

GOVERNMENT OF PUERTO RICO
PUERTO RICO DEPARTMENT OF EDUCATION
MASTER PROFESSIONAL SERVICES AGREEMENT

This **Master Professional Services Agreement** (hereinafter referred to as the “**Agreement**” or “**Contract**”) is made and entered into by and between the **Puerto Rico Department of Education**, herein represented by its Secretary, Eliezer Ramos Parés, of legal age, married and a resident of Guaynabo, Puerto Rico, (hereinafter referred to as the “**PRDE**”), and **XXXXXXXXXXXXXXXXXXXX, DESCRIBE NATURE OF DESIGN CONSORTIUM** a corporation organized under the laws of the Government of Puerto Rico or duly authorized to do business in Puerto Rico, herein represented by its XXXXXXXXXXXXXXXXXXXX, XXXXXXXX, of legal age and a resident of XXXXXXXX (hereinafter referred to as the “**Consultant**” or “**Contractor**”). Each party hereto may individually be referred to as a “**Party**” and collectively as the “**Parties.**”

WITNESSETH

WHEREAS, the **PRDE**, pursuant to the faculties conferred upon it by Act No. 85 of March 29, 2018, as amended, known as the “Puerto Rico Educational Reform Act, has the authority to engage such professional, technical, and consulting services that are deemed necessary or convenient to its activities, projects and operations and to comply with its obligations under the law.

WHEREAS, the **PRDE** is the government agency that directly administrates and operates Puerto Rico’s public schools system. **PRDE** has 1,109 schools of which approximately 857 are presently in use and are distributed among the seven **PRDE** Educational Regions components.

WHEREAS, due to the passing of hurricanes Irma and María in 2017, the earthquakes experienced in 2020 and the on-going COVID Pandemic, the schools and administrative offices of the **PRDE** suffered significant damages to its infrastructure and have caused extreme hardship that have impacted **PRDE**’s operations and have affected adversely **PRDE** students, faculty, administrative personnel, their families and the community.

WHEREAS, **PRDE** must perform repairs to schools and facilities throughout the seven **PRDE** Educational Regions to continue providing its educational and other essential services in a safe manner and to protect its assets from further damage.

WHEREAS, some Puerto Rico funds will be used, the repairs to schools will be mainly financed with reimbursements from the Federal Emergency Management

Agency's ("FEMA") Public Assistance funds, and the Federal Housing and Urban Development ("HUD") Community Development Block Grant ("CDBG").

WHEREAS, due to the significant damage caused by the disasters, PRDE requires the services of highly qualified consultants, with broad depth and expertise across multiple disciplines deeply related to design and construction services for the recovery and/or reconstruction of PRDE schools. Each project must be previously approved by Puerto Rico's Central Office for the Recovery and Reconstruction of Puerto Rico ("COR3") and FEMA.

WHEREAS, PRDE issued Request for Qualifications Number PRDE(ER)-2022-001 (the "**RFQ**") for the provision by Design Consortiums ("DC) of a variety of design and construction related services (as herein defined) for the reconstruction of schools administrated by the PRDE (the "**Project**"), which document is attached hereto and made a part of this Agreement, along with all published PRDE Addenda as Appendix A.

WHEREAS, the **Consultant** responded to the RFQ by submitting a Statement of Qualifications ("**SOQ**" or the "**Proposal**"), which document is attached hereto and made a part of this Agreement as Appendix B.

WHEREAS, the PRDE appointed an Evaluation Committee (the "Committee"), comprised of representatives of PRDE. Furthermore, the Committee had access to technical advisers, financial advisers and PRDE's competitive procurement consultants. The Committee's objective was to review all SOQs received pursuant to the RFQ and make recommendations for PRDE to engage in contract negotiations, especially related to professional fees, with one or several DCs.

WHEREAS, after careful deliberations, the Committee agreed to recommend entering into negotiations with several individual DCs for contract of one (1) year with four (4) one-year renewal options, subject to the approval of the Financial Oversight and Management Board for Puerto Rico, the Puerto Rico Office of Management and Budget, and the execution of a written contract between the Parties.

WHEREAS, upon the approval of the Committee's recommendations by PRDE's Secretary, PRDE entered into negotiations with the selected DCs. All proponents that had submitted a SOQ under the RFQ were notified.

WHEREAS, all required government approvals have been duly obtained by PRDE, including the approval of the Financial Oversight and Management Board for Puerto Rico, the Puerto Rico Office of Management and Budget and the Office of the Governor of Puerto Rico.

WHEREAS, as a result of the negotiation process the Parties have agreed to enter into this Master Professional Services Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the Parties agree to enter into this Master Professional Services Agreement (the “Agreement”) under the following:

TERMS AND CONDITIONS

- 1. OBJECTIVES.** Consultant will provide, on an “as needed” basis, in coordination with the PRDE, architectural and engineering services, including incidental services that members of the architectural and engineering professions, and individuals in their employ, may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, conceptual designs, plans and specifications, value engineering, construction administration phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, cost estimating, scheduling, technical procurement, permitting, engineering reports, document control, project reporting, mechanical engineering, electrical engineering, structural engineering, archaeological studies, historic preservation services, environmental assistance and other related services.

- 2. SCOPE OF SERVICES.** The complete scope and nature of the Services to be provided by Contractor are detailed in the document entitled **SCOPE OF SERVICES**, which was part of the RFQ (as Attachment J) and which is attached to this Agreement as a separate document from the RFQ, as Appendix C.

- 3. ASSIGNMENT OF INDIVIDUAL SPECIFIC PROJECTS TO CONTRACTOR.** No specific project, work, task, or service is being assigned to or required of Contractor under this Agreement. Upon PRDE’s request for a proposal for an individual project, work, task or service, Contractor will submit a written proposal, indicating its approach to the project, timeline, and costs as per negotiated fees in this Agreement. PRDE may request clarifications or other information related to the proposal. PRDE will notify the Contractor in writing if the proposal is accepted and when Contractor may proceed to begin working on that project, work, task or service. Upon receipt of said notice, Contractor shall proceed with the assignment within fifteen (15) days of notice date. All projects, work, tasks or services assigned to Contractor pursuant to this section shall be performed pursuant to the terms of this Agreement.

4. PRDE'S RESPONSIBILITIES. The PRDE shall be responsible for the following:

- a. Cause its appropriate staff and consultants to be available to participate in the Project activities, as required.
- b. Provide constant feedback and help with assigning priorities during the course of the initiative.
- c. Provide existing documentation and all the necessary information to obtain a clear understanding of the current processes, challenges, and areas of opportunities.
- d. Be available, as needed, to discuss Project requirements, participate in meetings, review documents, confirm and sign off on design decisions.

5. MUTUAL RESPONSIBILITIES. Each of the Contractor and the PRDE shall:

- a. Conduct Project review meetings at mutually agreed upon times and locations to discuss the Project status, issues, new requirements and overall Project satisfaction.
- b. Support and provide representation at these meetings, which will cover performance status update, schedule updates, pending changes, open issues and action items.
- c. Coordinate any change to the Project and process changes.
- d. Collaborate to adjust Project schedules in an expeditious manner in the event of unforeseen delays.

6. CONTRACTOR'S ADDITIONAL RESPONSIBILITIES. Contractor shall render its Services in accordance with the generally accepted practices in the industry applicable at the time such services are performed. In rendering its services, the Contractor shall comply with all applicable federal, state and local laws, codes and regulations. Contractor shall use its best efforts to use available number of billable hours in a responsible and efficient manner.

7. KEY PERSONNEL. The SOQ sets forth a list of key personnel (the "**Key Personnel**" or "**Key Persons**") from the Contractor's organization or consortium who will be assigned to perform services under this Agreement. PRDE has the right to request the Contractor to remove or cause to be removed a Key Person who is not, in PRDE's reasonable judgment, complying with applicable laws and regulations, safety guidelines, confidentiality requirements, or fails to perform its obligations in the performance of the portion of the services assigned to such Key Person. In such event, Contractor shall replace such Key Person without additional expense to PRDE and shall indemnify, hold harmless

and defend the PRDE against any claim such Key Person may bring, or threaten to bring, against the PRDE. Key Personnel shall not be removed or reassigned without prior notice to the PRDE. The Contractor shall provide reasonable information to PRDE regarding the professional experience and capabilities of any person proposed by the Contractor to replace a Key Person and the proposed transition plan to integrate such person into the projects or work assigned to Contractor.

8. SUBCONTRACTORS OR SUBCONSULTANTS. Except as otherwise set forth herein with respect to the Contractor's named subcontractors described in the Contractor's SOQ, the Contractor shall not subcontract other services under this Agreement without the prior written authorization of the PRDE. Each request to hire another service provider shall specify the issues in which the subcontracted provider would take part.

