

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

NEPR

Received:

Sep 2, 2023

6:09 PM

IN RE: REVIEW OF LUMA'S INITIAL BUDGETS

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Urgent Motion to Submit the McGwire Woods Contract for the Energy Bureau's Review and Approval

**URGENT MOTION TO SUBMIT THE MCGUIRE WOODS CONTRACT
FOR THE ENERGY BUREAU'S REVIEW AND APPROVAL**

COMES NOW the Puerto Rico Electric Power Authority ("PREPA"), through its counsel of record, and respectfully submits and requests as follows:

1. On May 16, 2023, LUMA ¹ filed a document titled *Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Proposed Annual T&D Projections Through Fiscal Year 2026* ("May 16 Motion") for the Energy Bureau of the Puerto Rico Public Service Regulatory Board's ("Energy Bureau") review and approval. The May 16 Motion included the following budget components: (i) the proposed T&D budget developed by LUMA, (ii) the proposed generation budget developed by Genera PR, LLC ("Genera") on behalf of the PREPA, for the PREPA subsidiary GENCO LLC ("GenCo"), and (iii) the proposed Budget developed by PREPA for its holding company, HoldCo, and its subsidiaries PREPA HydroCo LLC ("HydroCo") and PREPA PropertyCo, LLC ("PropertyCo").
2. On June 25, 2023, after a series of procedural events, including a technical conference and

¹ LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as, "LUMA").

various submissions including responses to the Energy Bureau's requests for information, the Energy Bureau entered *Resolution and Order* issuing a determination on the FY24 Annual Budgets for the electric utility system including the budgets for LUMA Energy, LLC and LUMA ServCo, LLC (collectively, "LUMA"), Genera-PR, LLC ("Genera") and PREPA ("June 25 Order").

3. Through the June 25 Order, the Energy Bureau ordered PREPA to file for review and approval, any new contract or amendment to an existing contract, before executing or making any award of such contract or amendment.

4. On July 11, 2023, the Energy Bureau issued a *Resolution and Order* ("June 11 Order"), through which it highlighted that, to review and grant approval of the proposed contracts, PREPA must specify: 1) if these are the totality of the contracts to be executed during FY24 and 2) how the amounts referenced pertaining to the contracts fit within the FY24 Approved Budget.

5. Furthermore, on July 19, 2023, the Energy Bureau ordered PREPA to submit, in its future filings, a table including the approved and proposed contracts, the amounts approved and proposed for those contracts, the line items from the Non-Labor/Other Operating Expenses Category to which they correspond, and the remaining balance of budgeted amount for Non-Labor Expenses by line-item, as approved in the June 25 Order.²

6. PREPA herein submits for the Energy Bureau's consideration, review, and approval the professional services contract with McGuireWoods, LLP. ("McGuire Contract"), Annex A. The Scope of Services provided by the McGuireWoods' firm to PREPA can be found in Article 1 of the McGuire Contract which states that McGuireWoods will assist and advise PREPA as described below:

² *Resolution and Order* dated June 19, 2023 ("June 19 Order") at p. 3.

- Management of all aspects of the Hurricane Maria and Earthquake insurance claims including developing the coverage strategy and advising on potential litigation strategy
- Assisting consultants with the preparation of claim reports and loss packages;
- Responding to coverage letters from the insurers and their adjusters and attorneys;
- Drafting demand letters and advising on potential litigation strategy;
- Coordinating the pursuit of insurance recoveries with PREPA's Disaster Funding Management Office (DFMO) and Project Management, Restructuring and Fiscal Affairs Office (PMO) and the Federal Emergency Management Agency (FEMA) claim settlement process;
- Regularly updating Financial Oversight Management Board's (FOMB) counsel on the status of the claims;
- Preparing proofs of loss;
- Sending notice to PREPA's creditors of interim payments pursuant to the PROMESA Title III court process;
- Assisting with responses to the Energy Bureau regarding the insurance claims³;
- Handling communications with COR3 regarding the insurance claims.

7. The McGuire Contract shall be in effect from the date of its execution until June 30, 2024, and the amount of payment shall not exceed a cumulative amount of two million six hundred thousand dollars (\$2,600,000). This amount is not part of the FY2024 approved budget, as these amounts are subject to compensation through the FEMA assistance reimbursement account, thus the approval of the McGuire contract has no bearing in the FY2024 budget as approved by the Energy Bureau through the June 25 Order.

8. Previously, on June 21, 2023, through a document titled *Motion to Submit Responses to the Energy Bureau's June 9 2023 Bench Orders and Third Request for Information in Compliance with the June 12, 2023 Order* PREPA filed under seal of confidentiality a memorandum by McGuire Woods, in response to Request of Information no. 9 of the June 12 Order⁴ ("McGuire Memorandum"). The McGuire Memorandum details the scope McGuireWoods' services to

³ For instance, the McGuire Woods counsels assist PREPA in submitting a claims status report in compliance with the October 14, 2022 *Resolution and Order* in case no. NEPR-MI-2020-0001 *In Re: The Puerto Rico Electric Authority's Permanent Rate*.

⁴ *Resolution and Order* dated June 12, 2023.

PREPA, the description of anticipated services, litigation, and settlement possibilities in connection with the insurance claims stemming from Hurricane Maria and the January 2020 Earthquake. PREPA hereby requests the Energy Bureau to take administrative knowledge of the McGuire Memorandum for the purposes of this motion and for it to form part of its evaluation in the present contract approval request.

9. It is imperative for PREPA to promptly execute the McGuire Contract since settlement meetings with insurance providers are scheduled to take place this month of September 2023. These settlement conferences could put an end to PREPA's efforts to recover insurance for more than \$1 billion in losses incurred by PREPA in connection with Hurricane Maria and the January 2020 Earthquake, and McGuireWoods is the firm that has represented PREPA in these efforts since its inception.

10. Lastly, PREPA herein certifies that the works to be performed by the McGuire Woods firm in connection with the McGuire Contract are not duplicative of any scope of work being carried out by LUMA, Genera or PREPA⁵.

WHEREFORE, PREPA respectfully requests the Energy Bureau to take **NOTICE** of the information provided, and **GRANT** approval for PREPA to Execute the McGuire Woods Contract.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 2nd day of September 2023.

/s Maralíz Vázquez-Marrero
Maralíz Vázquez-Marrero
TSPR 16,187
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⁵ PREPA does not include the table ordered in the July 11 and July 19 Orders, as the monies from the McGuire Contract are not included in line items of the FY2024 approved budget.

/s Joannely Marrero-Cruz
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CERTIFICATE OF SERVICE

It is hereby certified that, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and a courtesy copy of the filing was sent to LUMA through its legal representatives at margarita.mercado@us.dlapiper.com and laura.rozas@us.dlapiper.com and to Genera-PR, LLC through its legal representatives jfr@sbgblaw.com; alopez@sbgblaw.com; legal@genera-pr.com; regulatory@genera-pr.com.

