.-----



6.5 The Consultant shall immediately notify PREPA when the billing under the Contract amounts seventy-five percent (75%) of the Contract Amount. 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 Amount, except that a written amendment is agreed upon by both Parties. In addition, the Consultant shall present an itemized list of the remaining billable Services under the Contract. -----

6.6 If PREPA fails to make undisputed payments when due, Consultant may immediately suspend its Services under this Contract.-----

**Article 7. Fees, Expenses and Disbursements**

7.1 Fees, expenses, and disbursements are addressed in Exhibit C.-----

**Article 8. Invoices**

8.1 Consultant shall submit its invoices on a monthly basis for the work already performed during the preceding month. Consultant will provide to PREPA an invoice for each billing period which will include a description of the services rendered and the number of hours spent by each person. The invoice for professional services shall be itemized and must be duly certified by an authorized representative of the Consultant. The Consultant shall allocate any invoiced fees between: (i) activities undertaken outside of Puerto Rico; and (ii) those relating to activities undertaken within Puerto Rico.-----

8.2 PREPA will review the invoices upon receipt, and if they are in compliance with the requirements set forth in this Contract, it will proceed with payment. Payment is



due sixty (60) days of receipt of the invoice. PREPA reserves the right to conduct the audits to the extent necessary to verify an invoice, and it will not be subject to finance charges regarding invoice payments subject to an audit. -----

- 8.3 All invoices submitted by Consultant shall include the following Certification in order to proceed with its payment:-----

No Interest Certification:

*"We certify under penalty of nullity that no public servant of PREPA will derive or obtain any improper benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Contract. The only consideration to be received in exchange for the performance of the Services provided is the agreed-upon price that has been negotiated with an authorized representative of the PREPA. The total amount shown on this invoice is true and correct. The invoiced Services have been rendered, and no payment for such Services has been received".*

\_\_\_\_\_  
*Consultant's Signature*

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, if any approved by PREPA, providing Services also make the certification set forth above in any invoices submitted in connection with the Services. -----

#### **Article 9. Transfer of Funds**

- 9.1 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.-----

9.2 Consultant acknowledges and agrees that in the event Consultant transfers funds as set forth in Act 21-2012, then PREPA may deduct any amount, due or payable under this Contract, that Consultant owes; PREPA may retain any said amount if Consultant fails to fulfill its obligations and responsibilities under this Contract, or a claim arises for warranty or defects regarding the services rendered or goods provided under this Contract. Consultant also acknowledges and agrees that PREPA's payment obligation under any assignment of funds will cease upon payment of the outstanding amounts under this Contract. PREPA shall not be required to make payments or transfer any funds for an amount that exceeds the payment to which Consultant is entitled to under this Contract. -----

9.3 Consultant shall include with its notice of assignment of funds a cashier's check or money order for two hundred dollars (\$200), payable to "Puerto Rico Electric Power Authority", to cover administrative costs in processing such assignment.---

**Article 10. Information and Material Facts**

10.1 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.-----

- 10.2 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. -----

**Article 11. Information Disclosure and Confidentiality**

- 11.1 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 marked "Confidential" 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.-----
- 11.2 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 such 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 this Contract and the other Party. Consultant may retain one file copy for its records. -----

11.3 The term "confidential information" shall mean the information marked "Confidential" and may 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. -----

11.4 The Parties acknowledge that disclosure of any confidential information by either Party may 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. -----

11.5 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 confidential information which may include, 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 seek 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.-----

11.6 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 at PREPA's sole cost. Consultant agrees to expeditiously notify and submit to PREPA a copy of any court order or subpoena and to the



- extent possible provide any reasonable assistance to PREPA at PREPA's sole cost (in the form of documents) regarding the submission of such information.-----
- 11.7 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. Notwithstanding anything to the contrary, Consultant may disclose the confidential information to its subcontractors provided they are bound by similar confidentiality obligations.-----
- 11.8 The obligations of this Article 11 shall expire after a period of three (3) years following the expiration or termination of this Contract. -----

**Article 12. Rights and Titles**

- 12.1 The Consultant will submit any reports reasonably required by PREPA regarding the Services performed under this Contract. If required by PREPA, at the completion of any assigned task, the Consultant will submit a final written report describing the work it has performed. This requirement shall not be interpreted as a waiver by PREPA of Consultant's ethical obligation and responsibility of keeping PREPA informed of the progress of the assigned matters. -----





12.2 All rights, titles and interest in any reports, documents, analyses, investigations and any other tangible 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 all intellectual property and proprietary works of authorship, pre-existing or otherwise, that have not been created specifically for PREPA as required under this Contract. For clarity, Consultant will retain all right, title and interest to any software it develops, including any intellectual property related thereto, even if such software is developed 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 tangible by-product of the Services performed by the Consultant under this Contract provided that if PREPA does so for a reason other than its intended purpose, then such use, referral, sharing, or provision is at its sole risk and without liability or legal exposure to Consultant or to Consultant's independent professional associates or consultants, and PREPA shall indemnify Consultant and Consultant's independent professional associates and consultants from and against all claims, damages, losses, liability, and expenses, including attorneys' fees arising out of or resulting therefrom.-----



**Article 13. Copyright**

Each Party (as applicable, the "Indemnitor") shall defend and indemnify the other Party (as applicable, the "Indemnitee") from any suit or action brought against the Indemnitee based on a claim that any document, report, study, analysis, copyrighted composition, article or any by-product of those provided by the Indemnitor constitutes an infringement of any patents or copyrights of the United States. The defense and indemnity will not apply to the extent that the Services: (i) were supplied in accordance with PREPA's design or instructions, and where compliance with such design or instructions caused Consultant to deviate from its normal course of performance, and the suit or proceeding is brought against PREPA related to that design or instruction; or (ii) were modified by PREPA or were combined by Consultant with items provided by PREPA and the suit or proceeding is brought against PREPA related to that modification or combination. The Indemnitee subject to the claim or that becomes aware of a potential claim shall promptly notify in writing the Indemnitor, and give the authority, information, and assistance reasonable and necessary for the defense of such claim.-----

**Article 14. Standard of Care**

14.1 Consultant 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 reperform such deficient Services, at its own and exclusive cost, whenever such course of action is possible or desirable. Except for PREPA's rights to terminate the Contract or request personnel be removed from providing Services, the reperformance of deficient Services by Consultant shall be the sole obligation of Consultant and sole and exclusive remedies for PREPA 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.-----

- 14.2 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.
- 

- 14.3 Consultant shall not be responsible for the failure of PREPA or its Third Party Contractors to satisfactorily perform their responsibilities to PREPA or to carry out their work in accordance with the applicable contract documents; PREPA and its Third Party Contractors shall remain completely and solely responsible for means, methods, techniques, designs, sequences, procedures, and the protection and safety of their personnel and work, and for those employees and subcontractors under which they have care, custody, or control. -----

- 14.4 Estimates, schedules, forecasts, and projections prepared by Consultant relating to loads, interest rates and other financial analysis parameters, construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are opinions based on Consultant experience,



qualifications, and judgment as a professional. Since Consultant has no control over weather, cost and availability of labor, cost and availability of material and equipment, cost of fuel or other utilities, labor productivity, construction contractor's procedures and methods, unavoidable delays, construction contractor's methods of determining prices, economic conditions, government regulations and laws (including the interpretation thereof), competitive bidding or market conditions, and other factors affecting such estimates or projections, Consultant does not guarantee that actual rates, costs, quantities, performance, schedules, etc., will not vary significantly from estimates and projections prepared by Consultant. ----

**Article 15. Responsibility for Damages**

The appearing Parties agree that their responsibilities for damages under this Contract will be governed by the Contract, the Puerto Rico Civil Code and its case law, as dictated by the Supreme Court of Puerto Rico.-----

**Article 16. Independent Contractor**

- 16.1 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 not be considered as employees or agents of PREPA except for the limited role set forth in Section 1.1.-
- 16.2 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 17. Employees not to Benefit**

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 18. Conflict of Interest**

- 18.1 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. -----
- 18.2 Consultant acknowledges that in executing its services pursuant to this Contract it has a duty of complete loyalty towards PREPA which includes not having conflict of interest. "Conflict of Interest" means representing clients who have or may have interests that are contrary to PREPA but does not include rendering services that are unrelated to the services covered in this Contract. Also, Consultant shall, subject to any confidentiality obligations, have the continuous obligation to disclose to PREPA all information and circumstances of its relations with clients and third persons that would result in a conflict of interest which would influence the Consultant when performing its responsibilities under this Contract. If the Consultant is required to provide services to another entity of the Executive Branch



under the provisions of Article 30 and such services could result in a conflict of interests, the Consultant will notify PREPA in writing as provided in this article. ---

18.3 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 Rules of Professional Conduct regarding conflict of interests shall apply to Consultant and its personnel.-----

18.4 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.-----

18.5 Consultant's partners, directors, agents or employees and personnel will use reasonable efforts to avoid even the appearance of the existence of Conflict of Interests.-----

18.6 Consultant acknowledges that PREPA's Chief Executive Officer 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. In the event that the existence of adverse interests is discovered, the PREPA's Chief Executive Officer 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 Chief Executive Officer 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 may be terminated by PREPA.-----

18.7 The Consultant certifies that, to its knowledge and belief, at the time of the execution of this Contract, it does not have nor does it represents anyone who has Conflict of Interests with PREPA. If such Conflict of Interest arises after the execution of the Contract, the Consultant shall notify PREPA immediately. -----

**Article 19. Notices**

All notices and other communications hereunder shall be in writing and shall be deemed given when delivered personally or sent by email, 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: Puerto Rico Electric Power Authority  
PO Box 364267  
San Juan, Puerto Rico 00936-4267