9. RESPONSIBILITY FOR STAFF AND SUBCONTRACTORS. The Contractor will be responsible for hiring the personnel (including its Key Personnel, staff and any subcontractors) that will offer services under this Agreement. PRDE shall have no obligation regarding the work schedule, salaries, benefits related to the Contractor's personnel (including employees and subcontractors). It is expressly understood that Contractor shall be solely responsible for payment of all compensation, including, but not limited to, salaries, insurance and benefits due to its personnel (including employees and subcontractors). Contractor shall hold harmless and indemnify PRDE from any claims made by its personnel (including its employees and subcontractors) for any monies due for work under this Agreement. Contractor represents and warrants that all work accomplished by a subcontractor shall be consistent with the terms and provisions of this Agreement. No subcontractor is intended to be or shall be deemed a third-party beneficiary of this Agreement.

10. COMPLIANCE WITH ACTS 173 OF 1983 AND ACT 319 OF 1983. Contractor will ensure that all engineering and architectural work shall be commissioned to a professional or a professional services organization in accordance with Act 173 of August 12, 1983, as amended ("Act of the Puerto Rico Examining Board of the Engineers, Architects, Surveyors and Landscapers") and Act 319 of May 15, 1938, as amended ("Act to Create the Board of Engineers and Surveyors") as may be applicable to the specific work, task or service.

11. VISITS. Contractor will make the necessary arrangements to accommodate visits of officials of PRDE to observe the administrative capacity of Contractor. Contractor specifically agrees to make its facilities and technical documents

specifically relating to the services provided under this Agreement easily available to authorized federal and Puerto Rico Government officials conducting monitoring visits. PRDE will notify Contractor in writing of its request for a site visit so that appropriate documents can be readied and arrangements for staff availability can be made. All monitoring visits shall be conducted during normal working hours Monday through Friday.

12. SERVICES NOT EQUIVALENT TO A PERMANENT POSITION WITHIN THE GOVERNMENT OF PUERTO RICO. The Program Management Services to be provided by the Contractor under this Agreement do not constitute a regular, permanent position within the roster of available positions and retribution scale of PRDE. The Program Management Services cannot be rendered by PRDE's regular personnel since it does not have neither qualified personnel, nor the amount of personnel required to render the Project Management Services.

13. TRANSFER OF KNOWLEDGE. Provisions regarding transfer of technical skill and knowledge to PRDE is not applicable to this Agreement. Contractor certifies that this provision is not applicable as the services provided hereunder are non-recurring services. If any of the services that will be provided requires or allows for the transfer of skill and knowledge, Contractor shall endeavor to transfer any applicable expertise to the PRDE personnel.

14. TERM AND TERMINATION. This Agreement will be in effect for a period of one (1) year from the date of its signature by both Parties and may be extended by PRDE for four (4) additional one-year terms, subject to annual appropriation of funds. Thereafter, the Parties may agree to extend the Agreement in accordance PRDE's needs for the project and the availability of funds.

In accordance with the laws and regulations that govern this Agreement, the Parties hereby acknowledge and agree that:

- (i) no services will be rendered by the Contractor under this Agreement beyond the expiration date, unless on or before the expiration date the Parties have agreed by written agreement to extend the Term and the corresponding budget appropriations have been completed; and
- (ii) no payment and/or disbursement will be made or paid for services rendered in violation of this clause, since any officer, employee, advisor, person, and/or consultant of the PRDE that requests and/or accepts services from the Contractor will be in violation of this provision will be doing it without any legal authorization whatsoever.

Termination for Convenience or to Protect the Public Interest: If at any time during the Term of this Agreement, PRDE determines, in its sole discretion, that the services provided by Contractor are no longer in its best interest, PRDE may terminate this Agreement or may terminate Contractor's assignment of a particular project or task, upon thirty (30) calendar day's written notice to Contractor. Further, PRDE may terminate this Agreement if the PRDE determines that the termination is necessary for the protection of the public interest. In either instance, the PRDE will only pay for services rendered until termination date and will not pay any early termination charges under the contract. This amount cannot exceed the maximum amount stipulated in this Agreement.

Upon termination or expiration of this Agreement, the PRDE shall promptly pay the Contractor any accrued but unpaid fees hereunder incurred prior to the effective date of such termination or expiration, as the case may be. In no event shall the PRDE be liable for any costs incurred or services delivered after the effective date of termination as provided herein.

In addition to, and not as a limitation of the rest of the provisions of this Agreement or any other legal or equitable remedies available to the PRDE, PRDE may terminate this Agreement immediately and be released of any further obligation hereunder, in any of the following circumstances, which shall be deemed just cause for purposes of termination:

- a. If Contractor is negligent in the performance of the services, incurs in dereliction of duty, or breach of contract;
- b. If Contractor files for bankruptcy or any other proceeding for the protection of debtors, or if it is declared insolvent, or if any court or administrative body designates a liquidator or trustee to handle its affairs;
- c. If Contractor or any of its directors or officers is convicted for the commission of any felony or any misdemeanor which implies corruption or moral depravation;
- d. If any license, permit, franchise or authorization needed by Contractor to carry out its obligations hereunder is suspended, revoked or cancelled;
- e. In any case of war, invasion, disaster, emergency or force majeure;
- f. If the termination of this Agreement is necessary for the protection of the public interest.

Suspension of Services. Upon ten (10) days prior written notice from PRDE to the Contractor, PRDE may request that Contractor suspend services in whole or part. The Contractor shall promptly resume performance of services upon written notice from PRDE.

15. EVENTS OF DEFAULT BY CONTRACTOR. Events of default (“Events of Default”) include, but are not limited to, the following:

- a. Any material misrepresentation by Contractor in its Proposal in response to the RFP or this Agreement.
- b. Breach of any material agreement, representation or warranty made by Contractor in the Proposal or this Agreement.
- c. Failure of Contractor to perform in accordance with or comply with the terms and conditions of the Agreement;
- d. Default by Contractor under any other agreement Contractor may have with PRDE;
- e. The directors or officers of Contractor are indicted for the commission of any felony or any misdemeanor that implies corruption or moral depravation, or for any crime against the public treasury, faith or function or that involves public property or funds;
- f. If any license, permit, franchise or authorization needed by the Contractor to carry out its obligations under the Agreement is suspended, revoked or expired;
- g. Failure to maintain insurance as required under the Agreement;
- h. An assignment by the Contractor for the benefit of creditors or consent by Contractor to the appointment of a trustee or receiver or the filing by or against Contractor of any petition or proceeding under any bankruptcy, insolvency or similar law.

16. PRDE REMEDIES IN CASE OF DEFAULT. The occurrence of any Event of Default which Contractor fails to cure, or cause to be cured, within thirty (30) calendar days after receipt of written notice given by PRDE specifying the Event of Default, or if such Event of Default cannot be reasonably cured within thirty (30) calendar days after notice, Contractor fails to commence, or cause to be commenced, and continue diligent efforts to cure or cause said Event of Default to be cured, in the sole opinion of PRDE, the PRDE may declare the Contractor

in default, and give the Contractor written notice of PRDE's intent to terminate this Agreement, effective as of the date specified in the notice. After giving written notice to the Contractor, PRDE may invoke any or all of the following remedies:

- a. Take over and complete the services or any part thereof, either directly or through others. Contractor shall be liable to PRDE for any excess costs incurred by the PRDE. Any amount due the Contractor under this Agreement or any other agreement Contractor may have with the PRDE may be offset against amounts claimed due by PRDE in exercising this remedy;
- b. Terminate this Agreement, effective at a time specified by PRDE, in whole or in part, as to any or all of the services yet to be performed and/or if required;
- c. Suspend services during the thirty (30) days cure period if the default results from an action or failure to act by Contractor which affects the safety or welfare of students or the PRDE staff;
- d. Seek specific performance, an injunction or any other appropriate equitable remedy;
- e. Receive from Contractor any and all damages, including money damages, incurred as a result or in consequence of, an Event of Default;
- f. Withhold all or part of Contractor's compensation under the Agreement; and/or
- g. Any other legal remedy available to the PRDE.

17. FEES AND MAXIMUM PAYABLE AMOUNTS. Contractor shall perform its services for the hourly fees per position or fees per service indicated in Appendix D (Professional Services Fees Schedule), which is attached and made a part of this Agreement. The approximate number of hours per position are also indicated in the Proposal. These hourly fees are fully loaded and include overhead, profit, travel, reimbursable expenses and other administrative costs.

The total maximum amount to be paid under this Agreement is **\$\$\$\$XXXXXXXX**. Any increase to this amount shall require a written amendment signed by both Parties.

All hourly fees include 1.5% Puerto Rico Government Tax and 4% Special Sales and Use Tax.