In San Juan, Puerto Rico, this 2nd day of September 2023.

/s Joannely Marrero-Cruz
Joannely Marrero Cruz

Annex A

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 83 of May 2, 1941, as amended (Act 83), represented in this act by its Executive Director, Josué A. Colón Ortiz, of legal age, married, engineer and resident of Caguas, Puerto Rico.-----

AS SECOND PARTY: McGuireWoods, LLP (Contractor), a limited liability partnership formed and existing under the laws of the State of Virginia, United States of America, herein represented by Shelby Sanders Guilbert, Jr., Partner, married, lawyer and resident of Georgia who has authority to enter into this Contract by virtue of his position as a McGuireWoods, LLP partner. -----

Both PREPA and Contractor 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;-----

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, PREPA desires to enter into this Professional Services Contract (Contract) with Contractor for the performance of the Services. -----

WHEREAS, On May 24, 2023, PREPA's Governing Board through Resolution 5052 approved the execution of this Contract.-----

WHEREAS, Contractor hereby certifies that it is ready, willing and able to provide the Services pursuant to the terms and conditions set forth herein. -----

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 Contractor will advise and assist PREPA as its outside counsel in connection with the following matters: -----

- Management of all aspects of the Hurricane Maria and Earthquake insurance claims including developing the coverage strategy and advising on potential litigation strategy;-----
- Assisting consultants with the preparation of claim reports and loss packages; -----
- Responding to coverage letters from the insurers and their adjusters and attorneys; -----
- Drafting demand letters and advising on potential litigation strategy; -----

- Coordinating the pursuit of insurance recoveries with PREPA’s Disaster Funding Management Office (DFMO) and Project Management, Restructuring and Fiscal Affairs Office (PMO) and the Federal Emergency Management Agency (FEMA) claim settlement process; -----
- Regularly updating Financial Oversight Management Board’s (FOMB) counsel on the status of the claims; -----
- Preparing proofs of loss; -----
- Sending notice to PREPA’s creditors of interim payments pursuant to the PROMESA Title III court process; -----
- Assisting with responses to Puerto Rico Energy Bureau (PREB) regarding the insurance claims; -----
- Handling communications with COR3 regarding the insurance claims. -----

The Services will be provided on and subject to the terms and conditions set forth in this Contract and in accordance with Contractor proposal, copy of which is incorporated and made part hereof as an Appendix A to this Contract. If any part of Contractor proposal is found to be inconsistent with the terms and conditions set forth herein, the terms and conditions of this Contract shall prevail over the Contractor proposal.-----

1.2 At the direction of PREPA, Contractor may be required to work with other consulting, legal, investment, 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. Contractor is not responsible for worked performed by others. -----

Article 2. Services Coordination

All the Services of Contractor in relation to the terms and conditions of this Contract will be coordinated through PREPA’s Finance Directorate or the person delegated by them.-

Article 3. Contract Assignment or Subcontract

Contractor shall not assign nor subcontract its rights and obligations under this Contract, except in the event PREPA give written authorization for such actions. Provided, that no subcontract shall be considered for PREPA’s approval, except when the following requirements are met: (1) Contractor delivers to PREPA a copy of the subcontract, not less than thirty (30) days prior to the effective date of the proposed subcontract; (2) the subcontract includes, as a condition for its legal validity and enforceability, a provision whereby PREPA has the right to substitute, subrogate or assume Contractor’s rights under the subcontract, in the event that PREPA declares Contractor in breach or default of any of the Contract terms and conditions; and (3) the subcontract includes, as a condition for its validity and enforceability, a provision establishing for the subcontractor the obligation to comply with all Contractor’s 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.-----

Article 4. Contract Term

This Contract shall be in effect from the date of its execution until June 30, 2024, (The Contract Term). The Contract may be extended, for an additional annual fiscal period, at the exclusive option of PREPA and subject to the availability of funds, only by written amendment agreed upon by both Parties. -----

Article 5. Contract Termination

5.1 Either Party shall have the right to terminate this Contract, at any moment, by providing the other Party a thirty (30) days prior written notice by registered mail, return receipt requested, or overnight express mail to Contractor. 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. The rights, duties and responsibilities of the Parties shall continue in full force and effect during the thirty (30) day notice period. Contractor 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.-----

5.2 PREPA shall have the right to terminate this Contract immediately in the event of negligence, dereliction of duties or noncompliance by Contractor, without prior written notice. -----

Article 6. Payment

6.1 In accordance with the terms and conditions contained herein, PREPA agrees and Contractor accepts that the total amount to be paid under the Contract shall not exceed a cumulative amount of two million six hundred thousand dollars (\$2,600,000), including reimbursable expenses (the "Contract Amount"). All payments to be made under this Contract will be charged to account 01-1747-17757-550-118. 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 Contractor under the Contract.--

6.2 Nothing herein shall preclude the Parties from agreeing to increase said amount in writing and signed by both Parties. -----
PREPA will pay Contractor for the Services according to the hourly rates established by the schedule as follows:-----

NAME	TITLE	RATE
Shelby Guilbert	Partner	\$1,030
Joe Sheerin	Partner	\$940
Joseph Englert	Partner	\$930
Anne McCray	Partner	\$1,075
Laughlin Allen	Associate	\$690
John J. Feliciano-Acosta	Associate	\$655
Addison Smith	Associate	\$625
Candy Guerrero	Paralegal	\$425

Should Contractor assign another person not included in the schedule listed above hereto to attend to PREPA's matters pursuant to this Contract, Contractor shall promptly send PREPA an amended schedule to include such person's name and/or position, and request approval from PREPA for such amended schedule and shall require an amendment to the Contract. -----

6.3 Contractor 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, Contractor, 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, Contractor shall present an itemized list of the remaining billable Services under the Contract.-----

Article 7. Fees, Expenses and Disbursements

7.1 PREPA should not be billed for (a) time spent in processing conflict searches, preparing billing statements, or in responding to PREPA inquiries concerning Contractor's invoices; or (b) travel time during which Contractor is billing another client for work performed while traveling. Moreover, PREPA requires that only professional services be billed. Accordingly, PREPA should not be billed for the administrative tasks of creating, organizing, reviewing and/or updating files; routine or periodic status reports; receiving, reviewing, and/or distributing mail; faxing or copying documents; checking electronic mail or converting information to disk. -----

7.2 PREPA will reimburse Contractor for actual costs and expenses related to matters

assigned to Contractor and for necessary and reasonable out-of-pocket disbursements, subject to the limitations and exceptions set forth below. Contractor is expected to have a system in place that ensures those who bill time and disbursements to PREPA matters do so promptly and accurately. -----