Attention: Efran Paredes Maisonet  
Interim Chief Executive Officer

To Consultant: 9400 Ward Parkway  
Kansas City, MO 64114



Attention: Gabe Hernandez  
Member

**Article 20. Applicable Law and Venue**

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. Also, the Parties expressly agree that only the federal courts of Puerto Rico will be the courts 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. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS CONTRACT. -----

**Article 21. Change in Law**

21.1 Subject to Section 21.2, during the term of this Contract, a change in law, including, but not limited to changes in applicable tax law, which causes an increase in Consultant's costs when supplying the products or services to be acquired by PREPA, shall be of Consultant's responsibility and PREPA shall not be obliged to make additional payments nor to pay additional sums to the price, rates or canon originally agreed for those products or services, unless the parties mutually agree otherwise. In case of such change in law, Consultant may elect to terminate this Contract without penalty with thirty (30) days written notice to PREPA and PREPA shall pay and compensate Consultant consistent with its remedies as if this Contract had been terminated under Section 5.1, without waiver by Consultant of any other rights or remedies it may have in law or in equity to protect its rights under this Contract. -----



21.2 Notwithstanding the foregoing, any pandemic-related change in law (e.g., stay-at-home orders for COVID19) will entitle Consultant to equitable cost and schedule relief due to impacts from such change in law. -----

**Article 22. Force Majeure**

22.1 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. In the event of a suspension or force majeure event, Consultant shall be entitled to equitable cost and schedule relief due to impacts from the force majeure event. Consultant shall use commercially reasonable efforts to mitigate such force majeure-related costs. -----

22.2 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.-----

22.3 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 impact 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 23. Novation**

23.1 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.-----

23.2 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 24. Severability**

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 25. Save and Hold Harmless**

The Consultant agrees to indemnify PREPA for all expenses and costs of any nature (including reasonable attorneys' fees) incurred by PREPA arising out of any third party



claim made by any person for bodily injuries, including death, or for property damage, to the extent directly caused by the Consultant by the negligent act or omission, in the performance or nonperformance of its obligations under the Contract, but not to the point directly caused by negligence or tort of PREPA or a third party, which is not an employee or subcontractor of the Consultant.-----

-With respect to any indemnity set forth in this Contract, each indemnity shall give prompt notice of its receipt of any threat, indication or other notice of any claim, investigation or demand that might give rise to any losses required to be indemnified hereunder and shall reasonably cooperate in the defense of such claim. The indemnifying party shall have the right to conduct defense of such action at its sole expense.-----

**Article 26. Insurance**

The Consultant shall secure and maintain in full force and effect during the life of this Contract as provided herein, policies of insurance covering all operations engaged in by the Contract as follows:-----

1. Commonwealth of Puerto Rico Workmen's Compensation Insurance:

The Consultant shall provide Workmen's Compensation Insurance as required by the Workmen's Compensation Act 45-1935 of the Commonwealth of Puerto Rico.

The Consultant shall also be responsible for compliance with said Workmen's Compensation Act by all its sub-contractors, agents, and invitees, if any. -----



The Consultant shall furnish a certificate from the Puerto Rico State Insurance Fund showing that all personnel employed in the work are covered by the Workmen's Compensation Insurance, in accordance with this Contract.-----

2. Employer's Liability Insurance:

The Consultant shall provide Employer's Liability Insurance with a 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.-----

3. Commercial General Liability Insurance:

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

4. 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 or schedule autos, non-owned autos, and hired automobiles.-----

5. Professional Liability Insurance:

The Consultant shall provide a Professional Liability Insurance with limits of \$1,000,000 per claim and \$1,000,000 aggregate. -----

Requirements under the Policies:



The Commercial General Liability and Commercial Automobile Liability Insurance required under this Contract shall be endorsed to include:-----

a. As Additional Insured:

Puerto Rico Electric Power Authority (PREPA)  
Risk Management Office  
PO Box 364267  
San Juan, Puerto Rico 00936-4267

- b. A 30 day cancellation or nonrenewable notice to be sent to the above address.
- c. An endorsement including this Contract under contractual liability coverage and identifying it by number, date and Parties to the contract. -----
- d. Waiver of subrogation in favor of Puerto Rico Electric Power Authority (PREPA), if allowed by applicable law. -----
- e. Breach of Terms or Conditions:-----

*The Breach of any of the Warranties or Conditions in this policy by the Insured shall not prejudice PREPA's rights under this policy, or alternatively include a separation of insureds endorsement.* -----

Evidence of Required Insurance Policies:

All required policies of insurance shall be in reasonably 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 digitally signed by an authorized representative of the insurer, describing the coverage afforded. -----



PREPA and Consultant waive all rights against each other and their respective officers, directors, agents, or employees for damage covered by property insurance or self-insurance during and after the completion of the Services.

In other contracts entered into by PREPA for work related to the Services, and to the extent possible under applicable law, PREPA's other contractors and consultants shall be required to provide waivers of subrogation in favor of PREPA and Consultant for damage or liability covered by any of PREPA's other contractor's or consultant's policies of insurance and to name Consultant as an additional insured on those policies of insurance and as a beneficiary of any indemnity, in the same manner, and to the same extent, as PREPA. -----

**Article 27. Compliance with the Commonwealth of Puerto Rico Contracting Requirements**

The Consultant will comply with all applicable State Law, Regulations or Executive Orders that regulate the contracting process and requirements of the Commonwealth of Puerto Rico, including but not limited to:

- A. Executive Order No. OE-1991-24 of June 18, 1991 to require certification of compliance with the Internal Revenue Services of the Commonwealth of Puerto Rico: Pursuant to Executive Order No. OE-1991-24 of June 18, 1991, the Consultant will certify and guarantee that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. The Consultant further will certify that it has complied and is current with the payment of any and all income taxes that are, or were due, to the Government



of Puerto Rico. The Consultant shall provide, to the satisfaction of PREPA, and whenever requested by PREPA during the term of this Contract, the necessary documentation to support its compliance with this clause. The Consultant will be given a specific amount of time to produce said documents. During the term of this Contract, the Consultant agrees to pay and/or to remain current with any repayment plan agreed to by the Consultant with the Government of Puerto Rico. -----

B. Executive Order No. OE-1992-52 of August 28, 1992 to require certification of compliance with the Department of Labor of the Commonwealth of Puerto Rico. Pursuant to Executive Order No. 1992-52, dated August 28, 1992 amending OE-1991-24, the Consultant will certify and warrant that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. The Consultant accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every consultant and sub-consultant whose service the Consultant has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement.-----

C. Government of Puerto Rico Municipal Tax Collection Center: The Consultant will certify and guarantee that it does not have any current debt with regards to property taxes that may be registered with the Government of Puerto Rico's Municipal Tax



Collection Center (known in Spanish as *Centro de Recaudación de Ingresos Municipales* ("CRIM")). The Consultant further will certify to be current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. The Consultant shall provide, to the satisfaction of PREPA and whenever requested by PREPA during the term of this Contract, Certification issued by the CRIM, assuring that Consultant does not owe any tax accruing to such governmental agency. To request such Certification, Consultant will use the form issued by the CRIM (called "*CRIM-Certificados, Radicación, Estado de Cuenta y Todos los Conceptos*" in the website). The Consultant will deliver upon request any documentation requested by PREPA. During the Term of this Contract, the Consultant agrees to pay and/or to remain current with any repayment plan agreed to by the Consultant with the Government of Puerto Rico with regards to its property taxes.-----

The Consultant shall provide a Personal Property Tax Filing Certification, issued by the CRIM which indicates that Consultant has filed its Personal Property Tax Return for the last five (5) contributory terms or Negative Debt certification issued by the CRIM with respect to real and property taxes and a sworn statement executed by Consultant indicating that (i) its revenues are derived from the rendering of professional services, (ii) during the last five (5) years (or the time in which it has been providing professional services) it has had no taxable business or personal property on the 1<sup>st</sup> of January of each year, (iii) that for such reasons it has not been required to file personal property



tax returns, as required under Article 6.03 of Act 83-1991, as amended, and (iv) that for such reason it does not have an electronic tax file in the CRIM's electronic system.-----

- D. The Consultant shall furnish a Certification issued by the Treasury Department of Puerto Rico which indicates that Consultant does not owe Puerto Rico Sales and Use taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan and is in full compliance with its terms.-----
- E. The Consultant shall provide a Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Consultant has filed his Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods. -----
- F. The Consultant shall provide a copy of Consultant's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico. -----
- G. Puerto Rico Child Support Administration (ASUME): The Consultant shall present, to the satisfaction of PREPA, the necessary documentation certifying that the Consultant nor any of its owners, affiliates or subsidiaries, if applicable, have any debt, outstanding debt, or legal procedures to collect child support payments that may be registered with the Puerto Rico Child Support Administration (known in Spanish as the *Administración Para El Sustento de Menores* (ASUME). The Consultant will be given a specific amount of time to deliver said documents. 3 L.P.R.A. § 8611 et seq.-----

- H. The Consultant shall provide a Good Standing Certificate issued by the Department of State of Puerto Rico.-----
- I. The Consultant shall provide a Certification of Incorporation, or Certificate of Organization or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.-----
- J. Special Contribution for Professional and Consulting Services: As required by Act 48-2013, as amended, PREPA will withhold a special contribution of one point five percent (1.5%) of the gross amounts paid under this Contract.-----
- K. Social Security and Income Tax Retentions: In compliance with Executive Order 1991 OE- 24; and C.F.R. Part 404 et. Seq., the Consultant will be responsible for rendering and paying the Federal Social Security and Income Tax Contributions for any amount owed as a result of the income, from this Contract.-----
- L. Income Tax Retention Law: PREPA shall deduct and withhold ten percent (10%) of any and all payments to residents of the Commonwealth of Puerto Rico as required by the Internal Revenue Code of Puerto Rico. In case of US citizens and Non-US citizens, which are nonresidents of the Commonwealth of Puerto Rico the Consultant will retain twenty percent (20%) and twenty-nine percent (29%) respectively. PREPA will remit such withholdings to the Government of Puerto Rico's Treasury Department (known in Spanish as *Departamento de Hacienda de Puerto Rico*). The Consultant will request PREPA not to make such withholdings if, to the satisfaction of PREPA, the Consultant timely provides a release from such

obligation by the Government of Puerto Rico's Treasury Department. 3 L.P.R.A. § 8611 et seq., 2011 L.P.R. 232; 232-2011. -----

M. Compliance with Act 1-2012 of Governmental Ethics: The Consultant will certify compliance with Act 1-2012, as amended, known as the Ethics Act of the Government of Puerto Rico, which stipulates that no employee or executive of PREPA nor any member of his/he immediate family (spouse, dependent children or other members of his/her household or any individual whose financial affairs are under the control of the employee) shall have any direct or indirect pecuniary interest in the services to be rendered under this Contract, except as may be expressly authorized by the Governor of Puerto Rico in consultation with the Secretary of Treasury and the Secretary of Justice of the Government. 3 L.P.R.A. § 8611 et seq.; -----

N. Act 168-2000: Law for the Strengthening of the Family Support and Livelihood of Elderly People: The Consultant will certify that if there is any Judicial or Administrative Order demanding payment or any economic support regarding Act 168-2000, as amended, the same is current and in all aspects in compliance. Act 168-2000 "*Law for the Strengthening of the Family Support and Livelihood of Elderly People*" in Spanish: "*Ley para el Fortalecimiento del Apoyo Familiar y Sustento de Personas de Edad Avanzada*", 3 L.P.R.A. §8611 et seq.-----

O. Act 127-2004: Contract Registration in the Comptroller's Office of Puerto Rico Act: Payment for services object of this Contract will not be made until this Contract is



properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Act 18 of October 30, 1975, as amended.-----

P. Prohibition with respect to execution by public officers: 3 L.P.R.A. 8615(c): No public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.-----

Q. Prohibition with respect to contracting with officers or employees: 3 L.P.R.A. 8615(d): No executive agency may execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect economic interest during the last four (4) years prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice.-----

R. Prohibition with respect to contracts with officers and employees of other Government entities: 3 L.P.R.A. 8615(e): No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice.-----



S. Prohibition with respect to evaluation and approval by public officers:

3 L.P.R.A. 8615(f): No public officer or employee who has the power to approve or authorize contracts shall evaluate, consider, approve or authorize any contract between an executive agency and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.-----

T. Prohibition with respect to execution by public officers' contracts with former public officers: 3 L.P.R.A. 8615(h): No executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after two (2) years have elapsed from the time said person has ceased working as such.-----

U. Dispensation: Any and all necessary dispensations have been obtained from any government entity and that said dispensations shall become part of the contracting record.-----

V. Rules of Professional Ethics: The Consultant acknowledges and accepts that it is knowledgeable of the rules of ethics of his/her profession and assumes responsibility for his/her own actions.-----

W. Provisions Required under Act 14-2004: Contractor agrees that articles extracted, produced, assembled, packaged or distributed in Puerto Rico by enterprises with operations in Puerto Rico, or distributed by agents established in Puerto Rico shall be



used when the service is rendered, provided that they are available. The parties agree  
this Section is not applicable to the Services. -----

If any of the previously required Certifications shows a debt, and Consultant has requested a review or adjustment of this debt, Consultant will certify that it has made such request at the time of the Contract execution. If the requested review or adjustment is denied and such determination is final, Consultant will 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.-

**Article 28. Anti-Corruption Code for a New Puerto Rico**

Consultant agrees to comply with the provisions of Act 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico. The Consultant hereby certifies that it does not represent particular interests in cases or matters that create a Conflicts of Interest, or of public policy, between the executive agency and the particular interests it represents.-----

Consultant shall furnish a sworn statement to the effect that neither Consultant nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for Consultant has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico or any of the crimes included in Act 2-2018.-----



Consultant hereby certifies that it has not been convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.-----

PREPA shall have the right to terminate the Contract in the event Consultant is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.-----

Consequences of Non-Compliance: The Consultant expressly agrees that the conditions outlined throughout this Article are essential requirements of this Contract. Consequently,



should any one of these representations, warranties or certifications be incorrect, inaccurate or misleading, in whole or in part, there shall be sufficient cause for the PREPA to terminate this Contract .-----

**Article 29. Dispute Resolution**

Executive Negotiation: Any unresolved disputes shall be referred to the Contracting Officer, Project Manager or designee by PREPA and Consultant for resolution. During the first thirty (30) days following the delivery of a notice of dispute (and during any extension agreed to by the Parties in writing, the "Negotiation Period") the Parties shall attempt in good faith to resolve the dispute through negotiations. If such negotiations result in an agreement in principle to settle the dispute, they shall cause a written settlement agreement to be prepared, signed and dated (an "Executive Settlement"), and the dispute shall be deemed settled, and not subject to further dispute resolution. If a dispute is not resolved through the Executive negotiation, the Parties agree to resolve the dispute according to the jurisdiction established in the Choice of Law and Venue Article of the Contract.-----

**Article 30. Limitation of Liability**

In no event will Consultant be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased project costs, loss of revenue or profit, lost production, and/or claims by customers of PREPA.






To the fullest extent permissible by law, and notwithstanding any other provision of this Contract, the total liability, in the aggregate, of Consultant, its officers, directors, shareholders, employees, agents, and consultants, and any of them, to PREPA and anyone claiming by, through or under PREPA, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Services or this Contract from any form of negligence, professional errors or omissions (including breach of contract or warranty) of Consultant, its officers, directors, employees, agents or consultants, or any of them, SHALL NOT EXCEED Five Million Dollars (\$5,000,000). The parties agree that specific consideration has been given by Consultant for this limitation and that it is deemed adequate. -----

**Article 31. Non-Discrimination**

The Consultant agrees that it will not discriminate against any employee or applicant for employment on account of race, color, gender, age, sex, national or social origin, social status, political ideas or affiliation, religion, for being or perceived to be a victim of domestic violence, sexual aggression or harassment, regardless of marital status, sexual orientation, gender identity or immigrant status, for physical or mental disability, for veteran status or genetic information.-----

**Article 32. Federal Contracting Provisions**

Since the work under this contract will be funded in whole or in part by FEMA PA and CDBG DR grants, the following provisions will be part of the contract and must be



complied with, except as set forth otherwise in this paragraph. The Parties agree that the provisions in this Article 32 will only apply to the extent required by federal law related to the applicable FEMA or HUD grant(s). For provisions or portions of provisions which are not so required, such provisions or portions of provisions are self-deleting. PREPA represents that adequate federal funds have been obligated to PREPA to fulfill its payment obligations to Consultant under this Contract. PREPA shall promptly notify Consultant if such federal funds are de-obligated, inadequate, or otherwise unavailable to fulfill such payment obligations. -----

#### 32.1 Equal Employment Opportunity

During the performance of this contract, the Consultant agrees as follows:

i. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant 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:

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. The Consultant 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. -----

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

iii. The Consultant 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 Consultant's legal duty to furnish information. -----

iv. The Consultant 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 Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. – N/A Consultant doesn't have a labor union. -----

v. The Consultant 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. ---

vi. The Consultant 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. -----

vii. In the event of the Consultant'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 the Consultant 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. -----

viii. The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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 vendor. The Consultant 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 a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor 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.

The applicant 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 the applicant 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.

The applicant 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.

The applicant 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, the applicant 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 the applicant 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. -----

### 32.2 Contract Work Hours and Safety Standards Act

i. 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. ---


ii. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(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 (b)(1) 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 (b)(1) of this section. -----

iii. Withholding for unpaid wages and liquidated damages. The COR3 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)(2) of this section. -----

iv. 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 (b)(1) through (4) of this section. —





N/A \_\_\_\_\_

32.3 Clean Air Act:

i. The Consultant 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. \_\_\_\_\_

ii The Consultant agrees to report each violation to the (name of applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) 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. \_\_\_\_\_

iii. The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. \_\_\_\_\_

32.4 Federal Water Pollution Control Act:

i. The Consultant 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. \_\_\_\_\_



ii. The Consultant agrees to report each violation to the (name of the applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) 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. -----

iii. The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. -----

### 32.5 Debarment and Suspension

i. 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 Consultant is required to verify that none of the Consultant'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).  
-----

ii. The Consultant shall 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. -----



iii. This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the Consultant 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 (insert name of recipient/subrecipient/applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. -----

iv. 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. --

#### 32.6 Procurement of Recovered Materials:

i. In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or



- At a reasonable price. -----

ii. 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>. -----

iii. The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act. -----

### 32.7 Access to Records

The following access to records requirements applies to this contract:

i. The Consultant agrees to provide PREPA, COR3, 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 Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. -----

ii. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. -----



iii. The Consultant 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. -----


iv. In compliance with the Disaster Recovery Act of 2018, PREPA and the Consultant 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. -----

32.8 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 Consultant will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives. -----

32.9 No Obligation by Federal Government:

The Federal Government is not a party to this contract and is not subject to any obligation or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract. -----



32.10 Program Fraud and False or Fraudulent Statements or Related Acts:

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

32.11 Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

- i. 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. -----
- ii. 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. -----

iii. 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 Consultant, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant 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. -----



32.12 DHS Seal, Logo and Flags

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

32.13 HUD GENERAL PROVISIONS

General Provisions:

32.13.1 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction. -----

32.13.2 STATUTORY AND REGULATORY COMPLIANCE

Consultant shall comply with all laws and regulations applicable to the Community





Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses. ----

### 32.13.3 BREACH OF CONTRACT TERMS

The Agency reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Consultant or any of its subcontractors violate or breach any contract term. If the Consultant or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. -----

### 32.13.4 REPORTING REQUIREMENTS

The Consultant shall complete and submit all reports, in such form and according to such schedule, as may be required by the Agency. The Consultant shall cooperate with all Puerto Rico efforts to comply with HUD requirements and regulations pertaining to



reporting, including but not limited to 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and 570.507. -----

#### 32.13.5 ACCESS TO RECORDS

The Agency, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Consultant which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions. -----

#### 32.13.6 MAINTENANCE/RETENTION OF RECORDS

All records connected with this contract will be maintained in a central location and will be maintained for a period of at least four (4) years following the date of final payment and close-out of all pending matters related to this contract. -----

#### 32.13.7 SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The Consultant will take necessary affirmative steps to assure that minority firms,

women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

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

Additionally, for contracts of \$10,000 or more, the Consultant shall file Form HUD 2516 (Contract and Subcontract Activity) with the Agency on a quarterly basis. A copy of that form is available at <http://www.hud.gov/offices/adm/hudclips/forms/files/2516.pdf>. -----

#### 32.13.8 RIGHTS TO INVESTIONS MADE UNDER A CONTRACT OR AGREEMENT



Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD \_\_\_\_\_

32.13.9 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Consultant shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. \_\_\_\_\_

10. 32.10 SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Consultant shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides



that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited. -----

32.13.11 SECTION 504 OF THE REHABILITATION ACT OF 1973

The Consultant shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations.

The Consultant agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD. -----

32.13.12 AGE DISCRIMINATION ACT OF 1975

The Consultant shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance. -----



32.13.13 DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Consultant represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. part 2424. -----

32.13.14 CONFLICTS OF INTEREST

The Consultant shall notify the Agency as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as defined at 2 C.F.R. Part 215 and 24 C.F.R. § 85.36 (2013) (or 84.42 (2013), if applicable)). The Consultant shall explain the actual or potential conflict in writing in sufficient detail so that the Agency is able to assess such actual or potential conflict. The Consultant shall provide the Agency any additional information necessary for the Agency to fully assess and address such actual or potential conflict of interest. The Consultant shall accept any reasonable conflict mitigation strategy employed by the Agency, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict. -----



32.13.15 SUBCONTRACTING

When subcontracting, the Consultant shall solicit for and contract with such subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include but are not limited to:

- i. Placing unreasonable requirements on firms in order for them to qualify to do business,
- ii. Requiring unnecessary experience and excessive bonding,
- iii. Noncompetitive pricing practices between firms or between affiliated companies,
- iv. Noncompetitive awards to consultants that are on retainer contracts,
- v. Organizational conflicts of interest,
- vi. Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
- vii. Any arbitrary action in the procurement process.

The Consultant represents to the Government of Puerto Rico that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.



The Consultant will include these HUD General Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors. -----

32.13.16 ASSIGNABILITY

The Consultant shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Government of Puerto Rico. -----

32.13.17 INDEMNIFICATION

The Consultant shall indemnify, defend, and hold harmless the Government of Puerto Rico and its agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Consultant in the performance of the services called for in this contract. -----

32.13.18 COPELAND "ANTI-KICKBACK" ACT (Applicable to all construction or repair contracts)





Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The Consultant shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof. -----

#### 32.13.19 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$2,500 that involve the employment of mechanics or laborers)

The Consultant shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract

Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards. -----

32.13.20 DAVIS-BACON ACT

(Applicable to construction contracts exceeding \$2,000 when required by Federal program legislation)

The Consultant shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

On a semi-annual basis, the Consultant shall submit Form HUD 4710 (Semi-Annual labor Standards Enforcement Report) to the Agency. A fillable version of that form is available at <http://www.hud.gov/offices/adm/hudclips/forms/hud4.cfm>. -----



32.13.21 TERMINATION FOR CAUSE (Applicable to contracts exceeding \$10,000)

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this contract, the the Government of Puerto Rico shall thereupon have the right to terminate this contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant under this contract shall, at the option of the Government of Puerto Rico, become the Government of Puerto Rico's property and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Consultant shall not be relieved of liability to the Government of Puerto Rico for damages sustained by the Government of Puerto Rico by virtue of any breach of the contract by the Consultant, and the Government of Puerto Rico may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due to the Government of Puerto Rico from the Consultant is determined. -----

32.13.22 TERMINATION FOR CONVENIENCE (Applicable to contracts exceeding \$10,000)



The Agency may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Consultant. If the contract is terminated by the Government of Puerto Rico as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. -----

32.13.23 SECTION 503 OF THE REHABILITATION ACT OF 1973 (Applicable to contracts exceeding \$10,000)

The Consultant shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers With Disabilities -----

1) The Consultant will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Consultant agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:

- a) Recruitment, advertising, and job application procedures;
- b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff,



termination, right of return from layoff and rehiring;

- c) Rates of pay or any other form of compensation and changes in compensation;
  - d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - e) Leaves of absence, sick leave, or any other leave;
  - f) Fringe benefits available by virtue of employment, whether or not administered by the contractor;
  - g) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - h) Activities sponsored by the contractor including social or recreational programs; and
  - i) Any other term, condition, or privilege of employment.
- 2) The Consultant agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
  - 3) In the event of the Consultant's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
  - 4) The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the



contracting officer. Such notices shall state the rights of applicants and employees as well as the Consultant's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Consultant must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Consultant may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).

5) The Consultant will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Consultant is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

6) The Consultant will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance. -----

32.13.24 EXECUTIVE ORDER 11246

(Applicable to construction contracts and subcontracts exceeding \$10,000)

The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

During the performance of this contract, the Consultant agrees as follows:

- 1) The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: 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.
- 2) The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Consultant shall state that all qualified



applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3) The Consultant 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 or national origin.

4) The Consultant 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 by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5) The Consultant 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.

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

7) In the event of the Consultant's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be



cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as 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.

8) Consultant shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such subcontractor. The Consultant will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States. -----

32.13.25 CERTIFICATION OF NONSEGREGATED FACILITIES (Applicable to construction contracts exceeding \$10,000)

The Consultant certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not



maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control

where segregated facilities are maintained. The Consultant agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Consultant further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods). -----



32.13.26 CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER  
ACTS (Applicable to contracts exceeding \$100,000)

The Consultant and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- 1) A stipulation by the Consultant or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Part 15, as amended.
- 2) Agreement by the Consultant to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.



- 3) A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.
- 4) Agreement by the Consultant that he will include, or cause to be included, the criteria and requirements in paragraph (A) through (D) of this section in every nonexempt subcontract and requiring that the Consultant will take such action as the government may direct as a means of enforcing such provisions. -----

32.13.27 LOBBYING (Applicable to contracts exceeding \$100,000)

The Consultant 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 Consultant, 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 Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3) The Consultant 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. -----

#### 32.13.28. BONDING REQUIREMENTS

(Applicable to construction and facility improvement contracts exceeding \$100,000)

The Consultant shall comply with Puerto Rico bonding requirements, unless they have



not been approved by HUD, in which case the Consultant shall comply with the following minimum bonding requirements:

- 1) A proposal guarantee from each proposal equivalent to five percent of the proposal price. The "proposal guarantee" shall consist of a firm commitment such as a proposal bond, certified check, or other negotiable instrument accompanying a proposal as assurance that the Proponent will, upon acceptance of his proposal, execute such contractual documents as may be required within the time specified.
- 2) A performance bond on the part of the Consultant for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Consultant's obligations under such contract.
- 3) A payment bond on the part of the Consultant for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. -----

32.13.29 SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (As required by applicable thresholds)

- 1) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that employment and other



economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

3) The Consultant agrees to send to each labor organization or representative of workers with which the Consultant has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Consultant's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4) The Consultant agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part

135. The Consultant will not subcontract with any subcontractor where the Consultant has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

5) The Consultant will certify that any vacant employment positions, including training positions, that are filled: (1) after the Consultant is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Consultant's obligations under 24 C.F.R. part 135.

6) Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8) For contracts exceeding \$100,000, the Consultant shall submit Form HUD 60002





(Section 3 Summary Report) to the Agency on a quarterly basis, notwithstanding the annual reporting requirement set forth in that form's instructions. -----

32.13.30 FAIR HOUSING ACT

Consultant shall comply with the provisions of the Fair Housing Act of 1968 as amended. The act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. The Equal Opportunity in Housing Act prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds. -----

**Article 33. Entire Contract**

The terms and conditions contained herein constitute the entire agreement 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 21 day of August 2020. -----



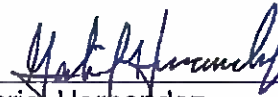
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Puerto Rico Electric Power Authority



Efran Paredes Maisonet  
Interim Chief Executive Officer  
Tax ID: 660-43-3747

Burns & McDonnell Caribbean (Puerto Rico), P-LLC



Gabriel Hernandez  
Member  
Tax ID: 66-0846535



## **Exhibit A**

### **Scope of Services**

Burns & McDonnell (Consultant) shall provide to PREPA under the Program Management Program the following services:

#### **General Requirements**

Consultant shall provide:

Trained and experienced staff capable of leading, under PREPA's supervision, efforts to successfully administer federally funded projects. Program Management's team must include staffs that are:

- Highly knowledgeable in all federal and Puerto Rico law, regulation and policy requirements applicable to PREPA's restoration projects funded by federal grants, including 2 C.F.R. Part 200.
- Highly motivated, innovative, and capable of autonomous performance under broad organizational structures with multiple stakeholders.
- Highly proficient in both oral and written English and Spanish languages, capable of understanding highly detailed and technical documentation.
- Capable of providing ordered document control of his or her activities.
- Trained and skilled in software use applicable to the expected duties and responsibilities of the work to be performed.

#### **Project Formulation**

##### **Project Planning**

Consultant shall:

- Establish project priority in coordination with PREPA Planning, T&D, Operations and others.
- FEMA Compatibility review in coordination with eligibility Subject Matter Experts
- Project boundaries definition and assets list.
- Coordinate with planning, Transmission and Distribution (T&D) for input on Scope of Work (SOW)

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- Question and Answer review

### **Project Formulation and Funding**

Consultant shall:

- Coordinate site inspections
- Lead Project Managers and Subject Matter Experts (SMEs)
- Tracking and Monitoring Projects
- Prepare Damage, Description and Dimensions (DDD's) Scope of Work (SOW) and Cost Estimates (CE).
- Prepare and Submit Project Formulation Package
- Address Request for Information (RFIs)

### **Design Management**

Consultant Shall:

- Review PREPA's Codes and Standards
- Prepare Preliminary Bid Package
- Perform document evaluation during Design-Build construction process
- Participate in weekly meetings during construction
- Review equipment, cable and materials Factory Acceptance Test (FAT)

### **Environmental Historical Preservation (EHP) Management**

Consultant shall:

- Identify Preliminary EHP considerations
- Create EHP Compliance Plan
- Implement EHP Compliance Plan
- Create, submit, follow up and obtain preconstruction, construction and operation permits



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### **Procurement Management**

Consultant shall perform:

- Technical review
- Financial review
- Legal review
- Contracting

### **Construction Management**

Consultant shall provide:

- **Construction controls**
  - ☐ Projectschedules
  - ☐ Budgetcontrols
  - ☐ ReportingSystems
- **Safety Officer**
  - ☐ OSHA compliance
  - ☐ Safety inspector
  - ☐ Losttime injury rate (LTIR)
- **Contract Administrator**
  - ☐ Projectcoordination
  - ☐ Document control
  - ☐ Measure performance
  - ☐ Monitor risk
  - ☐ Permits administration
  - ☐ Invoice management
  - ☐ Changes and claims Management
  - ☐ Commissioning



- **Engineering and Technical Services**

- ☐ Inspector and Quality Assurance
- ☐ Change Orders
- ☐ Request for Information
- ☐ Submittals
- ☐ Design review
- ☐ Constructability reviews
- ☐ Value Engineering

**Accounting Management**

Consultant shall provide: ☐ Budget

and Cost ☐ Management

☐ Accounts Payable Review ☐

Treasury

☐ Accounting

**Program Management Support**

Consultant shall provide management and oversight of all Consultant staff and subcontractors to assure a high degree of individual performance and compliance with all applicable Puerto Rico and Federal laws and regulations and provide daily coordination with PREPA. Consultant shall:

- Provide knowledge, experience, technical competence, and oversight in the planning, administration, implementation, and execution of projects funded pursuant to federal and Puerto Rico programs, including but not limited to: – FEMA Public Assistance Program
  - FEMA Hazard Mitigation Grant Program
  - HUD Community Development Block Grant-Disaster Recovery Program
  - Bipartisan Budget Act (BBA)



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- Assist with the management of funds requested and received.
- Manage and assist in the preparation of documentation to meet the requirements of applicable grant programs, including requirements for substantiating costs.
  - Participate in meetings with federal grant agencies, as required by PREPA.
- Establish quality assurance / quality control reviews and assessments associated with the payments process to ensure that they comply with federal and Puerto Rico regulations and conform to best practices.
  - Prepare monthly progress reports and other reports related to disaster funds as required by PREPA.
  - Formulate and utilize checklists necessary to assess whether files are completed and in compliance with federal requirements.
  - Provide technical assistance, as required by PREPA.

### Specific Federal Grant Program Advisory Services

Consultant shall provide technical assistance to PREPA in the administration of the Federal Grant programs available to PREPA for Disaster Recovery, including, but not limited to FEMA and HUD programs (FEMAPA, FEMA 428, Bipartisan Budget Act, Codes and Standards).

- Develop a process/system to efficiently submit grant applications, identify eligible projects, capture costs, prepare cost reports, reconcile invoices, and close-out projects.
- Attend meetings with relevant Puerto Rico and Federal officials to address eligibility and process issues.
  - Proactively identify and resolve issues that may arise related to grant funded work.
  - Provide engineering, cost estimating, and architectural support, among other types of technical assistance.
- Assess damage to infrastructure components and facilities. Assist in determining if any eligible damages have not been quantified and presented to inspectors/project officers.

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- Obtain, analyze and gather field documentation, including gathering relevant records to extract pertinent information.
- Review all project data and supporting documentation for accuracy and grant program eligibility.
- Prepare price and cost analysis, as needed.
- Evaluate and assist in the formulation of FEMA Project Worksheets, to include Cost Estimating, developing Detailed Damage Descriptions and Dimensions (DDD's), and project Scope of Work (SOW).
  - Assist in the development and evaluation of alternate and/or improved projects.
  - Evaluate the appropriateness of the use of FEMA pilot programs.
  - Provide technical assistance to comply with the Section 428 Alternative Procedures for Puerto Rico.
  - Review Project Worksheets (PW) to determine final eligible costs and third-party refunds/reimbursements.
  - Reconcile eligible costs and prepare PW versions.
- Assist PREPA's personnel and outside counsel in the preparation of administrative appeals in accordance with COR3's standard operating procedures for appeals.
  - Assist PREPA's personnel and outside counsel with work related to administrative arbitrations with the Civilian Board of Contract Appeals.
  - Reconcile change orders with scope of repair and prepare progress payments.
  - Perform PW closeouts.
  - Conduct assessments that identify disaster recovery needs.
- Develop and submit HUD required reporting as related to CDBG-DR cost share.
  - Amendments, performance reporting, and grant closeout.
- Prepare projects for audit and respond to Department of Homeland Security (DHS) Office of Inspector General (OIG) audit findings, as required.



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### FEMA 406 -HazardMitigation

- Identify preliminary Hazard Mitigation (HM) (406 and 404 programs)
- Create HM Plan (406 and 404 programs)
- Assist in identifying, developing, and evaluating opportunities for hazard mitigation projects to reduce or eliminate risk from future events.
- Prepare hazard mitigation proposals, grant applications, benefit cost analysis, and other services related to Hazard Mitigation Grant Program, Pre-Disaster Mitigation, and other mitigation programs.

### HUD CDBG-DR

Assist in the use of CDBG-DR for cost-share in compliance with FEMA and HUD law, regulations and policies.

### Other Federal Programs

Assist PREPA as needed to administer any grant funding from other Federal agencies as requested.

### Deliverables

In order to maintain transparent administration, Consultant must develop dashboards and reports that promote transparency, efficiency, and accountability.

The Consultant shall submit to PREPA monthly reports demonstrating accomplishments for the prior month to include production, quality, staffing, and any other criteria deemed necessary by PREPA management to monitor and measure performance under this contract.

The Consultant shall provide as part of their normal activities and in accordance with applicable laws, regulations, and policies.

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**Exhibit B – Schedule of Hourly Rates – Burns & McDonnell Caribbean, LLC and Subconsultants**

	Class	Hourly 2020 Rates		Subconsultants		
		Burns & McDonnell	Contingent Worker	CSA	CMA	Witt O'Brian's
		Rate/Hour	Rate/Hour	Rate/Hour	Rate/Hour	Rate/Hour
1a	Program Manager I	\$243.53	N/A	N/A	N/A	N/A
1b	Program Manager II	\$269.30	N/A			
1c	Program Manager III	\$310.05	N/A			
2a	Project Manager I	\$213.75	\$157.96	\$193.20	\$201.25	\$201.25
2b	Project Manager II	\$251.99	\$187.32			
2c	Project Manager III	\$307.45	\$229.91			
3a	Fed Program Mgmt Specialist I	\$149.63	\$108.71	\$193.20	N/A	\$172.50
3b	Fed Program Mgmt Specialist II	\$192.15	\$141.36			
3c	Fed Program Mgmt Specialist III	\$272.50	\$203.08			
4a	ENV Regulation Specialist I	\$141.35	\$102.35	\$165.60	\$143.75	N/A
4b	ENV Regulation Specialist II	\$192.79	\$141.86			
4c	ENV Regulation Specialist III	\$262.63	\$195.49			
5a	Project Specialist I	\$157.85	\$115.02	\$165.60	\$143.75	N/A
5b	Project Specialist II	\$184.25	\$135.30			
5c	Project Specialist III	\$214.84	\$158.79			
6a	Engineer/Architect I	\$175.11	\$128.28	\$165.60	\$155.25	N/A
6b	Engineer/Architect II	\$205.16	\$151.36			
6c	Engineer/Architect III	\$245.06	\$182.00			
7a	Engineering/Architectural Assistant I	\$123.53	\$88.67	N/A	\$132.25	N/A
7b	Engineering/Architectural Assistant II	\$157.77	\$114.96			
7c	Engineering/Architectural Assistant III	\$195.73	\$144.12			

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	Class	Hourly 2020 Rates		Subconsultants		
		Burns & McDonnell	Contingent Worker	CSA	CMA	Witt O'Brian's
		Rate/Hour	Rate/Hour	Rate/Hour	Rate/Hour	Rate/Hour
8a	Project Cost Estimator/Adjuster I	\$141.38	\$102.37	\$165.60	\$132.25	N/A
8b	Project Cost Estimator/Adjuster II	\$157.35	\$114.64			
8c	Project Cost Estimator/Adjuster III	\$215.98	\$159.66			
9a	Document Control Officer I	N/A	\$66.95	N/A	\$74.75	N/A
9b	Document Control Officer II	N/A	\$76.23			
9c	Document Control Officer III	N/A	\$112.32			
10a	Computer Network Support Technician I	\$126.87	\$91.23	\$131.10	\$109.25	N/A
10b	Computer Network Support Technician II	\$162.97	\$118.96			
10c	Computer Network Support Technician III	\$236.20	\$175.19			
11a	Office Administrator I	\$115.04	\$82.15	\$89.70	\$103.50	N/A
11b	Office Administrator II	\$131.42	\$94.73			
11c	Office Administrator III	\$190.15	\$139.83			
12a	Administrative/Clerical Officer I	N/A	\$71.89	\$51.75	\$57.50	N/A
12b	Administrative/Clerical Officer II	N/A	\$87.14			
12c	Administrative/Clerical Officer III	N/A	\$134.56			

Professional Service Billing Rate Clarifications

1. For any nonexempt personnel, overtime will be billed at 1.5 times the hourly labor billing rates shown.
2. For outside expenses incurred by others such as subcontractors, the client shall pay the cost to Burns & McDonnell plus 15%.
3. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt. **A late payment charge of 1.5% per month will be added to all amounts not paid within 60 days of the invoice date.**

4. Contractor may engage temporary staffing agencies or obtain assistance from its affiliates and subsidiaries in its own reasonable discretion including, without limitation, Burns & McDonnell Engineering Company, Inc., Burns & McDonnell International Inc. and Burns & McDonnell Engineering India Pvt. Ltd. ("Labor Sources") to fulfill Contractor's performance obligations under this Agreement. The parties agree that contracts, purchase orders, or similar agreements between Contractor and any Labor Sources are not subcontracts as that term is used in this Agreement, and personnel from such Labor Sources shall be billed according to the applicable rate sheet for the Scope of Work as if such personnel is a direct hire employee. Personnel from Labor Sources shall be considered agents of Contractor and able to act on behalf of Contractor within the scope of the authority granted such personnel according to job function and billing classification. Contractor shall remain fully responsible for all Work performed by Labor Sources and shall not be relieved of any obligations under this Agreement by virtue of delegating duties to such Labor Sources. No contract between Contractor and any Labor Sources shall bind or purport to bind Owner or give any Labor Sources a right to seek compensation or damages from the Owner under this Agreement."
5. The rates shown are effective for services through December 31, 2020 and are subject to escalation thereafter. Consultant shall submit justification to PREPA for approval 30 days prior to the end of each calendar year.
6. In accordance to 2 CFR Part 200.330, we have assumed we will be in the role of a "contractor" as defined under Part 200.330. As such, rates are not subject to compliance requirements of the Federal program and are not required to be cost-based.
7. Our hourly rates include wages, overhead, general and administrative expenses and profit for each labor category. Our hourly rates do not include any reimbursable expenses, materials, or US Expat taxes, which will be billed separately to PREPA.
8. The cost of leasing a dedicated office for the Program has not been included in our rates. PREPA will be billed separately for mutually agreed upon costs for office lease, utilities, janitorial services, office furniture, security, phones, internet and any other costs related to the operation of a dedicated Program office.

## **Exhibit C**

### **Direct Expenses**

It is not anticipated that the initial ramp up phase (6-12 months) of work will require any temporary or permanent personnel relocations to Puerto Rico. All start-up personnel will travel as required for short durations of time to attend meetings, field walks, or conduct business as required in person. After the ramp up initial phase, Consultant will provide written request to PREPA for any key personnel to be temporarily or permanently relocated for the project and will not bill any relocation related expenses until approval is granted.

#### **Personnel Mobilization/Demobilization**

The following are allowable reimbursable expenses associated with mobilization/ demobilization for temporarily relocated personnel to Puerto Rico.

- a. Personal automobile shipping for one vehicle from mainland United States (home location) to Puerto Rico and return personal vehicle to mainland United States (home location).
- b. Shipping (via 20ft container) of personal items from mainland United States (home location) to Puerto Rico and return personal items to mainland United States (home location).
- c. Fees for breaking apartment leases when assignment ends earlier than anticipated as determined by term of contract.
- d. Cost for a tow behind trailer if an employee is driving a personal or fleet vehicle to the project site.
- e. Hotel/motel should the mobilization/demobilization take longer than one day.
- f. Meals
- g. Tolls
- h. Travel time at 8 hours per day during normal business hours.

#### **Per Diems**

Per Diem will be charged for field-based employees who do not have their primary residence in Puerto Rico within 50 miles of the Project site. Or, within 50 miles of BMcD's project office for office-based employees. Per Diems are to be reimbursed at the beginning of the month. The Per Diem to and from dates must be stated on the expense account to be reimbursed. After two years of paid escalation to said personnel, BMcD & PREPA will evaluate a temporary relocation status of the employee for eligibility of reimbursable per diem. BMcD will provide a list of employees to receive Per Diem and the list will be approved in advance by PREPA.

#### **Temporary Relocation - Less Than Six Months (No Receipts Required)**

Meals: \$60 per person for each day for persons travelling or working in Puerto Rico.

## Professional Services Contract – Burns & McDonnell Caribbean (Puerto Rico) P-LLC

Lodging (standard not smoking room): \$250 per person, per night including government fees and taxes as of January 1, 2020 and shall be subject to annual cost of living increases. Economical alternatives of lodging, including temporary rentals of apartments, will be utilized when practicable.

Ground Transportation: Shall be reimbursable at cost, including Uber type services, taxis or car rentals and associated driving expenses such as, but not limited to parking fees, highway tolls, and fuel.

PREPA shall pay travel costs (airfare, car rental, etc.) for employees temporarily relocated to the island to travel home to mainland United States once every three weeks. Employee leave shall be allowed from noon Friday to noon Monday for weekend travel unless other arrangements are made by the Program Manager and approved by PREPA.

### **Temporary Relocation - Longer Than Six Months (No Receipts Required)**

The per diem rate for employees working away from their primary residence for more than six months will be \$150/day as of January 1, 2020 and shall be subject to annual cost of living increases. Per diem shall cover lodging, meals, personal telephone calls, other incidental costs and transportation to and from work. For any employee who has been paid 12 consecutive months of per diem, the daily charge thereafter shall increase by 35% to cover income tax burden.

PREPA shall pay travel costs (airfare, car rental, etc.) for employees temporarily relocated to the island to travel home to mainland United States once every three weeks. Employee leave shall be allowed from noon Friday to noon Monday for weekend travel unless other arrangements are made by the Program Manager and approved by PREPA.

### **Communication Equipment**

BMCD will provide cell phones to personnel at no cost to PREPA. For monthly service costs, a monthly charge of \$125 per month, per employee will be paid to BMCD to compensate for wireless plan usage. BMCD will provide a list of employees to receive the monthly charge and the list will be approved by PREPA. BMCD's employees eligible for this charge must be assigned 100% to projects under this agreement or will be prorated based on time spent on project. BMCD monthly internet services as required for field personnel (e.g., hot spots) will be approved by PREPA and billed at a monthly charge of \$100 per month per employee.

### **Auto Mileage**

Auto mileage associated with the use of a personal vehicle while on business for travel between assigned office locations and Site or other meeting locations will be reimbursed at the current rate as specified by the US Internal Revenue Service. (Mileage to and from work will not be reimbursed and shall be

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subtracted from any miles driven.)

### Air Travel

Airfares will be reimbursed based on coach class travel rates. Travel arrangements will be made as early as possible to take advantage of advance reservation rates. BMcD will be reimbursed for baggage handling service fees at standard reasonable rates. A copy of the original airline itinerary and paid invoice shall be submitted. Airfare may only be invoiced following completion of travel. In the event that a scheduled trip has to be cancelled or rescheduled by PREPA's order, PREPA will assume the cost of the penalty fee and any non-refundable travel costs.

### Lodging/Hotel Rooms

PREPA will reimburse hotel room fees at preferred corporate or contract rates, if available. PREPA will reimburse hotel room fees at the standard rate based on single room occupancy in cases where a corporate or contract rate is NOT available.

### Laundry

Any laundry and dry-cleaning charges will ONLY be billed if BMcD employee is on travel for assignment for a period in excess of six (6) consecutive days.

### Entertainment

PREPA will NOT be invoiced for the rental of premium channel movies, use of health club facilities or other forms of entertainment.

### Meals

In lieu of itemizing meal expenses and submitting receipts, BMcD may claim a standard \$60.00 per day for the duration of the business travel. All BMcD personnel must pay for their own meals and submit on individual expense accounts.

### Ground Transportation/Car Rental

Rental car expenses will be reimbursed for travel only at the mid-size rate unless alternative vehicle size is pre-approved by PREPA. Cab fare/Uber/Lyft (on a shared basis whenever possible) is reimbursable. Receipts will be required to document all ground transportation charges. PREPA will reimburse reasonable car rental charges including gas purchased.

### Parking/Tolls

BMcD will be reimbursed at cost for reasonable parking, tolls, and associated fee expenses incurred in the performance of Services while on business.



## Professional Services Contract – Burns & McDonnell Caribbean (Puerto Rico) P-LLC

### Non-Allowable Expenses

PREPA will NOT be invoiced for any reimbursement for travel expenses for family members, personal items, or charitable contributions.

### Project Office

BMCD's project office location(s), size, and lease terms will be closely coordinated with PREPA to meet the needs of the project and pre-approved by PREPA prior to BMCD entering into contractual liabilities. The office will provide offices, workstations, and conference rooms dedicated solely to the program and will provide sufficient space for BMCD and PREPA to work and focus on the successful planning, execution, and closeout of the program. The cost of the office including rent, build out, utilities, janitorial, furniture, IT equipment, audio visual equipment, printing and plotting equipment, wiring, telephones and all operating expenses will be pre-approved by PREPA and billed to PREPA at BMCD's actual cost without markup.

At this time, we are assuming PREPA will provide all project office facilities. Therefore, project office lease and other associated office cost has not been included in our estimated fee.

### Office Related Demobilization

In the event of termination, PREPA will be billed for direct and indirect costs associated with demobilization from the project site(s). Demobilization costs include, but are not limited to, labor billings during closeout; leased office space; third party goods and services that have cancellation costs; personnel moving costs; and internet, software hosting, and maintenance fees. Prior to demobilization, BMCD will estimate the costs specified above and present to PREPA for concurrence.

### Other Business Expenses

Any business supplies, equipment rental, reprographics and facsimile expenses will be reimbursed at cost. Project-specific equipment including specialty field equipment, audio-visual equipment, 2-way radios, specialty safety equipment, project signs and other miscellaneous materials, dumpsters, and small tools greater than \$100 will be billed to PREPA.

### Fleet Vehicles

BMCD will be responsible for supplying fleet vehicles to our field-based personnel and shared vehicles for the fleet pool. Vehicle assignments will be approved by PREPA in advance.

Once approved, PREPA will reimburse BMCD for costs of all approved fleet vehicles for its personnel and



## Professional Services Contract – Burns & McDonnell Caribbean (Puerto Rico) P-LLC

its contractors at actual vehicle rental cost as well as actual costs for fuel, cleaning, maintenance, and fleet care charges incurred as a result of normal usage and wear and tear.

Any safety, environmental, fire protection, and aftermarket items will be provided and installed by BMcD and billed to PREPA at cost.

### Miscellaneous Charges

The following expenses shall be itemized and billed separately to PREPA at actual cost:

- a. Home office mail related charges such as normal mailing and express shipping.
- b. Home office telephone related charges including local and long distance, and facsimile charges. Field office telephone related charges will be billed to PREPA.
- c. Reprographics related charges for normal copying, printing, scanning, copier paper and copier machine cartridges. Large in-house print jobs and special requests for bulk copying performed by third parties are NOT included and would be billed as an outside expense.
- d. Normal office supplies
- e. Third-party hosting service
- f. Messenger/courier service - PREPA will reimburse actual charges billed to Consultant for deliveries (including overnight deliveries).

### Third-Party Services

The approval of PREPA must be obtained in writing prior to retaining any third-party services. Invoices from third-party vendors should be paid directly by BMcD, incorporated into its invoice to PREPA and should include appropriate detail. Copies of third-party invoices may be requested by PREPA and should be retained in accordance with PREPA's guidelines. All third-party services invoiced to PREPA shall include a 15% markup.

Exhibit B: Schedule of Hourly Rates

**Exhibit B – Schedule of Hourly Rates – Burns & McDonnell Caribbean, LLC and Subconsultants**

	Class	Hourly 2020 Rates		Subconsultants			
		Burns & McDonnell	Contingent Worker	CSA	CMA	Witt O'Brian's	ARI Group
		Rate/Hour	Rate/Hour	Rate/Hour	Rate/Hour	Rate/Hour	Rate/Hour
1a	Program Manager I	\$243.53	N/A	N/A	N/A	N/A	N/A
1b	Program Manager II	\$269.30	N/A				
1c	Program Manager III	\$310.05	N/A				
2a	Project Manager I	\$213.75	\$157.96	\$193.20	\$201.25	\$201.25	\$184.00
2b	Project Manager II	\$251.99	\$187.32				
2c	Project Manager III	\$307.45	\$229.91				
3a	Fed Program Mgmt Specialist I	\$149.63	\$108.71	\$193.20	N/A	\$172.50	N/A
3b	Fed Program Mgmt Specialist II	\$192.15	\$141.36				
3c	Fed Program Mgmt Specialist III	\$272.50	\$203.08				
4a	ENV Regulation Specialist I	\$141.35	\$102.35	\$165.60	\$143.75	N/A	N/A
4b	ENV Regulation Specialist II	\$192.79	\$141.86				
4c	ENV Regulation Specialist III	\$262.63	\$195.49				
5a	Project Specialist I	\$157.85	\$115.02	\$165.60	\$143.75	N/A	\$97.75
5b	Project Specialist II	\$184.25	\$135.30				\$126.50
5c	Project Specialist III	\$214.84	\$158.79				\$149.50
6a	Engineer/Architect I	\$175.11	\$128.28	\$165.60	\$155.25	N/A	N/A
6b	Engineer/Architect II	\$205.16	\$151.36				
6c	Engineer/Architect III	\$245.06	\$182.00				
7a	Engineering/Architectural Assistant I	\$123.53	\$88.67	N/A	\$132.25	N/A	N/A
7b	Engineering/Architectural Assistant II	\$157.77	\$114.96				
7c	Engineering/Architectural Assistant III	\$195.73	\$144.12				
8a	Project Cost Estimator/Adjuster I	\$141.38	\$102.37	\$165.60	\$132.25	N/A	N/A
8b	Project Cost Estimator/Adjuster II	\$157.35	\$114.64				
8c	Project Cost Estimator/Adjuster III	\$215.98	\$159.66				
9a	Document Control Officer I	N/A	\$66.95	N/A	\$74.75	N/A	N/A
9b	Document Control Officer II	N/A	\$76.23				
9c	Document Control Officer III	N/A	\$112.32				

	Class	Hourly 2020 Rates		Subconsultants			
		Burns & McDonnell	Contingent Worker	CSA	CMA	Witt O'Brian's	ARI Group
		Rate/Hour	Rate/Hour	Rate/Hour	Rate/Hour	Rate/Hour	Rate/Hour
10a	Computer Network Support Technician I	\$126.87	\$91.23	\$131.10	\$109.25	N/A	N/A
10b	Computer Network Support Technician II	\$162.97	\$118.96				
10c	Computer Network Support Technician III	\$236.20	\$175.19				
11a	Office Administrator I	\$115.04	\$82.15	\$89.70	\$103.50	N/A	N/A
11b	Office Administrator II	\$131.42	\$94.73				
11c	Office Administrator III	\$190.15	\$139.83				
12a	Administrative/Clerical Officer I	N/A	\$71.89	\$51.75	\$57.50	N/A	N/A
12b	Administrative/Clerical Officer II	N/A	\$87.14				
12c	Administrative/Clerical Officer III	N/A	\$134.56				

#### Professional Service Billing Rate Clarifications

- For any nonexempt personnel, overtime will be billed at 1.5 times the hourly labor billing rates shown.
- For outside expenses incurred by others such as subcontractors, the client shall pay the cost to Burns & McDonnell plus 15%.
- Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt. A late payment charge of 1.5% per month will be added to all amounts not paid within 60 days of the invoice date.
- Contractor may engage temporary staffing agencies or obtain assistance from its affiliates and subsidiaries in its own reasonable discretion including, without limitation, Burns & McDonnell Engineering Company, Inc., Burns & McDonnell International Inc. and Burns & McDonnell Engineering India Pvt. Ltd. ("Labor Sources") to fulfill Contractor's performance obligations under this Agreement. The parties agree that contracts, purchase orders, or similar agreements between Contractor and any Labor Sources are not subcontracts as that term is used in this Agreement, and personnel from such Labor Sources shall be billed according to the applicable rate sheet for the Scope of Work as if such personnel is a direct hire employee. Personnel from Labor Sources shall be considered agents of Contractor and able to act on behalf of Contractor within the scope of the authority granted such personnel according to job function and billing classification. Contractor shall remain fully responsible for all Work performed by Labor Sources and shall not be relieved of any obligations under this Agreement by virtue of delegating duties to such Labor Sources. No contract between Contractor and any Labor Sources shall bind or purport to bind Owner or give any Labor Sources a right to seek compensation or damages from the Owner under this Agreement."
- The rates shown are effective for services through December 31, 2020 and are subject to 3% escalation thereafter.
- In accordance to 2 CFR Part 200.330, we have assumed we will be in the role of a "contractor" as defined under Part 200.330. As such, rates are not subject to compliance requirements of the Federal program and are not required to be cost-based.
- Our hourly rates include wages, overhead, general and administrative expenses and profit for each labor category. Our hourly rates do not include any reimbursable expenses, materials, or US Expat taxes, which will be billed separately to PREPA.
- The cost of leasing a dedicated office for the Program has not been included in our rates. PREPA will be billed separately for mutually agreed upon costs for office lease, utilities, janitorial services, office furniture, security, phones, internet and any other costs related to the operation of a dedicated Program office.

Exhibit C: Burns & McDonnell Draft Amendment

**GOVERNMENT OF PUERTO RICO  
PUERTO RICO ELECTRIC POWER AUTHORITY**

**FIRST AMENDMENT**

**PROFESSIONAL SERVICE CONTRACT 2021-P00048**

**APPEAR**

AS FIRST PARTY: The Puerto Rico Electric Power Authority (PREPA), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act 83 of May 2, 1941, as amended (Act 83), represented in this act by its Executive Director, Efran Paredes Maysonet, of legal age, married and resident of Bayamón, Puerto Rico. -----

AS SECOND PARTY: Burns & McDonnell Caribbean (Puerto Rico), P-LLC (Consultant), a professional limited liability corporation organized and existing under the laws of Puerto Rico, and registered to do business in Puerto Rico, represented in this act by its member, Gabriel Hernandez, of legal age, married, and resident in Kansas, USA, authorized by virtue of Corporate Resolution.-----

Both PREPA and Consultant are herein individuals referred to as a "Party" and collectively referred to as the "Parties".-----

**WITNESSETH**

In consideration of the mutual covenants and agreements hereinafter stated, hereinafter stated, the Parties agree themselves, their personal representatives, and successors as follows:-----

**STATE**

WHEREAS: PREPA, by virtue of Act 83, has the authority to engage those professional, technical and consulting services necessary and convenient to the activities, programs,

and operations of PREPA;-----

WHEREAS: Pursuant Section 205 (2) (d) of Act 83 competitive bidding shall not be necessary when professional or expert services or work are required and PREPA deems it in the best interests of good administration for such works or services to be contracted without such announcements.-----

WHEREAS: The appearing Parties executed Professional Services Contract number 2021-P00048 (Contract) on August 21, 2020, through which the Consultant provides PREPA Program Management Services, including planning, administrative, advisory and consultancy assistance, among others. The Contract had a maximum amount of nine millions (\$9,000,000) through June 30, 2021.-----

WHEREAS: On December 2020, mister Fernando Padilla Padilla, PREPA's Deputy Executive Director of Operations, requested an increase to the Contract Amount to increase the staffing support (man-hours) of the Consultant to perform the work with the urgency identified in the submission of the 10-year strategic plan presented to the Federal Emergency Management Agency (FEMA) in December 2020, for the reconstruction efforts. -----

WHEREAS: On January 4, 2021, PREPA's Governing Board, through Resolution \_\_\_\_\_ authorized the execution of the First Amendment of the Contract, to increase its amount by twenty-one million (\$21,000,000), from nine millions (\$9,000,000) to a maximum amount of thirty millions (\$30,000,000).-----

THEREFORE: The appearing Parties hereby agree to enter into this First Amendment under the following:-----

TERMS AND CONDITIONS

FIRST: The Parties agree to amend Article 6 of the Contract to increase the Contract Amount by twenty-one million (\$21,000,000), from nine million (\$9,000,000) to a maximum Contract Amount of thirty million (\$30,000,000). The payments to be made under this Contract, as amended, will be made from account 01-1747-17556-555-664. --

SECOND: As for the original Contract, The Consultant will comply with all applicable State Law, Regulations and Executive Orders that regulate the contracting process and establish the requirements for governmental contracting in the Commonwealth of Puerto Rico. Also, the Consultant shall provide, before the execution of this Amendment, the following: -----

A. Executive Order No, 0E-1991-24 of June 18, 1991 to require certification of compliance with the Internal Revenue Services of the Commonwealth of Puerto Rico: Pursuant to Executive Order No. 0E-1991-24 of June 18, 1991, the Consultant will certify and guarantee that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. The Consultant further will certify that it has complied and is current with the payment of any and all income taxes that are, or were due, to the Government of Puerto Rico. The Consultant shall provide, to the satisfaction of PREPA, and whenever requested by PREPA during the term of this Contract, the necessary documentation to support its compliance with this



clause. The Consultant will be given a specific amount of time to produce said documents. During the term of this Contract, the Consultant agrees to pay and/or to remain current with any repayment plan agreed to by the Consultant with the Government of Puerto Rico. -----

B. Executive Order No. OE-1992-52 of August 28, 1992 to require certification of compliance with the Department of Labor of the Commonwealth of Puerto Rico. Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, the Consultant will certify and warrant that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. The Consultant accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every consultant and sub consultant whose service the Consultant has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement..-----

C. Government of Puerto Rico Municipal Revenues Collection Center (MRCC): Consultant shall provide a certification issued by MRCC that it does not have any current debt with regards to property taxes that may be registered with the Government of Puerto Rico's MRCC (known in Spanish as *Centro de Recaudación de Ingresos Municipales* ("CRIM")). During the Term of this Contract, Consultant

agrees to pay and/or to remain current with any repayment plan agreed to by Consultant with the Government of Puerto Rico with regards to its property taxes.-----

Consultant shall provide a Personal Property Tax Filing Certification, issued by the MRCC which indicates that Consultant has filed its Personal Property Tax Return for the last five (5) contributory terms or Negative Debt certification issued by the MRCC with respect to real and property taxes and a sworn statement executed by Consultant indicating that (i) its revenues are derived from the rendering of professional services, (ii) during the last five (5) years (or the time in which it has been providing professional services) it has had no taxable business or personal property on the 1<sup>st</sup> of January of each year, (iii) that for such reasons it has not been required to file personal property tax returns, as required under Article 6.03 of Act 83-1991, as amended, and (iv) that for such reason it does not have an electronic tax file in the MRCC's electronic system.-----

- D. Consultant shall provide a Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Consultant has filed his Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods. -----
- E. Consultant shall provide a Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico. -----
- F. Puerto Rico Child Support Administration (*ASUME*): Consultant shall present, to the satisfaction of PREPA, the necessary documentation certifying that Consultant nor any of its owners, affiliates of subsidiaries, if applicable, have any debt, outstanding

debt, or legal procedures to collect child support payments that may be registered with the Puerto Rico Child Support Administration (known in Spanish as the *Administración Para El Sustento de Menores (ASUME)*).-----

G. Consultant shall provide a Good Standing Certificate issued by the Department of State of Puerto Rico.-----

H. Consultant shall provide a Certification of Incorporation, or Certificate of Organization or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.-----

I. Special Contribution for Professional and Consulting Services: As required by Act 48-2013, as amended, PREPA will withhold a special contribution of one point five percent (1.5%) of the gross amounts paid under this Contract.-----

J. Social Security and Income Tax Retentions: In compliance with Executive Order 1991 OE- 24; and C.F.R. Part 404 et. Seq., Consultant will be responsible for rendering and paying the Federal Social Security and Income Tax Contributions for any amount owed as a result of the income, from this Contract.-----

K. Income Tax Retention Law: PREPA shall deduct and withhold ten percent (10%) of any and all payments to residents of the Commonwealth of Puerto Rico as required by the Internal Revenue Code of Puerto Rico. In case of US citizens and Non-US citizens, which are nonresidents of the Commonwealth of Puerto Rico Consultant will retain twenty percent (20%) and twenty-nine percent (29%) respectively. PREPA will remit such withholdings to the Government of Puerto Rico's

Treasury Department (known in Spanish as *Departamento de Hacienda de Puerto Rico*). Consultant will request PREPA not to make such withholdings if, to the satisfaction of PREPA, Consultant timely provides a release from such obligation by the Government of Puerto Rico's Treasury Department. Act 1-2011, section 1062.03.-

- L. Compliance with Act 1 of Governmental Ethics: Consultant will certify compliance with Act 1-2012, as amended, known as the Ethics Act of the Government of Puerto Rico (Act 1-2012), which stipulates that no employee or executive of PREPA nor any member of his/he immediate family (spouse, dependent children or other members of his/her household or any individual whose financial affairs are under the control of the employee) shall have any direct or indirect pecuniary interest in the services to be rendered under this Contract, except as may be expressly authorized by the Governor of Puerto Rico in consultation with the Secretary of Treasury and the Secretary of Justice of the Government. 3 L.P.R.A. § 8611 et seq.;-----
- M. Act 168-2000: Law for the Strengthening of the Family Support and Livelihood of Elderly People: Consultant will certify that if there is any Judicial or Administrative Order demanding payment or any economic support regarding Act 168-2000, as amended, the same is current and in all aspects in compliance. Act 168-2000 "*Law for the Strengthening of the Family Support and Livelihood of Elderly People*" in Spanish: "*Ley para el Fortalecimiento del Apoyo Familiar y Sustento de Personas de Edad Avanzada*", 3 L.P.R.A. § 8611 et seq.-----

N. Act 127-2004: Contract Registration in the Comptroller's Office of Puerto Rico Act:

Payment for services object of this Contract will not be made until this Contract is properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Act 18 of October 30, 1975, as amended.-----

O. Prohibition with respect to execution by public officers: 3 L.P.R.A. § 8615(c): No

public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.-----

P. Prohibition with respect to contracting with officers or employees: 3 L.P.R.A.

§ 8615(d): No executive agency may execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect economic interest during the last four (4) years prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice.-----

Q. Prohibition with respect to contracts with officers and employees of other Government

entities: 3 L.P.R.A. § 8615(e): No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor gives express

authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice.-----

R. Prohibition with respect to evaluation and approval by public officers:

3 L.P.R.A. § 8615(f): No public officer or employee who has the power to approve or authorize contracts shall evaluate, consider, approve or authorize any contract between an executive agency and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.-----

S. Prohibition with respect to execution by public officers' contracts with former public

officers: 3 L.P.R.A. § 8615(h): No executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after two (2) years have elapsed from the time said person has

T. Dispensation: Any and all necessary dispensations have been obtained from any government entity and that said dispensations shall become part of the contracting record.-----

U. Rules of Professional Ethics: Consultant acknowledges and accepts that it is knowledgeable of the rules of ethics of his/her profession and assumes responsibility for his/her own actions.-----

V. Provisions Required under Act 14-2004: Consultant agrees that articles extracted, produced, assembled, packaged or distributed in Puerto Rico by enterprises with

operations in Puerto Rico, or distributed by agents established in Puerto Rico shall be used when the service is rendered, provided that they are available.-----

W. If any of the previously required Certifications shows a debt, and Consultant has requested a review or adjustment of this debt, Consultant will certify that it has made such request at the time of the Contract execution. If the requested review or adjustment is denied and such determination is final, Consultant will 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.-----

THIRD: Consultant agrees to comply with the provisions of Act 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico (Act 2-2018). Consultant hereby certifies that it does not represent particular interests in cases or matters that imply a conflicts of interest, or of public policy, between the executive agency and the particular interests it represents.-----

Consultant shall furnish a sworn statement to the effect that neither Consultant nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for Consultant has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico (Act 8-2017) or any of the crimes included in Act 2-2018.-----

Consultant hereby certifies that it has not been convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code (Act 146-2012), any of the crimes typified in Act 2-2018, or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017.-----

PREPA shall have the right to terminate the Contract in the event Consultant is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, any of the crimes listed in Articles 250 through 266 of Act 146-2012, , any of the crimes typified in Act 2-2018, or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017.

Consequences of Non-Compliance: Consultant expressly agrees that the conditions outlined throughout this Article are essential requirements of this Contract. Consequently, should any one of these representations, warranties or certifications be incorrect, inaccurate or misleading, in whole or in part, there shall be sufficient cause for the PREPA to render this Contract null and void.-----

FOURTH: All other terms and conditions, specifications, stipulations, insurances, and requirements established in the Contract, as amended, shall remain unaltered and fully enforceable. -----

In WITNESS WHEREOF, the Parties hereto have agreed to execute this First Amendment in San Juan, Puerto Rico, on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.-----



Puerto Rico Electric Power Authority

Burns & McDonnell Caribbean  
(Puerto Rico) P-LLC

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Efran Paredes Maysonet  
Executive Director  
Tax ID: 660-43-3747

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Gabriel Hernández  
Member  
Tax ID: 660-84-6535