PRDE will not be obligated and will not make any payments in excess of this amount, even if Contractor exceeds the same, regardless of the reasons they may have for such excess. In the event of early termination of the Agreement, the PRDE shall only be obligated to pay the compensation due up to the date

of termination. In no event shall the PRDE be liable for any costs incurred or services delivered after the effective date of termination.

Except as may be indicated in Appendix D, the PRDE shall not reimburse any expenses incurred by the Contractor in the performance of services under this Agreement. Any extraordinary expense for which the Contractor desires reimbursement must be approved in writing in advance by the authorized PRDE representative. The request shall specify the relation of the expense to the services to be rendered.

If needed, this Agreement shall be amended each fiscal year to add appropriated funds for said period.

18. EXCLUSION OF LIABILITY. The PRDE shall have no liability for the payment of invoices, costs, charges or fees billed by Contractor or its subcontractor(s) for:

- A. Costs of services not authorized in writing by the PRDE;
- B. Costs related to upgrading, maintaining or programming billing systems to meet the PRDE's requirements;
- C. Costs related to reimbursement of legal expenses in order to provide the services to the PRDE.

19. NON-APPROPRIATION OF FUNDS. Expenditures not appropriated by the PRDE in its current fiscal year budget are deemed to be unrecognized expenditures and therefore unallowable expenses. In the event sufficient funds are not appropriated in a subsequent fiscal year by PRDE for performance under the Agreement, PRDE shall notify Contractor and the Agreement shall terminate on the last day for the fiscal period for which funds were appropriated. In no event shall PRDE be liable to Contractor for any amount in excess of the then current appropriated amount.

20. INVOICES AND PAYMENTS. Contractor will invoice monthly PRDE for services rendered in the previous month and will certify the work or services provided as provided for in this Agreement and any other applicable certifications to comply with federal and local invoicing rules. Invoices will be prepared at the appropriate level of detail to support reimbursement of federal dollars to include the number of hours worked by each professional, a description of the work performed, and such other detail that may be reasonably required to comply with federal or local expenditure requirements. For services rendered on an hourly fee basis, each invoice shall be itemized with entries for fractions of an hour based on a quarter of an hour (.25) and must be duly

certified by an authorized representative of the Contractor. Any hours worked by a professional while physically located outside of Puerto Rico should be clearly identified on each invoice. All fees for services rendered shall be invoiced in conformance with the fee structure included in Appendix D hereof.

Payment of compensation shall be based on actual services performed during the Term. The PRDE shall not be under any obligation to pay for services not performed or not performed in accordance with this Agreement.

Invoices for any previously approved reimbursable extraordinary expenses must be accompanied with supporting evidence.

The PRDE may require that Contractor submit its invoices in the PRDE's billing and payment system in electronic format.

The Contractor shall include in its invoices the amount of remaining funds under the Agreement for the current fiscal year and shall notify the PRDE when the entire amount of funds allotted under this Agreement during each fiscal year have been or are close to having been consumed.

The PRDE will not honor invoices submitted after one hundred (120) calendar days of services having been rendered. The Contractor accepts and agrees to this requirement, and understands that if it does not comply accordingly, it waives its right to payment for rendered services covered by such invoices. Within thirty (30) calendar days after receipt of the invoice, PRDE or its authorized representative will review the invoices and, if they are in compliance with the requirements set forth in this Agreement, the invoice will be certified and authorized for payment. The PRDE shall pay all charges invoiced by the Contractor, other than disputed charges, within forty-five (45) to ninety (90) calendar days after certification of the invoice. If payment, (exclusive of any amounts within an invoice to the extent disputed in good faith by the PRDE as set forth below) is not received within sixty (60) calendar days of receipt of invoice, and the Contractor notifies the PRDE in writing and the PRDE does not provide an appropriate response objection to such payment or part thereof or provide reasonable justification as to the status of such payment within twenty (20) calendar days of receipt of such reminder, the Contractor may suspend or terminate this Agreement. Contractor shall resume the services upon receipt of such payment. All amounts to be paid to the Contractor under this Agreement will be paid in U.S. dollars by electronic funds transfer to the account or accounts designated by the Contractor from time to time or by such other method as is mutually determined by the Parties.

If PRDE, or its authorized representative, disputes any of the charges in an invoice, it shall notify the Contractor of such disputed charges in writing within a reasonable time. The notice shall set forth reasons for the objection to the charge. All undisputed amounts shall be paid by PRDE. The Parties shall attempt in good faith to resolve any objections to the invoiced amount within twenty (20) calendar days of the Contractor's receipt of the notice of dispute. If the Parties cannot reach an agreement within such period, the dispute shall be elevated to the Sub-secretary of Administration of the PRDE for evaluation and final decision. If the dispute is subsequently resolved in the Contractor's favor, the Contractor shall proceed to re-invoice the amount and PRDE shall pay the amounts agreed or found to be owing. Any portion of a disputed charge as to which the Parties resolve the dispute shall be paid within thirty (30) calendar days after the second invoice is received by PRDE.

21. CERTIFICATION OF INVOICES. Pursuant to the *Anti-Corruption Code for Puerto Rico* (Act No. 2 of January 4, 2018, as amended) all invoices submitted by the Contractor will contain a written certification stating that no officer or employee of the PRDE shall derive or obtain any benefit or profit of any kind from this Agreement, with the acknowledgement that invoices which do not include this certification will not be paid. The certification shall read as follows:

"Under penalty of absolute nullity, I hereby certify that no employee of the Contractor or its sub-contractors or partners has any direct or indirect pecuniary or other interest in this Agreement. If an employee is part or has any direct or indirect pecuniary or other interest in this Agreement, a previous waiver has been presented. The only consideration for providing the goods and services object of this Agreement has been the accorded payment agreed upon with the authorized representative of the Puerto Rico Department of Education. I hereby certify that this invoice is correct and that payment thereof has not been received."

22. ACCOUNT NUMBER. Payment to Contractor for services rendered will be made from the financial allotments made for this Agreement from the following account number XXXXXXXX or such other accounts as may be assigned from time to time by the PRDE.

23. WITHHOLDINGS AT SOURCE. Services provided by the Contractor under this Agreement are subject to a ten percent (10%) withholding tax at source under Section 1062.03 of the Puerto Rico Internal Revenue Code of 2011, as amended (the "PR Code"), 13 PR Laws Ann. §30273, and the regulations issued thereunder.

PRDE shall withhold the applicable percentage from the gross amounts paid for these services, when any of those amounts constitutes gross income from sources within Puerto Rico, in accordance with 13 PR Laws Ann. §30151, unless the Contractor provides evidence of having a total or partial waiver with regard to the withholding tax at source on payments for services rendered or a determination letter from the Puerto Rico Treasury Department confirming that it is exempt from Puerto Rico income tax in conformity with PR Code Section 1101.01, 13 PR Laws Ann. § 30471. PRDE shall forward such amounts to the Secretary of the Treasury of Puerto Rico and shall comply with reporting requirements under PR Code Section 1062.03.

As provided in PR Act No. 48-2013, as amended (the "Act"), and the official interpretations issued thereunder by the Secretary of the Treasury of Puerto Rico, all contracts for professional services, advisory, advertising, training or guidance, issued by an agency, department or instrumentality of the Commonwealth of Puerto Rico, public corporation, as well as the Legislature and the Judicial Branch, a special contribution equivalent to one point five percent (1.5%) of the services paid under this Agreement will be imposed and will be allocated to the Puerto Rico General Fund. This special contribution will be withheld by the Puerto Rico Treasury Department or by the governmental entity, as applicable, upon making the payment for professional services rendered under this Agreement, unless the Contractor holds a determination letter from the Puerto Rico Treasury Department confirming that it is a non-profit organization exempt from Puerto Rico income tax in conformity with PR Code Section 1101.01, 13 PR Laws Ann. § 30471. The special contribution for professional services established by the Act shall not, under any circumstances, be taken or construed as a credit or deduction against the tax on fixed income.

The Contractor acknowledges and accepts that PRDE may retain any portion of the payments to the Contractor which may be necessary to satisfy or pay any debts of the Contractor for taxes owed, on personal or real property (CRIM), duties, unemployment insurance, disability, chauffeurs social security, and debts for interests, dividends, rents and other similar distributions made by the Contractor and any other debt which the Contractor owes to the Government of Puerto Rico.

No withholding from payments to the Contractor shall be made related to Social Security contributions. Payments made under this Agreement shall be notified to the Income Tax Bureau (*Negociado de Contribuciones Sobre Ingresos*) of the Puerto Rico Treasury Department (*Departamento de Hacienda*).