7.3 PREPA will not reimburse Contractor for: (a) costs included in a ‘miscellaneous’ or ‘other’ category of charges; (b) overhead costs and expenses-such as those relating to fees for time or overtime expended by support staff (secretaries, administrative/clerical personnel, internal messengers, and other similar services), word processing and/or proofreading, cost of supplies or equipment, and/or other similar costs of doing business; (f) time spent attending education seminars or training programs; or (h) mark-ups or surcharges on any cost or expense. In addition, if communications are sent to PREPA using more than one medium, PREPA does not expect to pay for the cost of both communications. For instance, if a piece of correspondence is sent to PREPA by email, we do not expect to pay for the cost of that same correspondence if it is also sent via regular or expedited mail.-

7.4 PREPA will reimburse Contractor for separately itemized expenses and disbursements in the following categories. Contractor shall submit proof of payment: -----

7.4.1 Messenger/courier service – PREPA will reimburse actual charges billed to Contractor for deliveries (including overnight deliveries) where this level of service is required because of time constraints imposed by PREPA or

because of the need for reliability given the nature of the items being transported. Appropriate summaries of messenger/courier expenses must reflect the date and cost of the service and the identity of the sender and the recipient or the points of transportation. -----

7.4.2 Travel – PREPA will reimburse actual charges for transportation and hotels reasonable and necessary for effective services to PREPA. PREPA will not pay for any first-class or business-class travel. Summaries of transportation expenses should reflect the identity of the user, the date and amount of each specific cost, and the points of travel. Summaries of lodging and meals expenses should include the identity of the person making the expenditure, the date and amount, and the nature of the expenditure. -----

Travel expenses reimbursement applies for personnel providing the services to PREPA, travel expenses for family members or guests are not chargeable to PREPA or reimbursable. -----

7.4.3 Air Travel- The cost of air travel will be reimbursed up to an amount of \$500 per person per round trip (including: seat assignment, applicable taxes, and other applicable fees); however, if the lowest priced nonrefundable, nonstop economy ticket that is available on a date when Contractor's services are requested exceeds \$500, PREPA will reimburse air travel at the lowest available economy rate as of that date. Contractor shall submit a copy of the airline ticket and paid invoice. Airfare may only be invoiced following

completion of travel. -----

Airfare necessary to attend PREPA’s official business will be paid by PREPA according to these guidelines. Contractor shall buy an economic class ticket or equivalent, then if desired, he/she may upgrade, but PREPA will only pay the amount corresponding to the economy class or equivalent airfare.

Baggage fees will not be reimbursed. -----

Any travel and lodging expense for which a reimbursement is requested shall be reasonable and necessary, and any extraordinary travel and lodging expenses shall be authorized in writing and in advance by PREPA.-----

7.4.4 Maximum Per Diem Rates (no proof of payment will be required): -----

Meals: - \$57 per person for each traveling day for persons working “on-site” at PREPA. Under no circumstances PREPA will reimburse alcoholic beverages.-----

Lodging (standard not smoking room): - \$200 per person, per night.

For avoidance of doubt PREPA will reimburse all lodging applicable fees and taxes. Contractor shall submit hotel paid invoice. Contractor will use the most economical alternative of lodging, including temporary rentals of apartments or rooms (Airbnb like rentals). For travel period longer than five days, temporary rentals shall be coordinated when this temporary rental is less expensive than hotel accommodation, and evidence of said temporary rental shall be provided. -----

Ground Transportation: - \$20 per person, per working day. If a car is rented for the services to be provided, a fixed amount of \$25 per day will be reimbursed for parking expenses, upon presentation of evidence of the car rental (no proof of payment will be required). Taxi from airport to hotel or PREPA will be reimbursed at the regular posted rate. If consultant uses taxi then the daily \$20 per person, will not be allowed.-----

7.4.5 Reimbursable expenses shall not exceed six percent (6%) of the Contract Price in one year and will be reimbursed by PREPA through the presentation of acceptable evidence for such expenses. This limitation does not apply to expenses related to third-party services necessary for Contractor to render its Services under the Contract, given they are previously approved by PREPA. -----

7.4.6 Photocopying/printing – PREPA will reimburse actual charges for outside binding, and printing services and costs of outside photocopying services, which are not to exceed the actual five (5) cents per page for black and white copies, and twenty-five (25) cents per page for color copies. Summaries of expenditures for copying should reflect both the number of copies made and the cost per copy. -----

7.4.7 Third-Party Services – The approval of PREPA must be obtained in writing prior to retaining any third-party services. Contractor shall be responsible for ensuring that there are no conflicts of interest between any third party and

PREPA or between any third-party clients and PREPA. In addition, all arrangements with third-party vendors should include an appropriate undertaking of confidentiality and data privacy. Invoices from third-party vendors should be paid directly by Contractor, 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. -----

7.4.8 PREPA reserves the right to question the charges on any bill (even after payment) and to obtain a discount or refund of those charges that are disputed. At PREPA's request, copies of bills and records reflecting reimbursable expenses must be provided to PREPA. -----

Article 8. Invoices

8.1 Contractor shall submit monthly invoices within the first thirty (30) days following the period invoiced. Contractor 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, which shall include a brief description of the work performed by each person, and must be duly certified by an authorized representative of Contractor.---

8.2 PREPA will review the invoices within thirty (30) days upon receipt, and if they are in compliance with the requirements set forth in this Contract, it will proceed with payment. Payment is due within thirty (30) days of receipt of the invoice. If any

statement remains unpaid for more than sixty (60) days, PREPA agrees that Contractor may cease performing services or terminate the Contract unless arrangements satisfactory to both parties are made in good faith for payment of outstanding statements. PREPA reserves the right to conduct the audits it deems necessary, and it will not be subject to finance charges regarding invoice payments subject to an audit. -----

8.3 All invoices submitted by Contractor 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 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 PREPA. The total amount shown on this invoice is true and correct. The Services have been rendered, and no payment has been received”.

Contractor’s Representative 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, Contractor 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. Information and Material Facts

9.1 PREPA shall promptly provide to Contractor all information under the control of PREPA and necessary for Contractor to perform the Services under this Contract and those material facts that Contractor 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 Contractor, which are under its control, are true and complete, and does not constitute misleading or inaccurate information and Contractor shall be entitled to rely on the accuracy and completeness of the documents, data, and other information and material facts.-----

9.2 PREPA will advise in writing Contractor 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 Contractor.-----

Article 10. Information Disclosure and Confidentiality

10.1 Contractor acknowledges the proprietary and confidential nature of all internal, non-public, information systems, financial, and business information relating to PREPA and its personnel, its subsidiary corporations and affiliates and their personnel, the Commonwealth of Puerto Rico, its agencies, corporations and/or municipalities and their personnel, now or hereafter provided to Contractor or otherwise obtained by Contractor in the course of rendering services for PREPA (collectively, "Confidential Information"). -----