24. PROPRIETARY NATURE OF REPORTS AND OTHER DOCUMENTS, COPYRIGHTS AND LICENCES. The Contractor, in rendering its services will

produce written documents, presentations, brochures, reports, project specifications, schedules, plans, Project Worksheets, procurement documents, as well as other such documents and intellectual property as may reasonably be specifically and exclusively requested and funded entirely by PRDE, in whatever form, including print or electronic means. All such written materials and reports requested or scheduled to be delivered under this Agreement shall be considered a "Work for Hire" and shall be deemed to be the property of PRDE, including all copyrights thereto without this leading to additional compensation to the Contractor.

The Contractor will retain all proprietary rights, including but not limited to, copyright in its pre-existing or independently developed materials, concepts and technologies that may be used or adapted to provide the services under this Agreement.

The Contractor shall not use or publish deliverables or work product, including any reports, schedules, documents, or other materials created by Contractor under this Agreement without the prior written consent of PRDE.

If, in the performance of its services under this Agreement uses any material protected by a third-party copyright or other intellectual property right, Contractor shall procure a license or other appropriate permit to utilize said material.

25. NO INTELLECTUAL PROPERTY INFRINGEMENT. The Contractor hereby agrees that in performing the services under the Agreement, neither the Contractor nor any of its subcontractors will violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of any third party, and will not improperly use any third party's confidential information; and shall have, without encumbrance, all ownership, licensing, marketing and other rights required to furnish all materials and services that it furnishes to the PRDE under this Agreement and can grant or assign all rights granted or assigned to the PRDE pursuant to the Agreement.

License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the PRDE for the Project must be reasonable, and paid to the holder of the patent, or his authorized license, directly.

If the Contractor uses any design device or materials covered by letters, patent or copyright, Contractor shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all

royalties or costs arising from the use of such design, device or materials, in any way involved in the Project. The Contractor shall indemnify and save harmless the PRDE from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under the Agreement, and shall indemnify the PRDE for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the Project or after its completion.

26. CONFIDENTIAL INFORMATION. During the course of this Agreement, each Party may disclose to the other Party information which is confidential or proprietary that relates to the disclosing Party's business and administrative operations, stakeholders, services or technical knowledge. For purposes of this Agreement, "**Confidential Information**" shall mean and include, but not be limited to: (i) any information labeled, marked, or identified, verbally or in writing, as confidential by the disclosing Party; (ii) any financial information; (iii) any employee, or customer lists; (iv) internal policies and procedures; (v) any unpublished reports, technologies, or other materials which are proprietary to the disclosing Party and which have not been made available to the general public; and (vi) information that is not generally known to the public as well as any information which the disclosing Party would not release without obligations of confidentiality.

Each Party shall use the Confidential Information of the other Party for the sole purpose of performing their respective obligations under this Agreement and share such information only with employees on a need-to-know basis. Each Party shall not disclose the Confidential Information of the other Party to any third party without the prior written consent of the Party who owns such information, unless required by law. The term "Confidential Information" shall not include any information which: (i) is previously known to the Party without obligation of confidence; (ii) which is publicly disclosed either prior or subsequent to the receiving Party's receipt of such information; (iii) is rightfully received by the receiving Party from a third party without any obligations of confidentiality; (iv) information which is required by judicial order, applicable law or other agencies in connection with the Program Management Services; or (v) is approved for disclosure or release by the Parties.

Prior to disclosing any Confidential Information to any subcontractor necessary to perform the Services, the Contractor shall bind such sub-contractor to the

confidentiality obligations contained in this Article and shall be liable for any breach of the confidentiality obligations contained herein.

27. INDEPENDENT CONTRACTOR. It is understood and agreed that the relationship of the Contractor to PRDE is and shall continue to be that of an independent contractor. The execution of this Agreement does not make any of the Parties hereto an employee, agent, representative, alter ego or attorney-in-fact of the other. This Agreement does not authorize the Contractor to enter into obligations on behalf of the PRDE. The Contractor recognizes that it may not alter any of PRDE's internal procedures or policies without its express consent. Consequently, the actions of the Contractor shall not be binding on PRDE.

Neither Contractor nor any of Contractor's staff, agents, employees or subcontractors shall be entitled to receive PRDE employee benefits. It is further understood and agreed that PRDE shall not be responsible for, nor incur any liability for, any State or Federal withholding or other taxes or for FICA or State unemployment insurance for Contractor, its agents, employees or subcontractors, and the payment of any such taxes incurred or due by Contractor shall be the sole responsibility of Contractor. The Contractor agrees that neither Contractor nor its staff or subcontractors shall represent themselves as employees or agents of the PRDE. The Contractor shall provide PRDE with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including, but not limited to, a social security number or a federal employer identification number.

28. COMPLIANCE WITH CC 001-2021. Pursuant to CC 001-2021 promulgated by the Governor's Office and the Puerto Rico Office of Management and Budget, the Parties agree as follows:

Interagency Services: Both Parties hereto agree and accept that the Program Management Services provided under this Agreement may be provided to any other Government Entity as may ordered by the Governor's Office. The aforementioned additional services shall be provided under the same terms and conditions as to rate and number of hours as agreed to in this Agreement. For purposes of this Section, the term "Government Entity" shall include all government agencies of the Government of Puerto Rico as well as any of its instrumentalities, public corporations and the Office of the Governor of Puerto Rico.

Termination Clause. The Office of the Governor of Puerto Rico may cancel this Agreement at any time during its Term.

FOMB Policy: Review of Contracts: As required under CC 001-2021 and FOMB Policy for the Review of Contracts effective November 6, 2017, as modified on October 30, 2020, the Contractor represents and warrants that the information included in the Contractor Certification Requirement (“Certification”) 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 Government of Puerto Rico any amounts, payments or benefits received from the Government under the proposed contract. As required under CC 001-2021, Contractor represents that the Certification is signed by a duly authorized executive of the Contractor. A signed copy of the Certification is made to form a part of this Agreement as Appendix E.

29. INDEMNIFICATION. The Contractor agrees to defend, indemnify and hold harmless the Government of Puerto Rico, the PRDE and its respective members, employees, agents, officers and officials, all state Departments, Municipalities, Agencies, Boards and Commissions, their officers, agents, servants, employees and volunteers from and against any and all third party claims, liabilities, liens, losses, actions, suits, penalties, damages and, expenses, including costs and attorney fees, judgments or settlements or causes of action, of every kind, nature and character to the extent arising, or alleged to arise out of the following:

- (i) negligent or willful acts or omissions of the Contractor, its officials, agents, employees and/or subcontractors in the performance of this Agreement;
- (ii) failure of Contractor or its subcontractors to comply with applicable law;
- (iii) actual or asserted violation or infringement of any domestic or foreign patents, copyrights or trademarks or other intellectual property, or any improper use of confidential information or other proprietary rights that may be attributable to Contractor or any subcontractor in connection with the services;
- (iv) claims by any Government agency as a result of a failure by Contractor or any of its subcontractor to pay taxes;
- (v) failure of Contractor to make payments to any subcontractor in accordance with the respective subcontract; or
- (vi) personal injury to, illness or death of any person, or damage to or destruction of property of any person in any way arising out of or resulting from or related to the services to the extent caused by Contractor or any subcontractor or

anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

The Contractor shall, at its own cost and expense, appear, defend and pay all attorney fees and other costs and expenses arising from the indemnification provisions of the Agreement. In addition, if any judgment shall be rendered against the PRDE in any such action, the Contractor shall, at its own expense, satisfy and discharge such obligation of the PRDE. The PRDE shall have the right, at its own expense, to participate in the defense of any suit, without relieving the selected Contractor(s) of any of its obligations under the indemnification provisions of this Agreement. The PRDE retains final approval of any and all settlements or legal strategies, which involve the interest of the PRDE.

If Contractor, after receiving notice of any such proceeding, fails to immediately begin the defense of such claim or action, the PRDE may (without further notice to Contractor) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of Contractor, subject to the right of Contractor to assume the defense of such claim or action at any time prior to settlement, compromise or final determination thereof. The cost and expense of counsel retained by the PRDE in these circumstances shall be borne by Contractor and Contractor shall be bound by, and shall pay the amount of, any settlement, compromise, final determination or judgment reached while the PRDE was represented by counsel retained by the PRDE pursuant to this paragraph, or while Contractor was conducting the defense.

The indemnifications set forth herein shall survive the expiration or termination of this Agreement.

30. JOINT AND SEVERAL LIABILITY. In the event that Contractor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then, and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Contractor shall be the joint and several obligation or undertaking of each such individual or other legal entity.

31. GENERAL SAFETY GUIDELINES

- A. Contractor shall be solely responsible for safety in performing the services. Contractor shall adhere to any and all safety related requests by the PRDE and PRDE's designated representatives, including submission, upon the request of PRDE, a copy of Contractor's safety manual.
- B. Contractor, both directly and indirectly through its subcontractors, shall continuously protect the PRDE's property and adjacent property from damage, injury, or loss arising in connection with operations under the contract. Contractor shall make good any such damage, injury, or loss. Contractor is responsible for school site security.
- C. Contractor, both directly and indirectly through its subcontractors, shall take all necessary precautions to ensure the safety of the public and workers in performing the services, and to prevent accidents and/or injury to any persons on, about, or adjacent to any site where the services are being performed.
- D. Contractor shall monitor the performance of all its contractors and subcontractors engaged in projects being performed by Contractor for compliance and adherence to all applicable safety rules and standards and the safety of the public and personnel as well as that the PRDE's property for protection against damage or loss arising out of the projects being managed.
- E. Contractor shall comply with all applicable local and federal laws, ordinances, codes, rules, and regulations relative to safety and the prevention of accidents, including all safety rules and regulations adopted by the PRDE. Contractor, and its subcontractors shall cooperate with any other contractor that may be performing work on a site; such compliance shall include, but be not limited to, OSHA compliance and safety efforts.
- F. In an emergency affecting the safety of life or adjoining property, Contractor, without special instructions or authorization from PRDE, is permitted to act, at its discretion, to prevent the threatened loss or injury.
- G. Contractor shall protect private and public property adjacent to where the services are being performed, including all streets, sidewalks, light poles, hydrants, and concealed or exposed utilities of every description affected by or adjacent to where the services are being performed. If the items are damaged by Contractor or its subcontractors, Contractor shall make all necessary repairs to or replacements of them at no cost to PRDE.
- H. If, in the opinion of PRDE, the performance of the services endangers adjoining

property or persons, upon written notice from PRDE to the Contractor, the services and installations shall be stopped, and the method of operation changed in a manner acceptable to the PRDE. Contractor acknowledges and agrees that it shall be responsible for any financial repercussions resulting therefrom and that service delivery schedules may be postponed as a result thereof.

32. INSURANCE REQUIREMENTS. The Contractor represents that, as of the date of execution of this Agreement, it maintains the insurance coverage and their amounts, as indicated below. Contractor will present to the PRDE evidence of insurance in the standard Acord form certificate of insurance. The certificate will set forth each policy of insurance (policy number, effective dates of coverage and applicable limits). It will also show the PRDE as the certificate holder, set forth the project name and state what parties are included as an additional insured (including PRDE). The certificate will be issued and signed by the Contractor's insurance broker as its authorized agent. All policies will be maintained by the Contractor during the Term and any extensions thereof.

The insurance policies to be maintained by the Contractor and their respective amounts are as follows:

- **Commercial/General Liability Occurrence/Aggregate (Including Errors and Omissions): \$300,000.00 per occurrence and \$1,000,000.00 in the aggregate.**

The Contractor must purchase and maintain without interruption for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor, its agents, representatives, employees or subcontractors, or anyone employed directly or indirectly by any of them. For purposes of the insurance policies the duration of the Agreement shall be from the inception of the Agreement until the date of final payment. Defense and legal costs shall not erode the Per Occurrence or Aggregate Limits. This insurance shall be endorsed to include the following policy forms:

CG 20 10 11 85 Additional Insured – Owners, Lessees or Contractors – (Form B).

In the absence of CG 20 10 11 85, the insurance shall include both of the following: CG 20 10 AND CG 20 37, or its equivalent.

- **Automobile Liability: \$1,000,000.00 per occurrence**

Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with any activity under the Agreement, with limits of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles and shall be endorsed to include Code 1 "Any Auto". If the Contractor does not own any automobiles, the insurance shall be endorsed to include Code 8 "Hired Auto" and Code 9 "Non-Owned Auto". Contractor shall cause its subcontractors and subconsultants of all tiers to provide, at their own expense, the same insurance for all owned, non-owned or hired automobiles used in connection with the work.

If there is the exposure of transportation of hazardous materials the following endorsement shall be provided. Under this policy, Motor Carrier Endorsement, of the Motor Carrier Act of 1980, Form MCS-90, shall be provided by the Proponent.

- **Worker's Compensation: Statutory**
- **Professional Liability: \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.**

The policy shall not be cancelled for any reason, except non-payment of premium but said cancellation does not release the Contractor from the fulfillment of its obligations under the Agreement.

- **Additional Insured:** All insurance policies with the exception of Workers Compensation and Professional Liability shall include the, the Commonwealth of Puerto Rico, the Puerto Rico Department of Education, all Commonwealth Departments, Agencies, Municipalities, Boards and Commissions, its officers, agents, servants, employees and volunteers as an additional insured.
- **Additional Provisions:** The following additional provisions are required.
 - Waiver of Subrogation on all policies, except Workers Compensation and Professional Liability.
 - Additional Insured Clause providing coverage to the extent of loss attributable to the negligence of Contractor.
 - For any claims related to this project, the Contractor's insurance shall be primary to the extent of loss attributable to the negligence of Contractor.
 - Contractor agrees to have and maintain the policies as set forth and described herein.

- The insurance obligations under this Agreement shall be all insurance coverage and/or limits carried by the Contractor.
- Hold Harmless and Indemnification Agreement
- 90 Days' Notice of Cancellation, of Material Change or Non-renewal, including Non-Payment of Premium, which shall be provided by Contractor to PRDE.
- Cancellation of coverage for any reason does not release the Contractor from fulfilling its obligations under the Contract.
- Neither the acceptance of the completed work nor the payment thereof shall release the Contractor from the obligations of the insurance requirements or indemnification agreement
- The insurance companies issuing the policies shall have no recourse against the Commonwealth of Puerto Rico, the Puerto Rico Department of Education, all State Agencies, Municipalities, Boards and Commissions, its officers, agents, servants, employees and volunteers.
- **General Provisions:** The certificates of insurance for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the Agency before work commences and upon any contract renewal or insurance policy renewal thereafter.
 - The Certificate Holder should be listed as follows:
Commonwealth of Puerto Rico, Puerto Rico Department of Education
150 Federico Costa Avenue
Urb. Industrial Tres Monjitas
San Juan, Puerto Rico
RFQ PRDE(ER)-2022-001
 - If the Contractor does not meet the insurance requirements at policy renewal, at the option of PRDE, payment to the Contractor may be withheld until the requirements have been met, or PRDE may pay the renewal premium and withhold such payment from any monies due the Contractor, or the Agreement may be suspended or terminated for cause. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the Agreement.

- All insurance policies must be issued by insurance companies authorized to do business in Puerto Rico, must have a solid financial position and be classified as “A-” or better and a financial strength of VII or higher by the latest version of the Best Key Rating Guide or be accepted by PRDE after proper evaluation.
- Any failure of PRDE to demand or receive proof of insurance coverage shall not constitute a waiver of Contractor’s obligation to obtain the required insurance. The receipt of any certificate does not constitute an agreement by the PRDE that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all contract requirements.
- The Contractor’s failure to carry or document required insurance shall constitute a breach of the Contractor’s agreement with PRDE. Non-fulfillment of the insurance conditions may constitute a violation of the Agreement, and PRDE retains the right to stop services until proper evidence of insurance is provided, or this Agreement may be terminated. PRDE will not pay the Contractor for any services if satisfactory proof of insurance is not provided before the commencement of services.
- Any deductibles or self-insured retentions on referenced insurance coverage must be borne by the Contractor. Any insurance or self-insurance programs maintained by the Department of Education do not contribute with insurance provided by the Contractor under the Agreement.
- All subcontractors are subject to the same insurance requirements of the Contractor unless otherwise specified in the Agreement. The Contractor shall require any subcontractors under the Agreement to maintain comparable insurance naming the Contractor, the PRDE, inclusive of its members, employees and agents, and any other entity designated by PRDE, as Additional Insureds. The Contractor will maintain a file of subcontractor’s insurance certificates evidencing compliance with these requirements.
- The coverage and limits furnished by Contractor in no way limit the Contractor’s liabilities and responsibilities specified within the Agreement or by law. The required insurance is not limited by any limitations expressed in the indemnification language in the Agreement or any limitation placed on the indemnity in the Agreement given as a matter of law.

- The Contractor agrees that insurers waive their rights of subrogation against the PRDE. Further, Contractor and PRDE each hereby waives, for itself and its affiliates, right of recovery, and agrees that no third party shall have any right of recovery by way of subrogation, assignment or otherwise, against the other Party or its affiliates with regard to losses or claims insured against under this Agreement.
- During the term of this Agreement, PRDE shall maintain commercially reasonable amounts of insurance or self-insurance covering both its first party property damage exposure to damage to its buildings, facilities and business personal property as well as third party liability coverage for bodily injury and property damage to third parties caused by PRDE's negligence.

33. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR. As may be applicable, the Contractor represents and warrants that the following shall be true and correct as of the date of the Agreement and shall continue to be true and correct (as may be modified from time to time subject to PRDE's approval) during the Term of the Agreement:

Financially Solvent. The Contractor, and each of its subcontractors, is financially solvent, is able to pay all debts as they mature and is possessed of sufficient working capital to complete all services and perform all obligations under the Contractor's Proposal(s) and this Agreement. The Contractor also warrants that neither it nor any of its subcontractors owe any non-tax debt to the state or federal government.

Contractor should expect to be paid within 90 days of invoice acceptance. For these reasons, Contractor hereby certifies that it has sufficient financial capacity to continue to pay all staff in a timely manner and continue to perform under the Agreement without interruption or delay for at least that period of time. Contractor hereby certifies that it will pay its employees without regard to the timing of payment by PRDE and the Government of Puerto Rico.

34. WORK QUALITY ASSURANCE. The Contractor is responsible for the quality of the work and activities of each of its staff and subcontractors, including without limitation, compliance with the terms of the Agreement. The Contractor shall retain and utilize sufficient resources to assure the most effective and efficient performance of services and shall utilize professionals licensed to practice the applicable profession, as required by law or by the Agreement. The Contractor shall use efficient business administration methods and perform the services in

the best way and in the most expeditious and economical manner consistent with the best interests of PRDE, so as to ensure, among other things, that the services are performed at a reasonable cost to PRDE and that the services performed by other entities or persons in connection with the contract are also efficiently and cost-effectively delivered.

35. CONTINUING OBLIGATION TO PERFORM. In the event of any dispute between Contractor and PRDE, Contractor shall expeditiously and diligently proceed with the performance of all of its obligations under this Agreement with a reservation of all rights and remedies it may have under or pursuant to the contract at law or in equity.

32. ACCESS TO RECORDS. The Contractor agrees to provide the PRDE, the Government of Puerto Rico, the Federal Program Administrators, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the RFP or this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

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

The Contractor agrees to provide the PRDE, the Government of Puerto Rico, Federal Program Administrators, the Comptroller General of the United States or their authorized representatives access to work sites pertaining to the work being completed under the Agreement.

The authorized representative and agents of the PRDE, FEMA, and HUD shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

33. AUDITS. PRDE shall have the right to conduct audits in order to establish if the Contractor is abiding to the terms and conditions contained in this Agreement. The Contractor acknowledges PRDE's right to conduct or commence to conduct said audits throughout the Term and up to the later of: (a) thirty-six (36) months after the termination date of the Agreement or (b) the end of any close-out procedures by PRDE, COR3, the Office of the Comptroller of the Government of Puerto Rico, the Office of the Inspector General, or any other Government of Puerto Rico entity with authority under law or regulation to conduct said audit and/or FEMA. The Contractor shall provide all reasonable required assistance to conduct said audits. PRDE (or the Puerto Rico Government entity conducting the audit) will conduct these audits at its own cost unless the audits disclose that the Contractor has materially breached the terms and conditions contained in this Agreement in which

case the Contractor will afford the expenses generated by these audits. The audits will be conducted during normal business hours and upon previous written notification ten (10) calendar days in advance. The written notice shall contain a list of documents that will be required during the audit. However, during the audit, PRDE or the Government of Puerto Rico entity conducting the audit may request to examine additional documents.

34. RETENTION OF DOCUMENTS. The Contractor will keep the documents generated in connection with this Agreement until the later of: (i) six (6) years after the Term and/or (ii) the end of any close-out procedures by the Government of Puerto Rico and/or FEMA. If an audit has been initiated and a finding remains unsolved at the end of the said period, the documents will be kept until the resolution of said finding. The Contractor recognizes that persons duly authorized by PRDE, the Government of Puerto Rico or federal officials, will have access and right to examine the technical documents generated in relation to the Agreement.

35. TURNOVER OF DOCUMENTS AND RECORDS. Upon demand by PRDE following termination of this Agreement for any reason, or following the expiration of this Agreement by its terms, Contractor shall turn over to PRDE or its designee within ten (10) business days of demand, all materials, supplies, equipment owned, or purchased by PRDE, completed or partially completed work, analyses, data, computer disks, documents, reports and any other information pertaining to this Agreement or the performance or furnishing of services, whether prepared by the Contractor or its subcontractors. The Contractor shall cause its subcontractors to undertake the same obligations agreed to by Contractor under this Agreement.

36. APPLICABLE LAW AND VENUE. This Agreement shall at all times be subject to and interpreted by, and shall be complied with in accordance with the laws of the Government of Puerto Rico. The General Court of Justice in Puerto Rico shall have exclusive jurisdiction to resolve any dispute or controversy regarding the application or interpretation of this Agreement, and the Parties hereto irrevocably submit themselves to the exclusive jurisdiction of the Court of First Instance of the Government of Puerto Rico in San Juan.

37. SURVIVAL. SEVERABILITY. All express representations and warranties made or given in this Agreement shall survive the completion of services by the Contractor or its subcontractors, or the termination of the Agreement for any reason. If any provision or part of the Agreement is held to be unenforceable, the Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects this Agreement shall remain in full force and effect; provided, however, that if any such provision

may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

38. ASSIGNMENT OF AGREEMENT. This Agreement may not be assigned in part or in whole or transferred in any way by the Contractor to any other natural or legal person without the prior written consent of PRDE. However, PRDE's consent to an assignment of this Agreement shall not liberate the Contractor of its obligations hereunder.

39. NON-WAIVER. No delay or omission, or series of delays or omissions, by either Party to exercise any right under this Agreement shall be construed as any type of waiver of any right under the Agreement or the right of the PRDE to declare an Event of Default in the future. The remedies under the terms of the Agreement are not intended to be exclusive any other remedies provided, and each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. The Parties acknowledge that if the PRDE permits Contractor or any of its subcontractors to continue to provide services despite one or more Events of Default, the Contractor is not relieved of any responsibilities, duties or obligations under the Agreement.

40. CERTIFICATION ON INCOME TAX RETURNS: As may be applicable, the Contractor hereby certifies that it has filed all federal and Puerto Rico required income tax returns for the past five (5) years and that all payments thereof have been made. If the Contractor has any income tax related debt with the Government of Puerto Rico the Contractor hereby certifies that it has a payment plan with which terms the Contractor is complying and has provided evidence issued by the Puerto Rico Treasury Department to that effect. Should this certification be untrue or incorrect PRDE will cancel this Agreement immediately and the Contractor will have to reimburse all payments made under the Agreement.

41. TAX OBLIGATIONS. Contractor shall be responsible for complying with applicable federal and local tax laws and regulations. Contractor shall pay all required taxes on amounts paid to Contractor under the Agreement and indemnify and hold the PRDE harmless from any and all taxes, assessments, penalties, and interest asserted against the PRDE by reason of the Contractor's relationship, as an independent contractor, created by the Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold PRDE harmless from any failure of Contractor to comply with applicable workers' compensation laws or applicable federal and local tax laws and regulations. PRDE may offset against the amount

of any fees due to Contractor under the Agreement any amount due to the PRDE from the Contractor as a result of Contractor's failure to promptly pay to PRDE any reimbursement or indemnification arising under this paragraph.

Contractor shall bear all taxes and duties etc. levied or imposed on Contractor under the Agreement on account of services rendered, and payments received from PRDE under this Agreement.

42. PUERTO RICO GOVERNMENTAL REQUIREMENTS. The Contractor has presented a Certificate of Eligibility issued by the Puerto Rico General Services Administration which evidences registration in the Registry of Professional Services Providers (*Registro Unico de Proveedores de Servicios Profesionales*) or the Registry of Bidders (*Registro Unico de Licitadores*). Said document is made to form a part of this Agreement as Appendix F.

In addition, the Contractor shall comply with the following provisions:

- a. Contractor shall ensure that each of its subcontractors rendering services under this Agreement, submits the certifications requested hereunder and provides evidence of compliance..
- b. Pursuant to the Puerto Rico Treasury Department's CC-1300-25-14 Contractor hereby consents to allow withholding of any amount to cover debts owed by the Contractor to the Government of Puerto Rico from any amounts due to the Contractor for under this Agreement.
- c. The term "debt(s)" as used in this article shall mean any payments or taxes owed by the Contractor based on income, sales tax (IVU), property taxes, and other applicable taxes, including any special taxes approved during the Term; all rights, and/or licenses; amounts withheld in the origin from employees of the Contractor based on salaries or personal services; payments of interests, dividends; payments of rents to individuals; taxes owed by non-resident corporations and partnerships; the payment of interests, dividends, and other distributions of earnings to individual residents; unemployment insurance, temporary disability and social security for chauffeurs' payments (whichever apply), owed by the Contractor to the Government of Puerto Rico.