10.2 Contractor and its employees, affiliates and authorized subcontractors shall keep in strict confidence all Confidential Information, and: (i) shall not make public or disclose any of said materials without the previous written consent of PREPA, provided that Contractor shall be permitted to share financial and other information prepared or provided for purposes of PREPA's SEC Investigation, SEC or other government regulators, as may be required in the course of Contractor's representation of PREPA under this Contract; (ii) shall use the Confidential Information only to perform Contractor's obligations under this Contract; and (iii) will reproduce the Confidential Information only as required to perform Contractor's obligations under this Contract. -----

10.3 "Confidential Information" shall not apply to any information which: -----

- (a) is generally known to the public at the time of disclosure to Contractor or becomes generally known through no wrongful act on the part of Contractor;-----
- (b) is in Contractor's possession at the time of disclosure otherwise than as a result of Contractor's breach of any legal obligation; -----
- (c) becomes known to Contractor through disclosure by sources other than Contractor having the legal right to disclose such information; or -----
- (d) is independently developed by Contractor without reference to or reliance upon the confidential information. -----

10.4 In addition, these provisions shall not prohibit Contractor from making any disclosure pursuant to any subpoena or order of a court or a Governmental or Administrative tribunal which may assert jurisdiction over Contractor; provided that, to the extent legally permissible, Contractor shall promptly notify PREPA of any such disclosure obligations and reasonably cooperate with PREPA's efforts to lawfully avoid and/or minimize the extent of such disclosure.-----

10.5 Contractor will not disclose any Confidential Information relating to the work that Contractor performs under this Contract except as provided herein or by applicable the Rules of Professional Conduct or law. -----

10.6 Contractor may divulge Confidential Information to its employees who need to know such information to fulfill the purposes of this engagement provided that such persons: (i) shall have been advised of the confidential nature of such information and Contractor shall direct them, and they shall agree, to treat such information as confidential and to return all materials to Contractor upon request, but for one copy for record purposes only; and (ii) in each case, such person shall be bound by the terms of this Contract. -----

10.7 Contractor shall return all Confidential Information, as well as any other document that may relate to its work under this Contract, to PREPA within thirty (30) days after date of the expiration or earlier termination of this Contract or destroy such information, certifying that all the information has been returned to PREPA or destroyed, but for electronic information held in archive and/or backup

files to the extent such files cannot be deleted without unreasonable effort or expense and created in the ordinary course pursuant to established data backup/archive procedures; provided, however, Contractor may retain its own work product as long as it maintains the confidentiality of PREPA's Confidential Information as otherwise provided in this Contract and other Confidential Information for regulatory, professional liability, and recordkeeping purposes (provided it continues to maintain its confidentiality in accordance with this Contract). During this thirty (30) day period, and except to the extent making such documents available would result in the loss of legal privilege for PREPA, these documents shall be available for inspection by the Office of the Comptroller of Puerto Rico. Such inspection, if undertaken, shall not constitute a waiver of the attorney-client privilege or work product doctrine. -----

10.8 The Parties shall take all reasonable steps to keep confidential and use only for the purposes contemplated by the terms of the Contract the information provided by PREPA and/or Contractor, 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. -----

10.9 The Parties also agree that, except as agreed to in writing by both Parties, they will not, at any time after termination of this Contract, disclose any confidential information to any person whatsoever, or permit any person whatsoever to examine and/or make copies of any reports prepared by Contractor or under its

control by reason of its consulting services, and that upon termination of this Contract each Party will turn over to the other all documents, papers, and other matters in its possession or under its control that relate to the other Party. Contractor may retain one file copy for its records. -----

Article 11. Rights and Titles

- 11.1 Contractor will submit any reports reasonably required by PREPA regarding services performed under this Contract. If required by PREPA, at the completion of the assigned tasks, Contractor will submit a final written report describing the work it has performed. This requirement shall not be interpreted as a waiver by PREPA of Contractor’s ethical obligation and responsibility of keeping PREPA informed of the progress of the assigned matters. This obligation includes Contractor’s commitment to preparing and delivering to PREPA’s external auditors, in a timely manner, the legal letters periodically requested in connection with pending or threatened litigation, claims and assessments or loss contingencies, as part of the financial statements audit process for PREPA, its subsidiaries and affiliates, prepared in accordance with Contractor’s policy. Contractor shall not invoice the time spent in preparing a reasonable number of customary letters to auditors, as it is understood that this is an administrative obligation complementary to the services rendered hereunder.-----
- 11.2 All rights, titles and interest in any reports, documents, analyses, investigations and any other by-product conceived or developed by Contractor exclusively for

PREPA as a result of performing its obligations under this Contract shall be the exclusive property of Contractor provided, however, PREPA may use in any fashion it wishes any work product provided to PREPA orally and in writing without payment of any further fees and Contractor may maintain and use copies of such work product, including reports, documents, analyses, investigations and any other by-product provided by Contractor. PREPA shall retain the right to use, refer, share, or provide to any third party, as PREPA may determine, the results of any reports, documents, analyses, investigations or any other by-product of the Services performed by Contractor provided to PREPA under this Contract. ---

11.3 All rights, titles and interest in any reports, documents, analyses, investigations and any other by-product conceived or developed by Contractor exclusively for PREPA as a result of performing its obligations under this Contract shall be the exclusive property of PREPA. Contractor shall retain all right, title, and interest in and to proprietary works of authorship, pre-existing or otherwise, that have not been created specifically for PREPA under this Contract. With the exception of items marked as “CONFIDENTIAL” by Contractor, PREPA shall retain the right to use, refer, share, or provide to any third party, as PREPA may determine, the results of any reports, documents, analyses, investigations or any other by-product of the Services performed by Contractor under this Contract.-----

Article 12. Copyright

Contractor and PREPA shall jointly defend any suit or action brought against either party based on a claim that any document, report, study, analysis, copyrighted composition, article or any by-product of those, either used in the performance of the Services by Contractor or provided to PREPA by Contractor as part of its Services, or used in the performance of this Contract, including their use by PREPA, constitutes an infringement of any patents or copyrights of the United States. The Party of this Contract subject to the claim or that becomes aware of a potential claim shall promptly notify in writing the other Party of this Contract, and give the authority, information, and assistance reasonable and necessary for the defense of such claim. -----

Article 13. Responsibility for Damages

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

Article 14. Independent Contractor

14.1 Contractor shall be considered as an independent contractor, for all material purposes under this Contract, and all persons engaged or contracted by Contractor for the performance of its obligations herein, shall be considered as its employees or agents, and not as employees or agents of PREPA. -----

14.2 As an independent contractor, Contractor 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 15. 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 16. Conflict of Interest

16.1 Contractor 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. Contractor 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 Contractor. -----

16.2 Contractor 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, Contractor shall 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 Contractor when performing its responsibilities under this Contract. -----

- 16.3 The Parties understand and agree that a conflict of interest exists when Contractor advocates a position or outcome on behalf of any existing or future client that it knows to be contrary to PREPA's interests. Also, any conduct defined in the Rules of Professional Conduct regarding conflict of interests shall apply to Contractor and its personnel. -----
- 16.4 In the event that any of the partners, directors, agents or employees of Contractor 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.-----
- 16.5 Contractor's partners, directors, agents or employees and personnel shall avoid even the appearance of the existence of conflicting interests. -----
- 16.6 Contractor acknowledges that PREPA's Executive Director shall have the power to intervene with the acts of Contractor 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, PREPA's Executive Director shall inform Contractor in writing of PREPA's intention to terminate this Contract within a thirty (30) day period. During said period, Contractor may request a hearing with the Executive Director to present its arguments regarding the alleged conflict of interests. In the event that Contractor does not request such hearing during the specified thirty (30) day period or the

controversy is not satisfactory settled during the hearing, this Contract shall be canceled. -----

16.7 Contractor certifies that, 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, Contractor shall notify PREPA immediately. -----

Article 17. Notices

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

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

Attention: Josué A. Colón Ortiz
Executive Director

To Contractor: Shelby Sanders Guilbert, Jr.
Partner
McGuireWoods, LLP
1230 Peachtree Street, N.E.
Suite 2100
Atlanta, GA 30309-3534

Article 18. Applicable Law and Venue

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. The court and authorities of the Commonwealth of Puerto Rico and the federal courts of the United States shall have jurisdiction over all controversies that may arise with respect to this Contract. The Parties hereby waive any other venue to which they might be entitled by the virtue of domicile or otherwise. Should either party initiate or bring suit or action before any other court, it is agreed that upon application, any such suit or action shall be dismissed, without prejudice, and may be filed in accordance with this provision. -----

Article 19. Change in Law

Except as provided in Section 31.11, during the term of this Contract, any change in law, including, but not limited to changes in applicable tax law, which cause an increase in Contractor's costs when providing the services, shall be Contractor's responsibility and PREPA shall not be obligated to increase the Contract Amount. -----

Article 20. Force Majeure

20.1 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. -----

20.2 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.-----

20.3 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 occurrence of the alleged force majeure, gives the other Party written notice describing the particulars of the occurrence and its estimated duration. The burden of proof as to whether a force majeure event has occurred shall be on the Party claiming the force majeure. -----

Article 21. Novation

21.1 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.-----

21.2 The previous provision shall be equally applicable in such other cases where PREPA gives Contractor 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 22. 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 23. Save and Hold Harmless

Contractor agrees to save and hold harmless and 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 Contractor 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 Contractor.-----

With respect to any indemnity set forth in this Contract, each Party 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 24. Insurance

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

a. Professional Liability Insurance:

The Contractor shall provide Professional Liability Insurance with limits of at least \$1,000,000 per claim and at least \$1,000,000 in the aggregate. -----

Furnishing of Policy: -----

The required policy of insurance shall be in a form acceptable to PREPA and shall be issued only by insurance companies authorized to do business in Puerto Rico. -----

Article 25. Compliance with the Commonwealth of Puerto Rico Contracting Requirements

The Contractor will comply with all applicable laws, regulations and executive orders that regulate the contracting process and requirements of the Government of Puerto Rico, including Act 73-2019, as amended, known as the "2019 General Services Administration Act for the Centralization of Purchases of the Government of Puerto Rico" (Act 73-2019). In compliance with the provisions of Act 73-2019, the Contractor has provided PREPA the Certification of Eligibility of the Unique Registry of Professional Services Providers (known in Spanish as "*Certificado de Elegibilidad del Registro Único de Proveedores de Servicios Profesionales*", and hereinafter referred to as the "RUP Certification"), issued by the General Services Administration. It is hereby acknowledged that pursuant to the provisions of Article 42 of Act 73-2019, a valid RUP Certification serves as evidence of compliance with the documentation requirements

necessary for contracting professional services with the Government of Puerto Rico, particularly those applicable under Act 237-2004, as amended, which establishes uniform contracting requirements for professional and consultant services for the agencies and governmental entities of the Commonwealth of Puerto Rico (3 L.P.R.A. § 8611 et seq.), the Puerto Rico Department of Treasury Circular Letter Number 1300-16-16 issued on January 22, 2016, as amended, and the sworn statement before notary public required pursuant to Article 3.3 of Act 2-2018.-----

Further, the Contractor hereby certifies, guarantees, acknowledges and agrees to the following:-----

- A. The Contractor hereby certifies that as of the execution of this Contract, if applicable, it has filed income, sales and use ("IVU" for its Spanish acronym), and property taxes returns, in Puerto Rico for the past five (5) years. The Contractor also certifies that it does not have any outstanding debt or other debts with the Government of Puerto Rico for income, IVU taxes (collected by the Department of the Treasury), real or chattel property taxes (collected by the "*Centro de Recaudación de Ingresos Municipales*" ("CRIM")), unemployment insurance premiums, workers' compensation payments, Social Security for chauffeurs from the Department of Labor and Human Resources, nor have debts with the Puerto Rico Child Support Administration (known in Spanish as the *Administración Para El Sustento de Menores* (ASUME)). In the event that the Contractor owes taxes or premiums to said government agencies, it agrees that

PREPA may withhold any monies due to the Contractor under this Contract to be applied to the payment and cancellation of said debt. The Contractor also certifies that it is in corporate "Good Standing". The Contractor hereby represents and certifies that it is duly authorized with a certificate of incorporation and the execution, delivery and performance of all the services under this Contract are within the Contractor authorized powers and are not in contravention of law. The Contractor also certifies that it is in compliance with the Merchant's Registration. Accordingly, the Contractor has submitted to PREPA its RUP Certification from the General Services Administration. The Contractor shall maintain its certificate valid for the duration of this Contract.-----

- B. 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. -----
- C. Social Security and Income Tax Retentions: In compliance with Executive Order 1991 OE- 24; and C.F.R. Part 404 et. Seq., Contractor 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.-
- D. Income Tax Retention Law: PREPA shall deduct and withhold twenty-nine percent (29%) of the gross amounts paid for services, in accordance with Section 1062.11 of the Puerto Rico Internal Revenue Code, Act 1-2011, as amended. Contractor will request PREPA not to make such withholdings if, to the

satisfaction of PREPA, Contractor 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.-----

E. Compliance with Act 1-2012 of Governmental Ethics: Contractor will certify compliance with Act 1 of January 3, 2012, as amended (Act 1-2012), 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.-----

F. Act 168-2000: Law for the Strengthening of the Family Support and Livelihood of Elderly People: The Contractor 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.-----

- G. 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. -----
- H. 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. -----
- I. 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.-----
- J. 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. -----

K. 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. -----

L. 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. -----

M. Dispensation: Any and all necessary dispensations have been obtained from

any government entity and that said dispensations shall become part of the contracting record. -----

N. Rules of Professional Ethics: Contractor acknowledges and accepts that it is

knowledgeable of the rules of ethics of his/her profession and assumes responsibility for his/her own actions. -----

O. 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.-----

P. The Contractor certifies that at the time of execution of this Contract it has no other contracts with other agencies, public corporations, municipalities, and/or instrumentalities of the Government of Puerto Rico. The Contractor acknowledges and accepts that the failure to list any current contractual relationship with any governmental entity may result in the termination of this Contract if required by PREPA.-----

Q. The Parties hereby acknowledge the requirements and procedures set forth in Administrative Bulletin No. OE-2021-029 issued by the Governor of Puerto Rico, Hon. Pedro R. Pierluisi, on April 27, 2021 (“OE-2021-29”) and Circular Letter No. 013-2021 issued on June 7, 2021, by the Office of Management and Budget (“CC 013-2021”), applicable to professional services agreements with a maximum amount of \$250,000 or more per fiscal year. However, in accordance with the exceptions authorized in the Contracting Measures, PREPA filed a petition with the Office of Management and Budget seeking to be exempted from the Contracting Measures which was thereafter approved. Consequently, in accordance with the exceptions authorized in OE-2021-29 and CC 013-2021, the execution of this Contract is exempt from the requirements and procedures established in the abovementioned provisions.-----

R. The Contractor certifies that at the time of the execution of this Contract, it is not a public company with shares that are traded on a regulated stock exchange.

The Contractor certifies that prior to the execution of this Contract, it has submitted to PREPA a Certification of Legal Entity (known in Spanish as "*Certificación sobre Personas Jurídicas*").-----

If any of the previously required Certifications shows a debt, and Contractor has requested a review or adjustment of this debt, Contractor 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, Contractor will provide, immediately, to PREPA a proof of payment of this debt; otherwise, Contractor accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments. -----

Article 26. Anti-Corruption Code for a New Puerto Rico

Contractor 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). Contractor 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. -----

Contractor shall furnish a sworn statement to the effect that neither Contractor 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 Contractor has

been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended (Act 8-2017), 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. -----

Contractor 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 (Act 146-2012), known as the Puerto Rico Penal Code, 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 Contractor 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, as amended, known as the Puerto Rico Penal Code, 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: Contractor 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

PREPA to render this Contract null and void, and the Contractor shall reimburse PREPA all moneys received under this Contract. -----

Article 27. Non-Discrimination

Contractor certifies 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 28. Representation

Each of the Parties represents to the other that: -----

- (1) it has the legal power and authority to enter into this Contract and to perform its obligations hereunder, and neither the execution of this Contract nor the performance of its obligations hereunder will violate any Contract or obligation from that party to others; and -----
- (2) the officer or representative who has executed and delivered this Contract on its behalf is authorized to do so. -----

Article 29. Contract Review Policy of the Financial Oversight and Management Board for Puerto Rico

The Parties acknowledge that the Contractor has submitted the certification titled "Contractor Certification Requirement" required in accordance with the Contract Review

Policy of the Financial Oversight and Management Board for Puerto Rico, effective as of November 6, 2017, as amended, signed by the Contractor's Executive Director (or another official with an equivalent position or authority to issue such certifications). A signed copy of the "Contractor Certification Requirement" is included as an annex to this Contract.-----

The Contractor represents and warrants that the information included in the Contractor Certification Requirement is complete, accurate and correct, and that any misrepresentation, inaccuracy or falseness in such Certification will render the Contract null and void and the Contractor will have the obligation to reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the Contract. -----

Article 30. Transfer of skills and technical knowledge

For this Contract, the transfer of skills and technical knowledge required by the Certified Fiscal Plan is inapplicable given the non-recurring or specialized nature of the contracted services.-----

Article 31. Federal Contracting Provisions

Since the work under this Contract may be funded in whole or in part by grants through the Federal Emergency Management Agency (FEMA) Public Assistance program and the U.S. Department of Housing and Urban Development (HUD) Community

Development Block Grant Disaster Recovery program (CDBG-DR), the following provisions shall apply, if and as applicable, as provided herein:-----

31.1 Remedies: Any violation or breach of terms of this Contract on the part of Contractor or a subcontractor may result in the suspension or termination of this Contract or such other action, including the recovery of damages, as may be necessary to enforce the rights of PREPA. The duties and obligations imposed by this Contract and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law. Upon a material breach by Contractor, PREPA may utilize any remedy available by law, including precluding Contractor from further work with PREPA in the future and recommending suspension and debarment.-----

31.2 Equal Employment Opportunity: For all services under the Contract consisting of “federally assisted construction work,” as defined at 41 C.F.R. § 60-1.3, Contractor agrees as follows:-----

1. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor shall 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.-----

2. Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.-----
3. Contractor shall 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 Contractor's legal duty to furnish information.-----

4. Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. ---
5. Contractor shall 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. Contractor shall 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. -----
7. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24,

1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.-----

8. Contractor shall 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. Contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: -----
Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.-----

31.3 Employment Practices: PREPA further agrees that it will be bound by the equal opportunity clause as described in section 31.3 with respect to its own employment practices when it participates in federally assisted construction work, provided, that if PREPA 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 this Contract.-----

31.4 Cooperation: PREPA 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.--

31.5 Contracting Prohibition: PREPA 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, PREPA 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 PREPA under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from PREPA; and refer the case to the Department of Justice for appropriate legal proceedings.-----

31.6 Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701–3708) To the

extent this Contract involves the employment of mechanics or laborers, the following provisions apply:

1. In accordance with 40 U.S. 3701 et. seq., no contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.-----

2. In the event of any violation of the clause set forth in paragraph (1) of this Section 31.6 Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this Section 31.6, 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 (1) of this Section 31.6. -----

3. PREPA 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 Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this Section 31.6. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Section 31.6 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in set forth in this Section 31.6.-----

31.7 Clean Air and the Federal Water Pollution Control Act

1. Clean Air Act Clause:

- Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.-----
- Contractor agrees to report each violation to PREPA and understands and agrees that PREPA 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.-

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

2. Federal Water Pollution Control Act Clause:

- Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.-----
- Contractor agrees to report each violation to PREPA and understands and agrees that PREPA 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.-
- Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.-----

31.8 Suspension and Debarment Clause

1. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Contractor is required to verify that none of the

Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). -----

2. Contractor 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. This section does not prohibit Contractor from contracting with (including representing) parties that are suspended, debarred, or proposed for debarment pursuant to 2 C.F.R. pt. 180 (or any other government contracting exclusion program) where such engagement does not constitute a covered transaction as that term is defined in 2 C.F.R. pt. 180.-----

3. Contractor shall execute the certification attached hereto as an Annex (Certification Regarding Debarment, Suspension and Other Responsibility Matters). This certification is a material representation of fact relied upon by PREPA. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to PREPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. -----

4. Contractor shall, and shall cause all subcontractors of every tier to, comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C.-----

31.9 Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

1. Contractors that apply or bid for an award exceeding \$100,000 shall file the required certification. Contractor shall cause every subcontractor of every tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall cause every subcontractor of every tier to disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient (PREPA). Contractor shall also submit to PREPA the required certification regarding lobbying at Appendix B, 44 C.F.R. Part 18 attached to this Contract as an Annex (Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements).-----

31.10 Procurement of Recovered Materials

1. In the performance of this Contract, Contractor shall make maximum use of products containing recovered materials that are Environmental Protection Agency (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.-----

2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideine-cpg-program>.---- Contractor also agrees to comply with all other applicable requirements of Section 6002 of Solid Waste Disposal Act.-----

31.11 Changes: At any time, and only through a written change order instruction, PREPA may make changes in the Services or work to be performed within the general scope of this Contract. To the extent Contractor can demonstrate such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of any services under this Contract, an equitable adjustment shall be made and this Contract shall be modified in writing accordingly, provided, however, that no changes shall be made to the scope of the Services that would render the costs incurred in the performance of this Contract ineligible for, unallowable or not allocable under, outside the scope of, or not reasonable for the completion of, Federal grant awards from FEMA or any other U.S. federal agency. -----

31.12 Sufficiency of Funds: Contractor recognizes and agrees that all or a portion of the funding for this Contract may be derived from assistance awarded by Federal agencies of the United States of America to PREPA or the Government of Puerto Rico. As part of its obligations under this Contract, Contractor shall undertake reasonable efforts to comply with the terms of this Section 31 that may apply to Contractor as described herein. However, PREPA's obligation to pay Contractor for work performed under this Contract is not conditioned on any Federal awards, grants or other payments; PREPA shall be obligated to pay Contractor for work performed by Contractor under this Contract, even such work it is deemed unallowable or otherwise ineligible by any Federal agency. To the extent FEMA disallows some element of fees or costs incurred by Contractor in connection with work performed under this Contract, PREPA agrees to pay such fees and costs outside of the scope of assistance awarded by Federal agencies of the United States of America to PREPA or the Government of Puerto Rico.-

31.13 FEMA Disaster Assistance Survivor/Registrant Data:

1. PREPA shall provide advance notice to Contractor prior to providing Contractor access to any Disaster Assistance Survivor/Registrant data or any other personally identifiable information, to afford Contractor with reasonable opportunity to take appropriate steps to ensure compliance with the provisions of the Terms and Conditions for Sharing FEMA Disaster Assistance Survivor/Registrant Data with State Governments set forth in the FEMA-Government of Puerto Rico Contract for FEMA-4339-DR-PR.-----

2. Contractor shall indemnify, defend, and hold harmless PREPA and the Government of Puerto Rico for any and all costs associated with the defense of that litigation, including costs and attorneys' fees, settlements, or adverse judgments arising from Contractor's failure to comply with the requirements under this Contract.-----

31.14 Costs: Contractor will undertake best efforts to ensure that costs incurred by Contractor in connection with this Contract are in accordance with the cost principles of 2 C.F.R. pt. 200, Subpart E; provided, however, that PREPA shall be required to ensure Contractor is paid outside of the scope of any assistance awarded by Federal agencies of the United States of America to PREPA or the Government of Puerto Rico for any costs which are found to be contrary to the cost principles 2 C.F.R. pt. 200, Subpart E.-----

31.15 Financial Management System: Contractor agrees to provide PREPA with such financial data related to the scope of this Contract that may be reasonably available in the regular course of business as maintained in Contractor's financial and accounting systems to allow for PREPA to seek reimbursement of its costs by Federal agencies of the United States of America the Government of Puerto Rico pursuant to 2 C.F.R. pt. 200.-----

31.16 Penalties, Fines and Disallowed Costs: As described in Section 31.12, PREPA's obligation to pay Contractor for work performed under this Contract is not conditioned on any Federal awards, grants or other payments. PREPA shall be obligated to pay

Contractor for work performed by Contractor under this Contract, even such work it is deemed unallowable or otherwise ineligible by any Federal agency. To the extent FEMA disallows some element of fees or costs incurred by Contractor in connection with work performed under this Contract, PREPA agrees to withdraw such costs from the scope of reimbursement by FEMA and pay such fees and costs outside of the scope of assistance awarded by Federal agencies of the United States of America to PREPA or the Government of Puerto Rico.-----

31.17 Reporting Requirements: Contractor shall complete and submit all reasonable reports, in such form and according to such schedule, as may be required by PREPA.---

31.18 Review of Laws: Contractor certifies that it will access online and read each law that is cited in the aforementioned clauses and that, in the event it cannot access the online version, it will notify PREPA in order to obtain printed copies of the laws. Not requiring a printed copy of the laws to PREPA will be evidence that Contractor was able to find it online and read it as required.-----

31.19 Notice of Federal Emergency Management Agency (FEMA) Reporting Requirements and Regulations

1. PREPA may seek reimbursement for costs incurred under this Contract, in whole or in part, from the U.S. Government under Federal grant funding awarded or administered by FEMA to the Government of Puerto Rico. As a condition of FEMA funding under major disaster declaration FEMA-4339-DR-PR, FEMA

requires the Government of Puerto Rico and, in turn, PREPA to provide various financial and performance reporting. Contractor agrees to provide all reasonable unprivileged information, documentation, and reports necessary to satisfy these reporting requirements. Failure by Contractor to provide information necessary to satisfy these reporting requirements may result in loss of Federal funding for this Contract. In such scenario, PREPA agrees to withdraw any such request for payment related to this Contract and pay such fees and costs outside of the scope of assistance awarded by Federal agencies of the United States of America to PREPA or the Government of Puerto Rico -----

31.20 [Reserved]

31.21 Record Retention Requirements: Contractor agrees to maintain all books, records, accounts, and reports and all other records produced or collected in connection with this Contract for a period of not less than three (3) years after the date of final payment and closeout of all pending matters related to this Contract. If any litigation, claim, or audit is reasonably anticipated to arise or is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.-----

31.22 [Reserved]

31.23 [Reserved]

31.24 [Reserved]

31.25 [Reserved]

31.26 [Reserved]

31.27 [Reserved]

31.28 [Reserved]

31.29 Compliance with Laws, Regulations, and Executive Orders: Contractor acknowledges that FEMA and HUD financial assistance may be used to fund this Contract. Contractor shall, as and when applicable shall comply will all applicable Federal and Government of Puerto Rico law, regulations, executive orders, policies, procedures, and directives that apply to this Contract and Contractors work under the Contract as described herein. To the extent that there is a change to any applicable Federal and Government of Puerto Rico law, regulations, executive orders, policies, procedures, and directives that apply to this Contract, PREPA agrees to provide Contractor with reasonable notice of such requirements. Contractor agrees to negotiate in good faith with PREPA to agree to such amendments or further agreements as may be necessary to incorporate such requirements herein.-----

31.30 [Reserved]

31.31 Agreement to Execute Other Required Documents: Contractor and all subcontractors, by entering into the Contract, understand and agree that funding for the Services may be provided under Federal programs with specific contracting requirements.-----

To the extent any such requirement is not otherwise set forth herein, Contractor agrees to negotiate in good faith with PREPA to agree to such amendments or further agreements as may be necessary to ensure that PREPA receive Federal funding for this Contract.-----

31.32 U.S. Department of Homeland Security Seal, Logo, and Flags DHS Seal, Logo and Flags: Contractor shall not use the U.S. Department of Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. Contractor shall include this provision in any subcontracts.-----

31.33 Davis-Bacon Act

1. All transactions regarding this Contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.-----
2. Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.-----
3. Additionally, Contractor shall pay wages not less than once a week.-----

31.34 Copeland Anti-Kickback Act

1. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.-----
2. Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Contract clauses.-----
3. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a consultant, contractor and subcontractor as provided in 29 C.F.R. § 5.12.-----

31.35 [Reserved]

31.36 Additional Fair Labor Standards Provisions (HUD Form 4010)

1. The project or program to which the construction work covered by this Contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.-----
2. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions

as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in a wage determination of the Secretary of Labor, regardless of any contractual relationship which may be alleged to exist between Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 C.F.R. 5.5(a)(1)(ii) and the

Davis-Bacon poster (WH-1321) shall be posted at all times by Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.-----

3. Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:-----

- The work to be performed by the classification requested is not performed by a classification in the wage determination; and-----
- The classification is utilized in the area by the construction industry; and-----
- The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.-----

4. If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor, Washington, D.C. 20210.

The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215- 0140.)-----

5. In the event Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)-----
6. The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (B)(1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.-----
7. Whenever the minimum wage rate prescribed in this Contract for a class of laborer or mechanics includes a fringe benefit which is not expressed as an

hourly rate, Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.-----

8. If Contractor does not make payments to a trustee or other third person, Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)-----

9. HUD or its designee 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 Contractor under this Contract or any other Federal contract with the same Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by Contractor or any subcontractor the full amount of wages required by the applicable contract. In the event of failure to pay any laborer or mechanic,

including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to Contractor, disburse such amounts withheld for and on account of Contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.-----

10. Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section I(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section I(b)(2)(B) of the Davis-Bacon Act, Contractor shall maintain records

which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)-----

11. Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a Party to the contract, but if the agency is not such a Party, Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e. g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for

this purpose from the Wage and Hour Division Website at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a Party to the contract, but if the agency is not such a Party, Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for Contractor to require a subcontractor to provide addresses and social security numbers to Contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).-

12. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- That the payroll for the payroll period contains the information required to be provided under 29 C.F.R. 5.5(a)(3)(ii), the appropriate information is being

maintained under 29 C.F.R. 5.5(a)(3)(i), and that such information is correct and complete;-----

- That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 C.F.R. Part 3;-----
- The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by subparagraph A.3.(ii)(b);-----
- The falsification of any of the above certifications may subject Contractor or any subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code;-----
- Contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after

written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.-----

31.37 Apprentices and Trainees:

1. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to contractors to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not

less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, Contractor will no longer be

permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.-----

2. Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage

determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.-----

3. The utilization of apprentices, trainees and journeymen under 29 C.F.R. Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.-----

31.38 Compliance with Copeland Act: Contractor shall comply with the requirements of 29 C.F.R. Part 3 which are incorporated by reference in this Contract.-----

31.39 Subcontracts: Contractor or subcontractor will insert in any subcontracts the clauses contained in Section 31.36 (Additional Fair Labor Standards Provisions (HUD Form 4010)) to Section 31.44 (Complaints, Proceedings, or Testimony by Employees) and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this Section.-----

31.40 Contract Termination; Debarment: A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of this Contract and for debarment as a consultant, contractor and a subcontractor as provided in 29 C.F.R. 5.12.-----

31.41 Compliance with Davis-Bacon and Related Act Requirements: All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this Contract.-----

31.42 Disputes Concerning Labor Standards: Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general dispute's clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between Contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.-----

31.43 Certification of Eligibility:

1. By entering into this Contract, Contractor certifies that neither it (nor he or she) nor any Person or firm who has a controlling interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 C.F.R. Part 24.-----

2. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 C.F.R. Part 24.-----

3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., “Federal Housing Administration transactions”, provides in part: “Whoever, for the purpose of . . . influencing in any way the action of such Administration....makes, utters or publishes any statement knowing the same to be false....shall be fined not more than \$5,000 or imprisoned not more than two years, or both.”-----

31.44 Complaints, Proceedings, or Testimony by Employees: No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.-----

31.45 Health and Safety: The provisions of this paragraph are applicable where the amount of the prime contract exceeds \$100,000:

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.-----
2. Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.-----
3. Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. Contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.-----
4. Contractor shall include all of the above-detailed provisions in any and all subcontract agreements and shall be responsible to PREPA for its compliance.---

31.46 No obligation by the 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.-----

31.47 [Reserved]

31.48 Puerto Rico Energy Conservation Plant: Contractor must act in compliance, when applicable, with the mandatory standards and policies relating to energy efficiency which are contained in the Commonwealth's energy conservation plan.-----

31.49 Patent Rights: All contracts are subject to the patent rights with respect to any discovery or invention which arises or is developed during or under such Contract in accordance with 37 C.F.R. Section 401.2(a) and 37 C.F.R. Part 401.-----

31.50 Prohibition on Contracting for Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on

certain telecommunications products or from certain entities for national security reasons.-----

(2) Unless an exception in paragraph (c) of this clause applies, Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

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

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

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

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or

essential component of any system, or as critical technology as part of any system.-----

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

- (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or-----
- (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.-----

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- (i) Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and-----
 - ii. Are not used as critical technology of any system.-----
- (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.-----

(d) Reporting requirement.

(1) In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Contractor is notified of such by a subcontractor at any tier or by any other source, Contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.-----

(2) Contractor report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification:

The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.-----

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe the efforts it undertook to prevent use or submission of covered

telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.-----

(e) Subcontracts. Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.-----

31.51 Domestic Preferences for Procurements

(i) As appropriate, and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.

This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.-----

(ii) For purposes of this clause:

a. Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.-----

b. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such

as concrete; glass, including optical fiber; and lumber.-----

31.52 Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms

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

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

31.53 Copyright and Data Rights

License and Delivery of Works Subject to Copyright and Data Rights

The Contractor grants to PREPA, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, Contractor will identify such data and grant to PREPA or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, Contractor will deliver to PREPA data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by PREPA. Notwithstanding any terms in this section, nothing in this Contract shall be construed to impair or waive any attorney-client privilege, work product protection or other applicable legal protection or privilege that applies to Contractor's data, files, communications or other records. -----

Article 32. Entire Contract

The terms and conditions contained herein constitute the entire Contract between PREPA and Contractor with respect to the subject matter of this Contract, and supersede all communications, negotiations, and Contracts 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 ____ day of _____, 2023. -----

Puerto Rico Electric Power Authority

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