43. ANTI-CORRUPTION PROVISIONS: The Contractor hereby certifies that it has submitted to the Puerto Rico General Services Administration a sworn statement indicating that neither Contractor nor its officers, officials or any member of its board of officials or board of directors, nor any person performing equivalent functions for the Contractor have been convicted or pled guilty for violation of Section 6.8 of the Act 8 of 2017 (Act for the Administration and Transformation of

the Human Resources of the Government of Puerto Rico) nor of any of the crimes included in the Anti-Corruption Code of Puerto Rico, approved pursuant to Act 2 of 2018 and together with Act 1 of January 3, 2012, as amended, also known as the “Organic Act of the Office of Government Ethics of Puerto Rico.

The Contractor acknowledges that the certifications provided under this article are essential conditions of this Agreement. If these certifications are not correct in their entirety or in any of their parts, it shall constitute sufficient cause for PRDE to terminate this Agreement immediately and any applicable penalties may be imposed.

If the status of the Contractor or any of its shareholders, partner, associates, officers, directors, employees or agents with regards to the charges previously mentioned in this article should change at any time during the Term, the Contractor shall notify PRDE in writing immediately. The failure to comply with this responsibility constitutes a violation of this article and may result in penalties or such other remedies applicable under law or regulation.

44. GOVERNMENTAL ETHICS LAW AND CONFLICTS OF INTEREST. The Contractor hereby states and certifies that no public official of the Executive Branch of the Government of Puerto Rico nor any employee of the PRDE has direct or indirect monetary interest in this Agreement. The Contractor understands and agrees that in the performance of its obligations under this Agreement, it owes its complete loyalty to the PRDE and that it does not have interests which are in conflict with those of the PRDE. These conflicts of interests may include, but are not limited to, lawsuits or other legal claims against the PRDE. The Contractor will keep the PRDE informed of any conflicts of interest that may arise with any third parties.

45. PROFESSIONAL ETHICS RULES. The Contractor acknowledges and accepts that, to the extent applicable, it is knowledgeable of the rules of ethics of its profession and assumes responsibility for its own actions. The Contractor also acknowledges that in executing its professional services pursuant to this Agreement it has the obligation to comply with all applicable laws, regulations, and professional rules as to professional ethics, including having no adverse interest to the PRDE in violation of applicable law, regulation, or professional rule. “**Adverse interest**” means representing clients who have or may have interests contrary to PRDE’s interests in violation of the standards of ethics applicable to its profession or industry, or applicable Puerto Rico laws and regulations. This duty includes the continued obligation to disclose to PRDE all circumstances of any

such adverse interest relationships with clients and third persons, and any such adverse interest which could influence the PRDE when executing the Agreement while it is in effect. The Contractor shall be deemed to represent conflicting adverse interests when, on behalf of one client it must support that which it is its duty to oppose to comply with its obligations with another previous, present or potential client, in violation of the standards of ethics applicable to its profession or industry or applicable Puerto Rico laws and regulations. Also, it represents conflicting adverse interests when its conduct is or would be described to be in violation of the standards of ethics applicable to its profession or industry, or in applicable Puerto Rico laws and regulations. The conduct herein described, when engaged in by one of its directors, partners or employees, shall constitute a violation of this prohibition by the Contractor. The Contractor shall endeavor to avoid even the appearance of the existence of any such conflicting adverse interests.

46. IMPROVEMENT OF FAMILY ASSISTANCE AND SUPPORT FOR THE ELDERLY. Contractor certifies and warrants that, to the extent required by applicable law, it is in compliance with Act 168 of August 12, 2000, as amended, also known as the “Act for the Improvement of Family Assistance and for the Support of the Elderly” (“**Act 168-2000**”). In the event that the Contractor is under a court or administrative order directing it to provide financial support or to fulfill any obligation under Act 168-2000, the Contractor further certifies and warrants that it is in compliance with said obligations. It is expressly acknowledged that this certification is an essential condition of this Agreement. If the certification is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for the Contractor to terminate this Agreement by providing the PRDE five (5) days prior written notice of PRDE’s intention to terminate this Agreement.

47. LICENSES, PERMITS; PERSONNEL QUALIFICATIONS AND CONDUCT. The Contractor shall be responsible for procuring and maintaining all necessary authorizations, licenses, and any other permits required by local and federal laws, rules and regulations for the performance of the services under this Agreement. All services shall be rendered by duly qualified personnel who will have all certifications and licenses required by applicable laws and regulations. The Contractor’s personnel, while at the PRDE’s premises, shall at all times wear identification and observe the safety rules and regulations of the PRDE. PRDE may, at its sole discretion, request that any particular employee, staff, or subcontractor of the Contractor be removed from PRDE’s premises and from any work related to this Agreement.

48. CHANGES. The Contractor may, at any time, by written request, request to make changes in the project, work, task or services to be performed within the general

scope of this Agreement. The PRDE's authorized representative shall have the authority to order minor changes in the work not involving adjustment in the contract price or an extension to the Contract term and not inconsistent with the contract. Such changes shall be made by written order, or as otherwise established in writing by the parties. If such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of any services under this Agreement, an equitable adjustment shall be made and this Agreement 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 Agreement unallowable or not allocable under, or outside the scope or not reasonable for the completion of federal grant awards from FEMA, HUD or any other United States federal agency.

49. ENTIRE AGREEMENT; AMENDMENTS. The Agreement, including all attachments and referenced documents, will constitute the entire agreement of the parties with respect to the matters contained therein. No modification or amendment to the contract shall be effective unless such modification or amendment is in writing and signed by both parties.

50. APPENDIXES AND CONTROLLING DOCUMENTS. The following documents are part of this Agreement as if written in full in this document. In the event of any conflict between any term of this Agreement and any appendix incorporated herein by reference, precedence shall be given to the Agreement and thereafter to each appendix in the following order:

- **Appendix A:** RFQ No. PRDE(ER)-2022-001 and any published addenda.
- **Appendix B:** Contractor's SOQ
- **Appendix C:** Scope of Services
- **Appendix D:** Professional Services Fees Schedule
- **Appendix E:** Contractor Certification to the Financial Oversight and Management Board signed by the Contractor's authorized representative.
- **Appendix F:** Certificate of Eligibility issued by the Puerto Rico General Services Administration

51. FEDERAL GRANT TERMS AND CLAUSES. This Agreement may be funded wholly or in part with federal grant funds. Therefore, this Agreement is governed by certain federal terms and conditions applicable to federal grants. This article contains a listing of the required terms and conditions which, upon signature of this Agreement, are acknowledged by the Contractor. Any funds disallowed by any federal grantor for non-compliance with the terms of this Agreement, including the

dispositions of this article, shall be disallowed from fee or compensation to the Contractor.

No Government Obligation to Third Parties. The PRDE and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities of the Contractor, or any other party.

Program Fraud and False or Fraudulent Statements and Related Acts 31 USC 3801 et seq. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, "Administrative Remedies for False Claims and Statements," apply to its actions pertaining to this Agreement. Upon execution of this Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

or other work sites pertaining to the work being completed under the contract.

Equal Employment Opportunity 29 CFR, Part 1630, 41 CFR, Part 60 et seq. During the performance of this Agreement, the Contractor agrees as follows:

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

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The 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) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

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

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

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

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the 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 as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the

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

Government-wide Suspension and Debarment. By signing and submitting the Proposal and this Agreement, the Contractor agrees to comply with the following: (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by PRDE. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to PRDE limited to suspension and/or debarment. (4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contract Work Hours and Safety Standards Act 29 CFR, §5.5(b).

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

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work

in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages – The Contractor shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Lobbying. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient. APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING. Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000). The Contractor certifies, to the best of its knowledge, that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and

the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Davis-Bacon Act. a. 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. The 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.

Contractors are required to 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.

Additionally, contractors are required to pay wages not less than once a week.

Clean Air 42 USC § 7401 et seq. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to PRDE and understands and agrees that the PRDE will, in turn, report each violation as required to assure notification to the entity within the Government of Puerto Rico, FEMA, and the appropriate Environmental Protection Agency Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act Requirements 33 USC 1251 et seq. In the performance of its duties under this Agreement, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor agrees to report each violation to PRDE and understands and agrees that PRDE will, in turn, report each violation as required to assure notification to the appropriate entity within the Government of Puerto Rico, FEMA and the appropriate Environmental Protection Agency Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

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

Procurement of Recovered Materials 42 USC 6962. (1) In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price. (2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act..

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

grounds for termination of this contract and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

Energy Efficiency. The Contractor agrees to comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the Government of Puerto Rico's energy conservation plan issued in compliance with this Act.

Compliance with the United States Office of Management and Budget. The Contractor agrees to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under the Agreement.

Section 3 of the Housing and Urban Development Act of 1968. The work to be performed under the Agreement may be subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

Contractor agrees to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3, as may be applicable.

The Code of Federal Regulations Title 40 Part 31.36(e), "Procurement," requires the Recipient and Prime Contractor to take all necessary affirmative steps to assure that minority-owned and women-owned businesses are afforded contracting opportunities. This policy applies to all contracts, subcontracts and procurements for services (including engineering and legal), supplies, equipment, and construction. The goal of this policy is to make MBE/WBE firms aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. To achieve this goal, the affirmative steps, otherwise known as "six good faith efforts," that must be followed are:

1. Include qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Ensure that small and minority and women's businesses are solicited whenever they are potential sources of products or services to be bid;

3. Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small and minority and women's businesses (i.e. provide alternative bidding scenarios);
4. Establish delivery schedules to encourage participation by small and minority and women businesses (i.e. timing and flexibility);
5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency, U.S. Department of Commerce;
6. Require the Prime Contractor to take affirmative steps as outlined in items one through five above to subcontract with small and minority and women's businesses, if they award subcontracts.

•“Good Faith” Effort Compliance Documentation

The Recipient and Prime Contractors must provide documentation to support a “good faith” effort in the solicitation of MBE and WBE firms only. A Prime Contractor is a business concern that enters into written agreements directly with the Recipient which includes agreements to provide services (including engineering and legal), supplies, equipment and construction. The submission of documentation to support a “good faith” effort in the solicitation of Small Business Enterprise is not required; however, the Recipient and Prime Contractor must maintain this documentation in their files for possible future reference. Documentation may include the following:

1. Copies of announcements/postings in newspapers or other media for specific contracting/subcontracting opportunities. Include language in announcements/postings that MBE/WBE firms are encouraged to bid.
2. Copies of announcements/postings of contracting/subcontracting opportunities in trade publications or minority media that target MBE and/or WBE firms.
3. Documentation of sources used to identify potential MBE/WBE firms.
4. Documentation of contacts with MBE/WBE firms, including the firm name, address, telephone number dates of phone calls, letters and the contract results.
5. Copies of direct solicitation letters sent to all MBE/WBE firms.
6. Copies of the MBE/WBE certification documentation for ALL proposed prime and subcontractor MBE/WBE firms.

7. Documentation showing Prime Contractor has made the six good faith efforts to seek qualified MBE/WBE subcontracts - to the extent they use subcontractors.

Searches should be done of potentially qualified MBW/WBE businesses. From these lists, identify those businesses in your area to directly solicit. Solicit businesses that you would reasonably expect to respond and submit a quote. To ensure the Recipient is given credit for good-faith outreach efforts, the Recipient should document the searches executed and the results of the searches, describe criteria used to determine who on the list(s) to directly solicit (probably area code or distance) and describe any other resources used to seek qualified MBE/WBE firms to solicit. The Recipient must pass the outreach guidance to Prime Contractors because they are likewise required to make good faith outreach efforts when searching of MBE/WBE subcontractors. Prime Contractors are also required to document their outreach efforts just as project owners are.

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

Section 109 of the Housing and Community Development Act of 1964. The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

Interest of the Contractor. The Contractor covenants that it presently has no interest and shall not acquire any interest direct or indirect in the project or any parcels therein or any other interest which would conflict in any manner or degree

with the performance of his services under the Agreement. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

Subcontracts and Debarment. The Contractor shall not enter into any subcontract with any subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the Commonwealth of Puerto Rico.

Compliance with Federal Law, Regulations, and Executive Orders. The Contractor acknowledges that FEMA, HUD, or other federal financial disaster funds will be used to fund work under this Agreement. The Contractor shall comply with all applicable Federal and Government of Puerto Rico laws, regulations, executive orders, policies, procedures, and directives, including, but not limited to, all Federal Cost Principles set forth in 2 C.F.R. Part 200, and all applicable FEMA regulations in 44 C.F.R. Chapter I.

No Conflict with Other Government Contracts. The Contractor represents and warrants that the services to be rendered to the PRDE pursuant to another contract, if any, subscribed with the Government of Puerto Rico are not in conflict with the services to be rendered under the Agreement, neither in fact nor in appearance. The Contractor further represents and warrants that it does not have any contractual relationships with any other parties that would hamper or impede its ability to perform its duties and obligations under this Agreement.

52. NO LEGAL ACTIONS PREVENTING PERFORMANCE. As of the date of this Agreement, the Contractor has no knowledge of any action, suit, proceeding, or material claim or investigation pending or to its knowledge threatened against it in any court, or by or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, would materially affect the Contractor's ability, or the ability of its subcontractor(s) to perform its obligation under the Agreement.

53. PROVISIONS REQUIRED BY LAW DEEMED INSERTED. Each and every provision of law, and clause required by law, regulation, executive order, policy, procedure, directive, federal grant award or agreement, or cooperative agreement with any federal agency to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein. If, through mistake or otherwise, any provision is not inserted, or

is not correctly inserted, then upon the application of either party the Agreement shall be amended to make such insertion or correction.

54. NOTICES. Any required notices under this Agreement shall be sent by business e-mail with receipt verification and/or certified mail or throughout nationally recognized courier service with return receipt requested and addressed to the Parties as follow:

If to PRDE:

By U.S. Mail Services: P.O. Box 190759, San Juan, Puerto Rico, 00919-0759

By Messenger: 150 Federico Acosta Avenue, 2nd Floor, Urb. Industrial Tres Monjitas, Hato Rey, PR.

Attention: Office of Infrastructure and Recovery

If to the Contractor:

55. PUBLICITY. All advertising, press releases, public announcements and public disclosures (including, but not limited to, on social media sites such as Facebook, Twitter, Instagram, etc.) by either Party relating to this Agreement that includes (a) the other Party's name, trade names, trademarks, logos, services marks or trade dress (collectively "**Name**") or (b) language from which the connection of such Name may be inferred or implied, will be coordinated with and subject to approval by both Parties prior to release, which approval shall not be unreasonably withheld or delayed by the other Party.

56. DRAFTING RESPONSIBILITY. This Agreement has been reviewed by each of the signatories hereto and its counsel. There shall be no construction provision against either Party because this Agreement was drafted by either Party and the Parties waive any statute or rule of law to such effect.

57. COUNTERPARTS. This Agreement may be executed in facsimile or other electronic counterparts, each of which will be deemed to be an original and all of which together will be deemed to be one and the same document.

58. AUTHORIZATION TO ENTER INTO AGREEMENT. The Contractor has taken all action necessary for the approval and execution of the Agreement, and that execution by the person signing on behalf of the Contractor is duly authorized by the Contractor and has been made with complete and full authority to commit the Contractor to all terms and conditions of the Agreement which shall constitute valid, binding obligations of the Contractor.

PRDE has taken all actions necessary for the approval and execution of this Agreement, including obtaining all governmental permits required (including the Financial Oversight and Management Board for Puerto Rico and the Puerto Rico Office of Management and Budget), and execution by the person signing on behalf of PRDE is duly authorized and has been made with complete and full authority to commit PRDE to all the terms and conditions of the Agreement, which shall constitute valid, binding obligations of PRDE.

59. REGISTRATION OF AGREEMENT WITH THE OFFICE OF THE COMPTROLLER OF PUERTO RICO. No services will be rendered under this Agreement until it has been registered with the Office of the Comptroller of Puerto Rico.

60. FORCE MAJEURE. Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, fire, communication line failures, power failures, earthquakes, or other disasters.

61. LIMITATIONS OF LIABILITY. Neither Party shall be liable for any lost or prospective profits or any other indirect, consequential, special, incidental, punitive, or other exemplary losses or damages, whether based in contract, warranty, indemnity, negligence, strict liability or other tort or otherwise, regardless of the foreseeability or the cause thereof. Excepting proceeds of insurance with respect to the particular matter up to the limits of the insurance policies required to be maintained by Contractor hereunder, in no event shall Contractor incur liability under this Agreement or otherwise relating to the Services beyond the amount of fees received by Contractor under this Agreement up to the amount received during the prior 3-year period. Contractor shall not be liable for any claims based upon or resulting from any erroneous or incomplete data provided by PRDE or any third party on its behalf.

62. TOTALITY OF THE AGREEMENT. This Agreement and its appendices constitute the totality of the agreement between the Parties with relation to the services which are the object of the same and supersede any prior agreement between the Parties, verbal or written.

IN WITNESS WHEREOF, the Parties have respectively executed this Agreement this day of the month of _____ 2022.

Puerto Rico Department of Education

Contractor's Name

Eliezer Ramos Parés
Secretary
EIN: 660-43-3481

Name:
Title:
EIN: