

GOVERNMENT OF PUERTO RICO
DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES
SAN JUAN, PUERTO RICO

AGENCY: 050

CONTRACT NO. _____

REGISTRATION NO. _____

CONSTRUCTION CONTRACT

APPEARING

AS PARTY OF THE FIRST PART: THE DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES OF PUERTO RICO, a government agency created and authorized to award contracts by virtue of Act No. 23-1972, as amended, known as the Organic Act of the Department of Natural and Environmental Resources, with offices in San Juan, Puerto Rico, herein represented by its **SECRETARY**, Anaïs Rodríguez Vega, of legal age, married, lawyer and resident of San Juan, Puerto Rico; hereinafter referred to as the **“THE DEPARTMENT”**.

AS PARTY OF THE SECOND PART: _____, a corporation organized and authorized to do business under the laws of Puerto Rico (Register no. _____), represented in this act its President, _____, of legal age, _____, _____ by profession, and resident of _____, Puerto Rico, duly authorized by a Corporate Resolution issued on _____; hereinafter referred to as **“THE CONTRACTOR”**.

In consideration of the mutual covenants and agreements set forth below, the parties agree as follows:

STATEMENT

WHEREAS: The **DEPARTMENT**, through its Secretary, has been delegated the authority to administer the natural resources in Puerto Rico under the *Constitution* of the Government of Puerto Rico (Article 6, Section 9); the *Puerto Rico’s Environmental Public Policy Act*, as amended (Act No. 416-2004); the *Organic Act of the Department of Natural and Environmental Resources*, as amended (Act No. 23-1972) which created the **DEPARTMENT**; the *Puerto Rico’s Fisheries Act*, as amended (Act No. 278-1998); the *New Puerto Rico Wildlife Act*, as amended (Act No. 241-1999), and the *Puerto Rico Vulnerable and Endangered Species Management Regulation* (Regulation No. 6766 of February 11, 2004).

WHEREAS: Act. No 23-1972, *supra*, creates and authorizes the **DEPARTMENT**, among other things, to grant contracts for the purpose of achieving its objectives and goals.

WHEREAS: The parties certify that they are qualified and entitles to award this **CONTRACT**.

WHEREAS: The **CONTRACTOR** certifies to have the knowledge, capacity, and experience to provide the services herein described.

WHEREAS: The **DEPARTMENT** will be performing the Project “_____” here after known as **“THE PROJECT”**.

WHEREAS: In accordance with the Regulations for Procurement, the **DEPARTMENT** held Bid Process No. _____ for the construction of the Project.

WHEREAS: After due consideration, the **DEPARTMENT** selected the Contractor for the construction of the Project.

WHEREAS: Consequently, the **DEPARTMENT** and the Contractor wish to enter into this contract, upon the terms and conditions set forth below and in the Contract Documents.

THEREFORE: THE DEPARTMENT and THE CONTRACTOR have agreed to grant the following **CONTRACT** (hereinafter referred to as "**CONTRACT**"), subject to the following:

TERMS AND CONDITIONS

-----ARTICLE 1: GENERAL PROVISIONS

- 1.1. **Definitions.** The following definitions, used in the singular or plural, will also apply to the grammatical variations of the terms defined herein, when these variations have an initial capital letter.
 - 1.1.1 **Contract:** Means this document, its annexes and any extension, renewal, addendum, or amendment agreed in writing by the Parties.
 - 1.1.2 **Day:** Refers to the calendar days within a fiscal year, which begins on July 1 and ends on June 30.
 - 1.1.3 **Start Date:** Date on which this Agreement is executed or signed.
 - 1.1.4 **Services:** These are the activities established and detailed in Article 2 of this Contract, and/or in those future addenda that, if granted in writing, so establish.
 - 1.1.5 **Department:** Department of Natural and Environmental Resources created under the provisions of Act No. 23-1972, as amended.
 - 1.1.6 **ASG:** General Services Administration created under the provisions of Act No. 73-2019, as amended.

Terms used herein which are not defined in this Agreement shall have the meanings assigned to them in the Contract Document entitled "Uniform General Conditions for Public Works Contracts in Puerto Rico" (the "General Conditions"), which is attached hereto and made an integral part hereof.

- 1.2. **Applicable Law, Jurisdiction, and Interpretation.** The Parties agree to comply with all laws, rules, and regulations of the Government of Puerto Rico. This Agreement will be subject to and construed in accordance with the laws of the Government of Puerto Rico. The Parties expressly agree that the Courts of Puerto Rico based in San Juan will be the courts with exclusive jurisdiction to resolve all disputes arising in connection with this Agreement and expressly agree that the Terms and Conditions of this Agreement are independent and separate. The nullity of one or more of them will not affect the validity of the other Terms and Conditions established herein, which they are obliged to comply with. The Parties expressly waive trial by jury in connection with any cause of action relating to this Agreement.
- 1.3. **Waivers.** None of the provisions of the Agreement shall be construed as a waiver by the Parties of said provisions unless the waiver is made in writing.
- 1.4. **Successors and Assignees.** This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The **CONTRACTOR** may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the **DEPARTMENT**.

-----ARTICLE 2: SCOPE OF WORK AND PURPOSE OF THE CONTRACT

- 2.1. The Contractor shall furnish all labor, materials, supervision, tools and equipment required for the Project, as more fully described in the **Attachment A**, the ("Work") in strict accordance with the provisions of the Contract Documents, all of which are hereby made a part hereof. On or before the expiration or termination of the Contract, as part of its obligations thereunder, the Contractor shall deliver to the

DEPARTMENT a true and exact copy of all diagrams, plans, sketches, maps and other documents used in the performance of the Work and for which a third-party copyright or patent right would not be an impediment to such delivery. All the services and works described in this **CONTRACT** will be subject to inspection and supervision of the **DEPARTMENT** and/or its authorized representatives.

- 2.2. **Contract Documents:** The Contract consists of each of the Contract Documents identified in Article 1.1.1.14 of the Uniform General Conditions.
- 2.3. **Contract Attachments:** The Contract Attachments are identified in Article 9 - Attachments.
- 2.4. **Permits and Approvals:** The Contractor shall timely perform all of its obligations mentioned in the General Conditions, including, without limitation, securing and maintaining all Permits and Approvals legally required or imposed in connection with the performance of the Contract and the proper execution and completion of the Work, including compliance with the disposal of solid waste as stated in **Attachment B**.

-----**ARTICLE 3: CONTRACT PRICE, WITHHOLDING, AND LIQUIDATED DAMAGES**

3.1. **Contract Price.**

3.1.1. **Contract Price:** In accordance with the Contract Documents, the **DEPARTMENT** agrees to pay and the Contractor accepts, as full payment for the complete and proper performance of the Contract, the amount of _____ (\$_____) (the "Contract Price"), subject to authorized increase or decrease by means of Change Orders in accordance with Subsection 3.1.3 of this Agreement and in the General Conditions.

3.1.2. **Submission of Applications for Payment.** Prior to the submission of the first Application for Payment by the Contractor, the **DEPARTMENT** Representative and the Contractor shall agree upon a date each month (the "Invoice Submission Date"), which shall be the same date each month, on or prior to which the Contractor shall submit, on a monthly basis, an Application for Payment in accordance with the General Conditions. Except as provided in the succeeding paragraph, in the event the Contractor fails to submit, on or prior to the 15th day following the Invoice Submission Date for any month, an Application for Payment for such month that complies with the requirements of the General Conditions, the amount of such Application for Payment shall be automatically reduced by one percent (1 %) of the amount of such Application for Payment, without further act by the **DEPARTMENT** or the Contractor. Such reduction in the amount of any Application for Payment shall not be recoverable by the Contractor and shall constitute instead an automatic adjustment in the Contract Price binding on the Contractor.

In the event the Contractor fails to submit, on or prior to the 30th day following the Invoice Submission Date for any month, an Application for Payment for such month that complies with the requirements of the General Conditions, the amount of such Application for Payment shall be automatically reduced by two (2%) of the amount of such Application for Payment, without further act by the **DEPARTMENT** or the Contractor. Such reduction in the amount of any Application for Payment (a) shall be in lieu of, and not in addition to, the reduction provided in the preceding paragraph, and (b) shall not be recoverable by the Contractor and shall constitute instead an automatic adjustment in the Contract Price binding on the Contractor.

All Applications for Payments shall be subject to review and approval by the **DEPARTMENT's** Representative and the Contracting Officer in accordance with the General Conditions. Any determination by the **DEPARTMENT's** Representative whether or not to recommend the issuance of a Certificate of Payment, in whole or in part, with respect to any Application for Payment

shall be made in accordance with the General Conditions. Each Application for Payment must include a written certification stating that:

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

3.1.3. Allowances. See Attachment C.

3.1.4. In accordance with the Contract Documents, the amount of retainage with respect to progress payments is five percent (5%) of each partial payments made to the Contractor.

3.2. Withholding

3.2.1. Resident Individual or Entity Contractors. the **DEPARTMENT**, in compliance with Law No. 1 of January 31, 2011, The Internal Revenue Code for a New Puerto Rico, as amended, shall deduct and withhold the applicable percent of amounts payable to the Contractor for services performed under this Contract.

3.3. Liquidated Damages

3.3.1. Measure of Damages. In the event that Final Completion is not achieved on or prior to the Scheduled Final Completion Date (as such date may be adjusted by means of a Change Order in accordance with the Contract Documents), whether or not the Contract is terminated pursuant to the General Conditions, the Contractor acknowledges that (a) the **DEPARTMENT** will suffer losses and damages on account of such delay, and (b) the amount of such losses or damages would be difficult, if not impossible, to ascertain and prove. The liquidated damage amount specified below shall be considered not as a penalty, but as fixed and agreed liquidated damages due to the **DEPARTMENT** from the Contractor by reason of interference with business, increased engineering, inspection and administrative costs to the **DEPARTMENT** and other items which would result in an expenditure of public funds due to the delay in achieving Final Completion on or prior to the Scheduled Final Completion Date. the **DEPARTMENT** and the Contractor, having considered the nature and types of losses or damages that would be suffered by the **DEPARTMENT**, hereby agree for purposes of the Contract that, instead of requiring proof of actual damages, the amount of such damages is fairly and reasonably established as the liquidated amount _____ (\$_____.00) per day for each and every day of delay:

3.3.1.1. In achieving Final Completion on or prior to the Scheduled Final Completion Date (as adjusted in accordance with the Contract Documents); or

3.3.1.2. In the event of termination of the Contract pursuant to the General Conditions and the **DEPARTMENT**'s replacement of the Contractor with another contractor to complete the Work, in achieving Final Completion measured from the Scheduled Final Completion Date. The damages described in Clauses .1 and .2 above are referred to herein as “Liquidated Damages”.

3.3.2. Recovery of Damages. The Contractor agrees to pay to the **DEPARTMENT**, upon demand, the full amount of the Liquidated Damages due under Subsection 3.3.1 and authorizes the **DEPARTMENT** to deduct the amount of such Liquidated Damages due from retainage or any other amounts otherwise due the Contractor under the Contract. Nothing

contained in this Section 3.3 shall be interpreted to limit the damages otherwise recoverable by the **DEPARTMENT** or any other remedies of the **DEPARTMENT** under the Contract Documents, at law or in equity. The amount of Liquidated Damages payable to the **DEPARTMENT** pursuant to this Subsection 3.3.1 shall not be subject to reduction, adjustment or offset for any reason (including, without limitation, that the circumstances giving rise to such Liquidated Damages were caused by any action or inaction of the **DEPARTMENT** other than any action or inaction constituting wilful misconduct or gross negligence on the part of the **DEPARTMENT**).

- 3.4. **Collection Remedies:** All amounts due to PRIFA from the Contractor pursuant to Section 3.3 or any other provisions of the Contract ("Owed Amounts") shall be due and payable on the tenth (10th) day after demand therefore, and, if not paid when due, shall bear interest from such due date at the Repayment Rate on the amount outstanding. The **DEPARTMENT** shall be entitled, at any time, to recover any Owed Amount (plus interest) from the Contractor by reducing any payments due to the Contractor from the **DEPARTMENT** by all or any portion of such Owed Amount (plus interest) and crediting the amount of such reduction (excluding interest for such purpose) against the Owed Amount. If any such offset is made, the **DEPARTMENT** shall so notify the Contractor. The **DEPARTMENT's** rights under this Section 3.4 are in addition to its right to receive direct payment of Owed Amounts (plus interest) from the Contractor.

-----ARTICLE 4: CONTRACT TIME

- 4.1. **Contract Time:** The Contract Time will be effective and enforceable against the parties for a period of no more than _____ (____) **calendar days** from the date of execution of this agreement (the Effective Date). This time period includes all administrative tasks, the project start up, Construction Period, close out and final payment. The Construction Period for this Agreement, as agreed between the Contractor and the **DEPARTMENT**, is for the total of _____ (____) **calendar days** from the issuance of the Notice to Proceed by the **DEPARTMENT**, or, if earlier, until the date on which the construction is completed, and final payment is issued. The Construction Period is included within the Contract Time. The Contract Time may be adjusted in accordance with, and subject to the terms of the Contract Documents.
- 4.2. **Substantial and Final Completion Dates:** The Contractor shall commence the Work promptly upon receipt of the Notice to Proceed issued by the **DEPARTMENT** in accordance with the Contract Documents. The Contractor shall thereafter proceed to carry out the Work diligently in accordance with the schedule requirements set forth in the Contract Documents so as to ensure the substantial completion of the work. Substantial Completion is the stage in the progress of the Work when the work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or use the work or a portion thereof for its intended use. Substantial Completion of the Work shall be achieved not later than the date that is _____ (____) **calendar days** after the date of issuance of the Notice to Proceed (the "Scheduled Substantial Completion Date"), like is described in **Attachment A-1**. The Scheduled Substantial Completion Date shall be subject to adjustment by means of a Change Order in accordance with the Contract Documents. Final Completion of the Work shall be achieved not later than _____ (____) **calendar days** following the date of achievement of Substantial Completion.

The Administrative Closing shall be achieved within _____ (____) **calendar days** from the date of Final Completion. Administrative Closing of the Project is part of the Contract Time and included in the same period of _____ (____) **calendar days**. Time is of the essence with respect to all of the obligations of the Contractor under the Contract. **The failure to complete the work within the time established by this "Scheduled Substantial Completion Date" will subject the Contractor to liquidated damages as set forth in Section 3.3 above.**

-----ARTICLE 5: CONTRACTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1. Organization and Authority of Contractor: The Contractor represents and warrants to the **DEPARTMENT** that:

- 5.1.1. The Contractor is a Corporation duly formed, validly existing and in good standing under the laws of The Government of Puerto Rico of the state of its formation.
- 5.1.2. The Contractor is duly registered before the Puerto Rico Department of State under identification no. _____ and duly authorized to do business in Puerto Rico.
- 5.1.3. The Contractor has full power, authority, and capacity to (a) carry on its business, profession, or craft, (b) execute, deliver and perform its obligations under the Contract and (c) perform the Work in full.
- 5.1.4. The Contractor has taken all necessary corporate or other action to authorize its execution, delivery and performance of its obligations under the Contract.
- 5.1.5. The Contract has been duly executed and delivered by the Contractor and constitutes the legal, valid and binding obligation of the Contractor enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws of general application affecting the rights and remedies of creditors.
- 5.1.6. The Contractor's execution, delivery and performance of its obligations under the Contract does not and will not (a) conflict with, result in a breach of, or constitute a default under, any agreement or other instrument to which the Contractor is a party, or (b) violate any federal, state or local law of The Government of Puerto Rico, regulation, ordinance, judgment, decree or order to or by which the Contractor or any of its assets may be bound or affected (collectively, "Laws of The Government of Puerto Rico and Orders").
- 5.1.7. The Contractor and its employees and agents (a) have complied with all Laws of The Government of Puerto Rico and Orders that relate to or could affect the Contractor's ability to perform the Work, (b) possess all necessary Permits and Approvals necessary to perform the Work, which Permits and Approvals are in full force and effect, and (c) are not aware of any legal, professional or ethical impediment of any kind to performing the Work.

5.2. Contract Documents, Site and Work: The Contractor further represents and warrants to the **DEPARTMENT** that:

- 5.2.1. The Contractor has examined and carefully studied the Contract Documents.
- 5.2.2. The Contractor has visited the Site and is familiar with, and is satisfied as to, the general, local and Site conditions that may affect cost, progress, performance or furnishing of the Work.
- 5.2.3. The Contractor is familiar with, and is satisfied as to, all Laws of The Government of Puerto Rico and Orders that may affect costs, progress, performance or furnishing of the Work.
- 5.2.4. The Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been made available by the **DEPARTMENT**.

- 5.2.5. The Contractor is aware of the general nature of work to be performed by the **DEPARTMENT** and others at the Site that relates to the Work as indicated in the Contract Documents.
- 5.2.6. The Contractor has correlated (a) all information known to the Contractor, (b) all information and observations obtained from visits to the Site, (c) all reports and drawings identified in the Contract Documents, and (d) all additional examinations, investigations, explorations, tests, studies and data, with the Contract Documents.
- 5.2.6.1. The Contractor has given the **DEPARTMENT** written notice of all conflicts, errors, ambiguities or discrepancies that the Contractor has discovered in the Contract Documents,
- 5.2.6.2. The written resolution thereof by the **DEPARTMENT** is acceptable to the Contractor, and
- 5.2.6.3. the Contract Documents are generally sufficient to indicate and convey an understanding of all terms and conditions for performance and furnishing of the Work.
- 5.2.7. The Contractor accepts the trust and confidence established between the Contractor and the **DEPARTMENT** by this Agreement, and agrees to furnish reasonable skill and judgment and to cooperate with each other. The Contractor shall furnish procurement, construction, construction administration and management services, and shall use the Contractor's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the **DEPARTMENT**. The **DEPARTMENT** and the Contractor shall endeavor to promote harmony and cooperation between the **DEPARTMENT** and the Contractor and other persons or entities employed by the **DEPARTMENT** for the Project or the Contractor for the Work.
- 5.2.8. The Contractor agrees that the Contract Price includes any and all home office overhead expense that the Contractor may incur during the Contract duration, whatever the cause of that delay may be. The contractor waives any claim for the office overhead expenses, arising out of or relating to this Contract.
- 5.2.9. The Contractor agrees that the Contract Price includes any and all job site and office overhead that the Contractor may incur, whatever the cause may be. The Contractor waives any type of claim of such job site and office overhead incurred during that period, arising out of or relating to this Contract.
- 5.2.10. The Contractor will keep available all information relevant to the government contract and at no cost to the treasury.
- 5.2.11. The projects developed by the **DEPARTMENT** are works that are paid for with public funds (federal and/or state). In order to be accountable for the work carried out on its projects, the **DEPARTMENT** requires that a representative of the contractor be available, to assist and accompany the **DEPARTMENT** officials, to public and/or private forums that promote a public purpose, including but not limited to official citations from the legislative branch, the judicial branch, the media, among others; to report on matters related to the Scope of Services contracted for the Project.

5.3. Tax Matters

- 5.3.1. **Certifications.** Prior to the execution of the Contract by the Contractor, in accordance with Puerto Rico Treasury Department Tax Circular Letter No. 1300-21-06 dated February 28, 2006, each of the Contractor and, in the event the Contractor is a partnership, each partner of the Contractor who is a resident of Puerto Rico shall have submitted to the **DEPARTMENT**:
- 5.3.1.1. A Certification of Filing of Income Tax Returns (Form SC-6088), a Certificate of Compliance with Filing of Return and Tax Debt for

Government Contractors (Form SC-2628) or, in the event the Contractor is an individual, a Certification of Individuals of Filing of Returns, issued by the Puerto Rico Treasury Department, Area of Internal Revenue or Division of Tax Assistance (as applicable), certifying that the Contractor or such partner, as the case may be, has filed all required income tax returns during the five (5) years prior to the date of the Contract (to obtain such Certification, the Contractor or such partner, as the case may be, must submit a Request for Filing Certification and Copy of Return (Form 330-05) to the Puerto Rico Treasury Department);

- 5.3.1.2. A Certification of Debt (Form SC-6096) issued by the Puerto Rico Treasury Department, Area of Internal Revenue, unless a Certificate of Compliance with Filing of Return and Tax Debt for Government Contractors (Form SC-2628) was submitted by the Contractor or such partner, as the case may be, to the **DEPARTMENT** in accordance with the preceding paragraph;
- 5.3.1.3. A Certification, issued by the Municipal Income Collection Center (the "CRIM"), certifying that the Contractor or such partner, as the case may be, does not owe any real or personal property tax to the CRIM (to obtain such Certification, the Contractor or such partner must use the appropriate form issued by the CRIM); and
- 5.3.1.4. A Certification, issued by the Puerto Rico Labor and Human Resources Department, certifying that the Contractor or such partner, as the case may be, has paid to the Puerto Rico Labor and Human Resources Department all required unemployment security, temporary disability, and chauffeurs social security taxes, or has entered into a payment plan to pay any such taxes which may be delinquent (a copy of which payment plan the Contractor has submitted to the **DEPARTMENT**) and is in full compliance with the terms of such payment plan (to obtain such Certification, the Contractor or such partner must use the appropriate form issued by the Puerto Rico Labor and Human Resources Department).

If the Contractor or any such partner was not required to file any income tax returns during all or part of the five (5) year period referred to above for any of the reasons provided by the Puerto Rico Tax Code, the Contractor or such partner, as the case may be, shall have presented, prior to the execution of the Contract by the Contractor, a sworn statement, subject to the penalty of perjury (as defined in the Puerto Rico Penal Code of 1974), reciting the reason for which the Contractor or such partner was not required to file income tax returns.

If any of the above certifications shows a tax debt, and the Contractor or such partner, as the case may be, has filed a petition to review or adjust such debt, the Contractor or such partner shall have so certified upon execution of the Contract by the Contractor. If the review or adjustment is denied by the corresponding agency, the Contractor or such partner shall immediately provide the **DEPARTMENT** evidence of the payment of such debt, and shall submit to the **DEPARTMENT** a certification to that effect from the Puerto Rico Treasury Department, Department of Labor and Human Resources or CRIM, as the case may be; otherwise, the Contractor or such partner agrees to pay such debt from the amounts to be paid under the Contract, by PRIFA withholding the corresponding amount.

- 5.3.2. **Representations and Warranties.** Each of the Contractor and, in the event the Contractor is a partnership, each partner of the Contractor who is a

resident of Puerto Rico represents and warrants to the **DEPARTMENT**, as of the date of execution of the Contract by the Contractor, that each of them:

- 5.3.2.1. Has filed all required income tax returns with the Puerto Rico Treasury Department during the five (5) years prior to the date of the Contract and does not owe any income taxes to Puerto Rico, or has entered into a payment plan to pay any delinquent income taxes (a copy of which payment plan the Contractor has submitted to the **DEPARTMENT**) and is in full compliance with the terms of such payment plan; and
- 5.3.2.2. Has paid any required property taxes, unemployment security, temporary disability and chauffeurs social security taxes, and any other "tax debt" as defined in the aforementioned Puerto Rico Treasury Department Tax Circular Letter No. 1300-21-06, or has entered into a payment plan to pay any such tax debt which may be delinquent (a copy of which payment plan the Contractor has submitted to the **DEPARTMENT**) and is in full compliance with the terms of such payment plan. Each submittal of an Application for Payment shall constitute a reaffirmation of the representations and warranties contained in this Subsection 5.3.2 as of the date of such Application for Payment.
- 5.3.3. In case of professional services to be provided through this Contract a special contribution equivalent to 1.5% of the total amount of such portion of the Contract, will be imposed to the Contractor, which will be allocated to the General Fund; in accordance with Law 48-2013, as amended, and the Puerto Rico Secretary of the Treasury Circular Letters 1300-03-14, 1300-06-14, 1300-09-14, 1300-07-21.
- 5.3.4. **Covenants.** On an annual basis on each anniversary of the date of execution of the Contract by the Contractor, the Contractor and, in the event the Contractor is a partnership, each partner of the Contractor who is a resident of Puerto Rico shall (a) submit to the **DEPARTMENT** the certifications or other documentation required under Subsection 5.3.1, and (b) expressly confirm the representations and warranties contained in Subsection 5.3.2.

The Contractor and each such partner hereby covenants that, during the term of the Contract, none of them shall (a) become delinquent in the payment of any taxes to Puerto Rico, its subdivisions or municipalities, or (b) fail to fully comply with the terms of any payment plan with respect to delinquent taxes to which it may be subject.

In the event the Contractor or any such partner has filed all income tax returns but owes any taxes, the Contractor agrees to pay such taxes from the amounts to be paid under the Contract, by the **DEPARTMENT** withholding the corresponding amount. The Contractor shall require each Subcontractor to agree to in writing, and make and perform the representations, warranties and covenants contained in this Section 5.3. The Contractor shall furnish promptly such written agreements to the **DEPARTMENT**.

Each of the Contractor and, in the event the Contractor is a partnership, each partner of the Contractor who is a resident of Puerto Rico expressly agrees and acknowledges that (a) the representations, warranties and covenants contained in this Section 5.3 are essential conditions to the Contract, and (b) if the **DEPARTMENT** determines that any of such representations, warranties or covenants are not true and correct or performed, in whole or in part, the **DEPARTMENT** shall have sufficient cause to rescind, cancel or terminate the Contract. If such rescission, cancellation or termination occurs, the Contractor shall reimburse to the

DEPARTMENT all payments received by the Contractor under the Contract.

- 5.4. **Warranty on Materials, Parts and Equipment:** Without limitation to the warranties set forth in the General Conditions, the Contractor warrants that all materials, parts and equipment used and services performed under the Contract (a) comply in all respects with the terms and conditions of the Contract, (b) are free from any and all latent and patent defects in design, materials and workmanship, and (c) are suitable and adequate for the purposes for which they were designed and for such other purposes, if any, as are specified in the Contract.

The warranty period will begin on the date on which PRIFA accepts the service and/or installation of the material, part or equipment and will continue for a period of one (1) year following Substantial Completion (the "Minimum Warranty Period") or for such longer period as the manufacturer or supplier of such material, part or equipment may provide in a separate warranty or as otherwise provided by law The Government of Puerto Rico. The Contractor shall, upon written notice from the **DEPARTMENT** during the applicable warranty period, fully remedy, free of any cost or expense to the **DEPARTMENT**, such defects or deficiencies as may exist with respect to any material, part, or equipment used or any service performed under the Contract, whether or not such remedy is commenced or completed prior to the expiration of the applicable warranty period; provided that, in the case of a material, part or equipment, such material, part or equipment has been properly stored, maintained, and operated by the **DEPARTMENT** within the specified requirements for such material, part or equipment. Without limiting the generality of the foregoing, the Contractor shall, at its own cost and expense, repair or replace, transport-in from the Contractor's facilities to the Site, and transport-out from the Site to the Contractor's facilities any and all materials, parts, and/or equipment necessary to fully remedy all defects or deficiencies subject to the foregoing warranties or otherwise to enable the Contractor to fully comply with its obligations under this Section 5.4. The Performance Bond shall serve as a guarantee for the Contractor's obligations under this Section 5.4 during the Minimum Warranty Period, and shall cover any failure, in whole or in part, by the Contractor to properly perform any of such obligations. With respect to any material, part or equipment procured by the Contractor from the manufacturer thereof or supplier, the Contractor shall obtain from such manufacturer or supplier, and, upon acceptance of such material, part or equipment by the **DEPARTMENT**, legally tender or assign to the **DEPARTMENT** in full, a written warranty from such manufacturer or supplier with respect to such material, part or equipment at least as broad in scope and duration as the warranties contained in this Section 5.4.

- 5.5. **Conflicts of Interest:** The Contractor represents and warrants that it does not receive any payment or benefit of any kind for services rendered regularly in connection with an appointment of the Contractor to a governmental agency, body, public corporation or municipality of Puerto Rico.

The Contractor also represents and warrants that it may have entered into contracts with other governmental agencies or bodies, but that such circumstances do not constitute a conflict of interest for the Contractor.

The Contractor agrees and acknowledges it has a duty of complete loyalty to the **DEPARTMENT** in rendering services under the Contract, which duty includes not having any interests adverse to the **DEPARTMENT**. Adverse interests include representation of clients with interests in opposition to those of the **DEPARTMENT**. Also, the Contractor shall have the continuous obligation to disclose to the **DEPARTMENT** all information and circumstances regarding the Contractor's relations with clients and third parties and any interest which could influence the **DEPARTMENT** in exercising its rights or in enforcing the Contractor's obligations under the Contract during or after the term of the Contract.

The Contractor agrees and acknowledges that it has a conflict of interest when (i) it is required to argue on behalf of a client a position which it has a duty to oppose in order to comply with its obligations to a prior, present or potential client other

than the **DEPARTMENT**, or (ii) its conduct is described as such in the canons of ethics applicable to the Contractor and its personnel, or in the laws of The Government of Puerto Rico, regulations or ordinances of Puerto Rico. If, in the event the Contractor is a partnership, corporation or other entity, any of the partners, directors or employees of the Contractor engages in any conduct described in this Section 5.5, such conduct shall constitute a violation of the restrictions set forth herein.

The Contractor shall avoid even the appearance of a conflict of interest. The Contractor acknowledges that the Secretary of the **DEPARTMENT** shall have the power to intervene in the acts of the Contractor or any Subcontractor or Subsubcontractor and/or their respective agents and employees for the purpose of enforcing the restrictions set forth in this Section 5.5. In the event that the Secretary of the **DEPARTMENT** should discover the existence of adverse interests with respect to the Contractor, the Secretary shall inform the Contractor, in writing, of the **DEPARTMENT**'s intention to terminate the Contract within a period of thirty (30) days. During such period, the Contractor may request a meeting with the Secretary to present its arguments regarding the alleged conflict of interest, which meeting shall be granted by the **DEPARTMENT** in every case. In the event that the Contractor does not request such a meeting during the specified thirty (30) day period, or the controversy is not satisfactorily resolved during the meeting, the Contract shall be terminated by the **DEPARTMENT**.

The Contractor hereby warrants that no officer, employee, advisor or Contractor of the **DEPARTMENT** nor any member of the family unit, has any direct or indirect economic interest in this Contract and that no officer, employee, advisor or Contractor of the executive branch of The Government of Puerto Rico nor any member of their family unit has any interest and/or participation in the economic benefits or earnings related to this Contract.

5.6. **Child Support/ Family Support:** In the event the Contractor is an individual resident of Puerto Rico or a sole proprietor or partnership, the Contractor or each partner of the Contractor who is a resident of Puerto Rico, represents and warrants that the Contractor or such partner, as the case may be, has made all required child support payments and does not owe any child support, or has entered into a payment plan to pay any delinquent child support and is in full compliance with the terms of such payment plan. If the Contractor is a Corporation that has received one or more court orders requiring the Corporation to retain child support from its employee's salary, it certifies that it has made such retentions.

5.7. In the same way, it certifies and guarantees that at the moment it is not in breach with the law 168-2000, "Law for the Strengthening of the Family Support and Sustenance of Elderly People". In the case of legal persons, it certifies that it complies with the orders issued to its name as employer to withhold from the salaries of its employees the payments of alimony, by means of a certification of state of fulfillment.

If the Contractor is subject to a judicial or administrative order under the provisions of Law 168-2000, he must certify that he is in compliance with the payment of the financial contribution or with the obligation imposed. It is expressly recognized that this certification is an essential condition of the contract. If this certification is not correct in whole or in part, this constitutes sufficient cause for the **DEPARTMENT** to void the contract, and the Consultant will have to reimburse the **DEPARTMENT** for any amount of money received so far. If the circumstances of the Consultant related to the payment of alimony change at any time during the term of this agreement, it should be reported to the **DEPARTMENT** immediately. In such a case, the Consultant will submit a compliance certification or affidavit for the purpose that you are fulfilling the responsibility of providing alimony to minors or elderly persons. Failure to comply with this obligation constitutes a violation of this clause and will result in the aforementioned remedies.

5.8. At the time of execution of this Contract, the Contractor certifies that it is not a public corporation with shares exchanged on a duly regulated stock exchange. The

Contractor has completed the Certification of Legal Persons, prior to the Contract execution, and has been provided to the **DEPARTMENT**.

- 5.9. If required, the necessary waiver from any government entity that has been obtained by the Contractor, will be part of the contract file.

-----ARTICLE 6: CONDITIONS PRECEDENT:

- 6.1. **Conditions Precedent:** the **DEPARTMENT** shall have no obligation to issue the Notice to Proceed until each of the condition's precedent set forth in Subsections 6.1.1 through 6.1.5 below has been satisfied or waived by the **DEPARTMENT** in its sole discretion.

6.1.1. **Insurance.** All insurance required to be carried by or on behalf of the Contractor pursuant to the Contract shall be in full force and effect, in accordance with the provisions of the General Conditions, and originals or certified copies of all required insurance certificates or policies shall have been provided to the **DEPARTMENT** in accordance with the provisions set forth in the General Conditions.

6.1.2. **Bonds.** The **DEPARTMENT** shall have received duly authorized and executed originals of the Performance Bond and the Payment Bond, in the forms attached hereto, respectively, as **Attachment D** to this Agreement, in accordance with the General Conditions.

6.1.3. **Representations and Warranties.** The representations and warranties of the Contractor set forth in the Contract Documents, including, without limitation, those set forth in Article 5 of this Agreement, shall be true and correct in all material respects as of the date hereof and as of the date of issuance of the Notice to Proceed.

6.1.4. **No Litigation.** There shall be no pending or threatened action, suit, investigation or proceeding (or basis therefore), at law of The Government of Puerto Rico or in equity, before or by any arbitration panel, court or governmental agency or body that (a) challenges, or might challenge, directly or indirectly, the selection of the Contractor to perform the Contract or the authorization, execution, delivery, validity or enforceability of the Contract, or (b) materially adversely affects the Contractor's ability to perform the Contract.

6.1.5. **Tax Certifications.** The Contractor shall have complied with the requirements of Subsection 5.3.1.

-----ARTICLE 7: MISCELLANEOUS:

- 7.1. **Entire Agreement:** The Contract constitutes the entire integrated agreement of and between the parties, and any and all prior or contemporaneous promises, representations, agreements or understandings, whether oral or written, between or of the parties are expressly merged into the Contract and superseded hereby.

- 7.2. **Severability:** If any provision of the Contract is declared or determined to be invalid or unenforceable by a court of competent jurisdiction, such declaration or determination shall not affect or impair the validity or enforceability of the remaining provisions of the Contract, and the parties hereto agree to comply with such remaining provisions.

- 7.3. **Notices:** All notices and communications to the **DEPARTMENT**, the **DEPARTMENT's** Representative and the Contractor, including, without limitation, all orders, consents and approvals, shall be in writing, shall be deemed to have been received if delivered personally, or sent by registered or certified United States mail, return receipt requested, or by private express courier or mail service providing evidence of receipt, to the addresses set forth below or to such other

address as the addressee shall have indicated by prior written notice to the person or entity giving notice:

If to the **DEPARTMENT**:
Lcda. Anaïs Rodríguez Vega, Secretary
PO Box 366147
San Juan, Puerto Rico 00936

If to the Contractor

7.4. **No Waiver or Novation:** The failure of the **DEPARTMENT** or the **DEPARTMENT**'s Representative to enforce any provision of the Contract or any right or remedy available at law of The Government of Puerto Rico or in equity shall not be construed to be a waiver of any such provision, right or remedy, or to affect in any way the validity of the Contract or any part thereof.

To be effective, a waiver of any right of the **DEPARTMENT** under the Contract must be express, in writing and specifically addressed to the Contractor. the **DEPARTMENT** and the Contractor expressly agree that no amendment of the Contract or Change Order shall be understood or construed as a contractual novation of the Contract, unless both parties agree to the contrary specifically in writing. The foregoing provision shall be equally applicable in such other cases where the **DEPARTMENT** grants the Contractor an extension of time for compliance with any of the Contractor's obligations under the Contract, or where the **DEPARTMENT** fails to make any claim or demand with respect to any of its rights or remedies under the Contract.

Under no circumstances, except where the **DEPARTMENT** specifically agrees in writing, shall the **DEPARTMENT**'s rights under the Contract be understood or construed to have been waived by any amendment, Change Order or extension of time or by reason of any failure to make any claim or demand with respect to any of the **DEPARTMENT**'s rights or remedies under the Contract, even where the **DEPARTMENT** has agreed, as provided under the previous paragraph, that any of these circumstances shall constitute a contractual novation, and the **DEPARTMENT** hereby expressly reserves its right to enforce or make any claim with respect to its rights and obligations under the Contract and to require and insist on the Contractor's compliance with any and all of its obligations under the Contract as if such amendment, Change Order, extension of time, failure to make a claim or demand, or novation, if any, had not occurred or been made.

7.5. **Disclaimer of Liability and Indemnification**

7.5.1. **Disclaimer of Liability.** In no event shall the **DEPARTMENT** be liable to the Contractor except for obligations expressly assumed by the **DEPARTMENT** under the Contract Documents, nor shall the **DEPARTMENT** ever be liable to the Contractor for indirect, special, incidental or consequential damages resulting from, arising out of, or in connection with, the Work, the Contract, any rescission, cancellation, termination or suspension of the Contract or any acceleration of the expiration of the Contract. No representative of the **DEPARTMENT** nor any officer, agent, consultant or employee of the **DEPARTMENT** (including, without limitation, the **DEPARTMENT**'s Representative) shall be charged personally by the Contractor with any liability or be held liable to it under any term or provision of the Contract, for any breach of the Contract by the **DEPARTMENT**, or otherwise in connection with performance under the Contract.

7.5.2. **Indemnification.** Without limiting the scope of the indemnification clauses set forth in the General Conditions, the Contractor agrees to save and hold harmless, and to indemnify the **DEPARTMENT** against any and all

expenses and costs of any nature (including, without limitation, attorneys' fees and costs) incurred by the **DEPARTMENT** in connection with any claim made by any person for personal injuries, including, without limitation, death, or for property damage caused by the Contractor, by act or omission, in the performance or non-performance of its obligations under the Contract.

7.6. Governing Law and Jurisdiction

- 7.6.1. **Governing Law.** The Contract shall be governed by, and construed in accordance with, the laws of Puerto Rico. The parties hereto expressly agree that their respective liability for damages under the Contract shall be governed by the Puerto Rico Civil Code and related case law of The Government of Puerto Rico as determined by the Supreme Court of The Government of Puerto Rico.
- 7.6.2. **Jurisdiction and Venue.** Each of the parties hereto expressly and irrevocably (a) agrees that the state courts of The Government of Puerto Rico shall have sole and exclusive jurisdiction to settle any dispute or controversy between the parties regarding the terms and conditions of the Contract or any other matter involving the Project, (b) submits itself and its assets to the jurisdiction of such courts, (c) waives any objection or defense that such courts lack in personal jurisdiction over such party, (d) waives any objection or defense which it may have at any time to venue residing in such courts with respect to any proceedings involving the Contract or the Project, (e) waives any claim that any proceedings involving the Contract or the Project have been brought in an inconvenient forum, and (f) agrees not to seek redress or institute any action with respect to the Contract or the Project in any court or other forum, whether federal or state, other than in the state courts of The Government of Puerto Rico. Nothing contained in this Section shall preclude the parties from enforcing in any jurisdiction any judgment, award or order obtained in the state courts of The Government of Puerto Rico.
- 7.6.3. **Change of Law.** Any change in law of The Government of Puerto Rico during the term of the Contract, including, without limitation, any changes in applicable tax law, that causes an increase in the Construction costs in supplying any products or services to the **DEPARTMENT** shall be the Construction responsibility, and the **DEPARTMENT** shall not be obligated to make any additional payments or to pay any additional sums beyond the Contract Price.
- 7.6.4. **No Litigation.** There shall be no pending or threatened action, suit, investigation or proceeding (or basis therefore), at law or in equity, before or by any arbitration panel, court or governmental agency or body that (a) challenges, or might challenge, directly or indirectly, the selection of the Construction to perform the Contract or the authorization, execution, delivery, validity or enforceability of the Contract, or (b) materially adversely affects the Construction ability to perform the Contract.
- 7.6.5. **Mediation:** In the event a dispute shall arise between the parties to this contract, the parties agree to participate in mediation. The parties agree to share equally in the costs of the mediation. The mediation shall be administered by a mediator designated by both parties. Mediation involves each side of a dispute sitting down with an impartial person, the mediator, to attempt to reach a voluntary settlement. Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties. In the event that the Construction disagrees with any such administrative determination, then the Construction may pursue any available legal remedies arising out of such mediation in the General Court of Justice of The Government of Puerto Rico, Court of First Instance of San Juan.

- 7.7. **Force Majeure:** Each of the parties hereto shall be excused from performing any obligation hereunder, and shall not be liable in damages or otherwise for such non-performance, if and only to the extent that such party shall be unable to perform or is prevented from performing such obligation by an event constituting a Force Majeure. Force Majeure may include, but shall not be limited to, the following: acts of God, third party industrial disturbances, acts of the public enemy, war, blockages, boycotts, riots, insurrections, epidemics, earthquakes, hurricanes, major floods, civil disturbances, lockouts, fires, explosions, and interruptions of services due to any act or failure to act of any governmental instrumentality; provided that (a) each of these events, or any other claimed as a Force Majeure, and/or its effects, are beyond the reasonable control and are not caused by the fault or negligence of the party claiming the occurrence of a Force Majeure or of its employees, agents, affiliated companies or subcontractors, (b) in the case of natural phenomena, are beyond normal intensity at the Site and are not ordinarily occurring, and (c) such party, within ten (10) days after the occurrence of the alleged Force Majeure, gives the other party written notice describing the particulars of the occurrence and its estimated duration. The burden of proof as to whether a Force Majeure has occurred shall be on the party claiming the occurrence of the Force Majeure.
- 7.8. **Independent Contractor:** The Contractor shall be considered and shall act solely as an independent Contractor for all material purposes under the Contract, and nothing in the Contract shall be construed to create an agency, partnership, or joint-venture relationship between the Contractor and the **DEPARTMENT** or between any members of the Contractor and the **DEPARTMENT**. All Subcontractors, Sub-subcontractors or other persons engaged or contracted by the Contractor for the performance of the Contractor's obligations under the Contract and all personnel of any of the foregoing involved in any aspect of performing the Work shall be considered employees or agents of the Contractor or such Subcontractor or Sub-subcontractor (and not as employees or agents of the **DEPARTMENT**), and shall be subject to the direction, supervision and control of the Contractor or such Subcontractor or Sub-subcontractor (and not the **DEPARTMENT**), subject to the terms and conditions of the Contract Documents.
- 7.9. **No Contractual Relationship:** The Contract Documents shall not be construed to create a contractual relationship of any kind (a) between the **DEPARTMENT's** Representative and the Contractor, (b) between the **DEPARTMENT** and any Subcontractor, or (c) between any persons or entities other than the **DEPARTMENT** and the Contractor, except as specifically set forth in the Contract. The Contractor understands and agrees that the Engineer's obligations are to the **DEPARTMENT** and, by performing those obligations properly, the Engineer may increase the burdens and expenses of the Contractor, its Subcontractors and Sub-subcontractors, or sureties of any of them.
- 7.10. **Assignment:** The Contractor shall not assign, delegate or subcontract any of its rights and obligations under the Contract, except with the prior written authorization of the **DEPARTMENT**. The request for such authorization shall contain a list of all subcontractors or assignees. The Awarded Contractor shall include all of the provisions of this agreement in every subcontract so that such provisions will be binding upon each of its subcontractors or assignees.
- 7.11. The Contractor shall be responsible to Owner for the acts and omissions of all of its Subcontractors, and Sub-Subcontractors, their respective agents and employees and/ or all other persons performing any of the Work or supplying any materials or equipment for the Work under their respective contracts with the Contractor. The Contractor shall rebuild, repair, restore and make good any damages to any portion of the Work that any subcontractor or assignee may cause, at its own cost and expense, before the final completion and acceptance of the Project.
- 7.12. **Amendments:** To the extent permitted by law of The Government of Puerto Rico, the terms of the Contract shall not be altered, modified, supplemented or amended

in any manner whatsoever, except by a written instrument duly executed by the **DEPARTMENT** and the Contractor.

- 7.13. **Captions:** The captions or headings in any Contract Document are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of such Contract Document.
- 7.14. **Execution in Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.
- 7.15. **Dissemination of Information:** Certain of the **DEPARTMENT's** confidential or proprietary information may come into the Contractor's possession in the course of performing its obligations under the Contract. The Contractor shall hold such information and all other information that it develops or obtains from the **DEPARTMENT** or otherwise regarding the Project in confidence, shall not use such information other than for performance of its obligations under the Contract, and shall require its employees, agents, Subcontractors and Sub-subcontractors to be bound to the **DEPARTMENT** by the same obligation of confidentiality. The **DEPARTMENT** reserves the right to release all information to the public and to the media relating to the Contract and the Work. The Contractor agrees, and to cause its employees, agents, Subcontractors and Subsubcontractors, to refer all inquiries about the Contract or the Work to the **DEPARTMENT**.
- 7.16. **Cancellation and Termination:** Notwithstanding the provisions mentioned in the General Conditions, in the event of a substantial or material breach of the Contract by the Contractor or an emergency or other circumstance requiring the **DEPARTMENT** to take immediate action to protect its interests, limit its liability or prevent injury to any person or damage to any property, the **DEPARTMENT** shall have the right to rescind, cancel, terminate or suspend the Contract immediately and without prior notice to the Contractor. The exercise by the **DEPARTMENT** of its right to rescind, cancel, terminate, or suspend the Contract shall not be construed as a waiver by the **DEPARTMENT** of any right or remedy it may have under the Contract or at law of The Government of Puerto Rico for any delay or breach by the Contractor in the performance of its obligations under the Contract.
 - 7.16.1. Shall constitute sufficient cause to terminate this Agreement immediately, without notice, in the following cases: 1) negligence or neglect of its duties; or 2) misconduct on or off the **DEPARTMENT** facilities by the Contractor; 3) If the Contractor is convicted of the offenses referred to in Article 3.4 of the Code of Ethics, Law 2-2018, as amended; or (4) If the **DEPARTMENT** becomes aware that the Contractor including natural or legal personnel or any president, vice president, director, executive director, or member of a board of officers or board of directors, or persons performing equivalent functions for the legal entity, are ineligible to obtain a contract for professional services in the public service under the provisions of Section 6.8 of Law 8-2017, as amended, known as: "Law for the Administration and Transformation of Human Resources in the Government of Puerto Rico".
- 7.17. Executive Order 2021-008 requires the use of technology, to prevent the government from requesting information from the citizen in its possession. this will result in a reduction in the cost of having to request this information from a number of agencies to complete different procedures. In accordance with the Executive Order, the Office of Innovation and Technology Services (PRITS) created the IDEAL Platform, a system of interoperability among the agencies of the Government of Puerto Rico, for government procedures or procedures including contracting, permits, requests for assistance and services. Through the IDEAL Platform, and with the consent of the Contractor, the **DEPARTMENT** can access the required certifications, available in this system. However, it shall be the responsibility of the Contractor to provide certifications that are not available on said Platform. If the Contractor does not issue its consent to the the

DEPARTMENT, for the use of the IDEAL Platform, the required certifications will be provided under its responsibility.

7.18. At the time of signing this Contract, the Contractor maintains a contractual relationship in force with the following entities of the Government of Puerto Rico, such as:

Contract Number	Entity
1.	
2.	
3.	
4.	
5.	
6.	

7.19. The Contractor certifies that the above are all entities of the Government of Puerto Rico with which it has a contractual relationship. In addition, the Contractor acknowledges and agrees that failure to mention any government entity with which he has an existing contractual relationship may result in termination of this contract as required by the **DEPARTMENT**. If the Contractor should obtain additional contracts from other instrumentalities and/or government agencies of Puerto Rico, had to inform the **DEPARTMENT** of such contracts immediately. The Contractor certifies that any contract will not affect the services provided to the the **DEPARTMENT**.

7.20. It shall be the responsibility of the Contractor to certify by affidavit before a Notary Public whether the natural or legal person or any president, vice president, director, executive director, or member of a board of officers or board of directors, or persons performing equivalent functions for the legal person, has been convicted or pleaded guilty to the offenses listed in Section 6.8 of Law 8-2017, as amended, known as: "Law for the Administration and Transformation of Human Resources in the Government of Puerto Rico".

-----ARTICLE 8: CRIMINAL CHARGES CLAUSE

8.1. **Certification:** The Contractor certifies and guarantees that at the execution of this Contract, the Contractor, its partners, associates, officers, employees and agents have not been convicted, or that it has no knowledge of being the subject of any investigation in either a civil or a criminal procedure in a state or federal court for criminal charges related to the public treasury, the public trust, a public function, or a fault that involves public funds or property. It is expressly acknowledged that this certification is an essential condition of this Contract. If the certification is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for the **DEPARTMENT** to terminate this Contract immediately, without prior notice, and the Contractor will have to reimburse the **DEPARTMENT** any amount of money received under this Contract.

If the status of the Contractor with regards to the charges previously mentioned changes at any time during the term of the Contract, it shall notify the **DEPARTMENT** immediately. Failure to comply with this responsibility constitutes a violation of this clause and shall result in the remedies mentioned in the previous paragraph.

-----ARTICLE 9: ATTACHMENTS

9.1. **Incorporation:** This Agreement includes the **Attachments** listed below, each of which is incorporated hereby and made a part of the Contract. Those **Attachments** not referred to in this Agreement are referred to in the General Conditions.

- 9.1.1. **Attachment A** - Scope of Work
- 9.1.2. **Attachment B** - Contractor's Proposal Form of **December 22, 2022**
- 9.1.3. **Attachment C** - Solids Waste Disposal
- 9.1.4. **Attachment D** - Bonds
- 9.1.5. **Attachment E** - Cancelled Stamps

- 9.1.6. **Attachment F** - Other Documents
- 9.1.7. **Attachment G** - Bid Documents (CD)
- 9.1.8. **Attachment H** - Allowances
- 9.1.9. **Attachment I** - Certification Regarding Lobbying
- 9.1.10. **Attachment J** - Federal Regulations and Provisions
- 9.1.11. **Attachment K** - OSHA's COVID-19 Guidance for the Construction Workforce
- 9.1.12. **Attachment L** - Contractor Certification Requirements
- 9.1.13. **Attachment M** Executive Order OE-2022-014

-----ARTICLE 10: “CÓDIGO ANTICORRUPCIÓN PARA EL NUEVO PUERTO RICO”

- 10.1. The Contractor shall duly comply with the dispositions of Law 2-2018 “Código para el Nuevo Puerto Rico”. Therefore, it requires and provides that any natural or legal person wishing to do business with The Government of Puerto Rico certifies under oath that has not been convicted or pleaded guilty to the offenses according to Article 3.3 of that Act.
- 10.2. The Contractor certifies and warrants that, at the time of entering into this Agreement, it has not been convicted, He has pleaded guilty or is aware that he is the subject of investigation in a civil or criminal proceeding in the federal or state forum for events relating to any of the crimes listed in Law 2 of 4 January 2018. The corresponding affidavit is included in **Attachment G**. The Contractor acknowledges his duty to continuously report, during the term of the contract, any fact that relates to the commission of an offense, mentioned in Art. 3 .4 of the Code of Ethics of Law 2-2018, as amended.
- 10.3. The **DEPARTMENT** notes and the Contractor acknowledges that both parties are subject to the provisions of the Government Ethics Act and the Anti-Corruption Code for the New Puerto Rico of Law 2-2018, as amended, and of the federal government, documents that they undertake to know and to comply fully and of which the **DEPARTMENT** makes available to the Contractor.

-----ARTICLE 11: LAW NUMBER 85-2002:

- 11.1. **Eligibility Certificate:** In accordance with the dispositions of the Law Number 85 of June 18, 2002, the contractor is submitting the Eligibility Certificate from the “Administración de Servicios Generales” No. _____.

-----ARTICLE 12: ACT NUMBER 14-2004:

- 11.2. The Contractor shall comply with Act Number 14 of January 8th, 2004, which provides for the investment in articles manufactured and produced locally.

-----ARTICLE 13: BUDGET CLAUSE:

- 13.1. **Budget Clause:** The services rendered under this agreement are budgeted and will be paid Account No. _____.

-----ARTICLE 14: REQUIREMENT OF PRESENTATION:

- 14.1. None of the services rendered under this Contract can be claimed until the same is presented to the Office of the Comptroller of Puerto Rico for registration, as required with Law Number 18 of the 30 of October of 1975, as amended.

-----ARTICLE 15: NON-CLAIM CERTIFICATION:

- 15.1. Contractor certifies that at the time of signing of this Agreement, he has no claim of any nature against the **DEPARTMENT** or against any other Government Agency of the Government of Puerto Rico, nor is he an interested party in any judicial or administrative procedure against the **DEPARTMENT** or any other Government Agency of the Government of Puerto Rico.

-----ARTICLE 16: TERMINATION BY THE GOVERNMENT SECRETARIAT OFFICE:

- 16.1. In accordance with the Puerto Rico Budget and Management Office ("OGP" by its Spanish acronym) Circular Letter No. 001-2021 dated on January 11, 2021; the Government Secretariat Office shall have the power to terminate this agreement at any time.

-----ARTICLE 17: REGULATIONS:

- 17.1. The Contractor acknowledges and accepts to comply with each of the regulations listed in **Attachment J** in a case-by-case basis, as it may be required by the funding entity. The Contractor recognizes that compliance with these regulations is an essential condition of the Contract.
- 17.2. The Contractor represents and warrants that the Contractor, its principals, and affiliates have not been debarred, suspended, or placed in ineligibility status under the provisions of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000 (government debarment and suspension regulations). The Contractor represents and warrants that it will not enter into any contracts or subcontracts with any individual or entity which has been debarred, suspended or deemed ineligible under those provisions. During the term of this Agreement, the Contractor will periodically review SAM.gov and local notices to verify the continued accuracy of this representation. The Contractor shall require all subcontractors at every tier to comply with this requirement.
- 17.3. This certification is a material representation of fact relied upon by the **DEPARTMENT**. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, in addition to remedies available to the **DEPARTMENT**, and the Federal Government, may pursue available remedies, including but not limited to suspension and/or debarment. The **DEPARTMENT** will not pay any invoice until the Contractor submits evidence of complete registration in the SAM.
- 17.4. The Contractor must implement strict safety measures to mitigate contagion and protect the health of the workers against COVID-19 based on the guidelines and instructions from the Centers for Disease Control and Prevention ("CDC"), the Federal Department of Health, the Federal Department of Labor, the Puerto Rico Department of Labor and the Occupational Safety and Health Administration ("OSHA"). In addition, prior to start working the Contractor must provide the training, guidance, and ongoing supervision to workers related to new occupational safety measures. Attached hereto, **"OSHA's COVID-19 Guidance for the Construction Workforce"**, as **Attachment K**.

-----ARTICLE 19: CONTRACTOR CERTIFICATION REQUIREMENTS:

- 19.1. The Parties acknowledge that the Contractor has submitted the certification entitled "Contractor Certification Requirements" required in accordance with the Contract Revision Policy of the Financial Supervision and Administration Board for Puerto Rico, Effective as of November 6, 2017, and as executed on October 30, 2020). The Contractor Certification Requirements is attached hereto, as **Attachment L** of the Contract.

-----ARTICLE 20: INTERAGENCY SERVICES:

- 20.1. The Contractor acknowledges and agrees that the contracted services may be provided to any other entity of the executive branch with which the **DEPARTMENT** subscribes a memorandum of understanding or by direct provision of the Chief of Staff of the Governor of Puerto Rico. The services will be provided under the same terms and conditions as regards hours of work and compensation set out in this contract.

-----**ARTICLE 21: EXECUTIVE ORDER 2022-014:**

- 21.1. The Contractor recognizes and agrees to strictly comply with the provisions of Executive Order 2022-014 ("OE-2022-014") and the Labor Agreement of the Project, if required. OE-2022-014 is attached hereto, in **Attachment M**.

The Contractor will provide a minimum wage of Fifteen Dollars (\$15.00) per hour to skilled worker and Eleven Dollars (\$11.00) per hour to unskilled worker, for the work he performs on the Project, as defined in the OE-2022-014.

In addition, the Contractor certifies that its Subcontractors will comply with the provisions of the OE-2022-014. The Contractor shall include in any contract he grants to perform the work for the benefit of PRIFA, a clause in which the Subcontractor is obliged to comply with all the provisions of OE-2022-014, the Labor Agreement of the Project, if required, as well as any other document that is issued under the OE-2022-014. In addition, the Contractor's clause shall provide for the Subcontractor to include a similar compliance clause in any subcontract that he grants to perform the work under this Contract.

-----**ARTICLE 22: MANDATORY CLAUSES AND PROVISIONS:**

- 22.1. BYRD ANTI-LOBBYING:** Entities who apply or bid for an award of \$100,000 or more shall file the required Byrd Anti-Lobbying certification attached as Appendix to this Agreement. 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 Board and the Government of Puerto Rico.

- 22.2. EQUAL EMPLOYMENT OPPORTUNITY:** During the performance of this contract, the contractor agrees as follows:

22.2.1. The **CONTRACTOR** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The **CONTRACTOR** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

22.2.2. 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

22.2.3. The **CONTRACTOR** will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses

the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, 2 proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the **CONTRACTOR's** legal duty to furnish information.

22.2.4. The **CONTRACTOR** will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the **CONTRACTOR's** commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

22.2.5. 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.

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

22.2.7. In the event of the **CONTRACTOR's** noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the **CONTRACTOR** may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

22.2.8. The **CONTRACTOR** will include the provisions of paragraphs (a) through (h) 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**. The **CONTRACTOR** will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor 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** as a result of such direction, the **CONTRACTOR** may request the United States to enter into such litigation to protect the interests of the United States.

22.3. CERTIFICATION OF NON-SEGREGATED FACILITIES: By the submission of a proposal, **CONTRACTOR** or **SUBCONTRACTOR** certifies that does not maintain or provide for **CONTRACTOR's** establishments, and that **CONTRACTOR** does not permit employees to perform their services at any location, under **CONTRACTOR's** control, where segregated facilities are maintained. **CONTRACTOR** certifies further that will not maintain or provide for employees any segregated facilities at any of **CONTRACTOR's** establishments and will not permit employees to perform their services at any location under **CONTRACTOR's** control where segregated facilities are maintained. The **CONTRACTOR**, or **SUBCONTRACTOR** agrees that a breach of this certification is a violation of the equal opportunity clause of the RFP and of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains,

recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. **CONTRACTOR** further agrees that (except where **CONTRACTOR** has obtained for specific time periods) will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that **CONTRACTOR** will retain such certifications in his files; and that **CONTRACTOR** will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

22.4. SMALL AND MINORITY ENTERPRISES, WOMEN'S COMMERCIAL ENTERPRISES AND LABOR SURPLUS AREA ENTERPRISES: The **CONTRACTOR** shall take the necessary affirmative action to ensure that minority enterprises, women's business enterprises and enterprises in the area of surplus labor are used in subcontracting where possible. Steps include, but are not limited to:

- 22.4.1.** Include qualified small and minority enterprises and women's business enterprises on application lists,
- 22.4.2.** Ensure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources,
- 22.4.3.** Divide total needs, where economically feasible, into smaller tasks or quantities to allow for maximum participation by small and minority enterprises and women's business enterprises,
- 22.4.4.** Establish delivery schedules, where permitted by the requirement, that encourage the participation of small and minority businesses and women's business enterprises; and
- 22.4.5.** Use the services and assistance of the Small Business Administration and the Department of Commerce's Minority Business Development Agency.

For contracts of \$10,000 or more, the **CONTRACTOR** must file Form HUD 2516 (Contract and Subcontract Activity) with the Puerto Rico Department of Housing, quarterly.

22.5. THE HATCH ACT: The **DEPARTMENT** and the **CONTRACTOR** agree to comply with mandatory rules and policies related to the Hatch Act, Public Law 94-163, as amended. The Hatch Act applies to the political activities of certain state and local employees. State and local employees involved in or interfering with the works and provisions set forth in this agreement and/or the grants made hereunder may engage in any of the following activities: being a candidate in nonpartisan elections; attend political meetings and conventions; contribute money; campaigning in partisan elections; and holding positions in political parties. State and local employees involved in or interfering with the works and provisions set forth in this contract and/or the grants made hereunder may not perform the following activities: being a candidate in partisan elections; using official influence to interfere in elections; coercing the political contributions of subordinates in support of political parties or candidates to the office of the special counsel. operates a website that provides guidance on incubation law issues.

22.6. COMPLIANCE WITH THE DAVIS-BACON ACT:

- 22.6.1.** All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. 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.

22.6.2. **CONTRACTOR** is 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.

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

22.6.4. The **CONTRACTOR** is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The **DEPARTMENT** will report all suspected or reported violations to the Federal awarding agency.

22.7. COMPLIANCE WITH THE COPELAND “ANTI-KICKBACK” ACT:

22.7.1. Contractor. The **CONTRACTOR** shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this **CONTRACT**.

22.7.2. Subcontracts. The **CONTRACTOR** or **SUBCONTRACTOR** shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these contract clauses.

22.7.3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment.

22.8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708): The **CONTRACTOR** must compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

22.8.1. *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.

22.8.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in the previous paragraph (*Overtime requirements*), the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in the previous paragraph, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in the previous paragraph.

22.8.3. *Withholding for unpaid wages and liquidated damages.* The **DEPARTMENT** 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 this Clause.

22.8.4. *Subcontracts.* The **CONTRACTOR** or **SUBCONTRACTOR** shall insert in any subcontracts the clauses set forth in this Clause and 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 (a) through (d) of this Clause.

22.9. CONFLICT OF INTEREST:

22.9.1. Written Standards. The **DEPARTMENT** has written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. 2 C.F.R. § 200.318(c)(1).

22.9.2. Personal Conflicts of Interest. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a FEMA award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from a firm considered for award. 2 C.F.R. § 200.318(c)(1); See also Standard Form 424D, 7; Standard Form 424B, 3.

22.9.2.1. FEMA considers a “financial interest” to be the potential for gain or loss to the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties as a result of the particular procurement. The prohibited financial interest may arise from ownership of certain financial instruments or investments such as stock, bonds, or real estate, or from a salary, indebtedness, job offer, or similar interest that might be affected by the procurement.

22.9.2.2. FEMA considers an “apparent” conflict of interest to exist where an actual conflict does not exist, but where a reasonable person with knowledge of the relevant facts would question the impartiality of the employee, officer, or agent participating in the procurement.

22.9.3. Gifts. The officers, employees, and agents of the **DEPARTMENT** cannot solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, **DEPARTMENTS** may set standards for situations in which the financial interest is the minimums, not substantial, or the gift is an unsolicited item of nominal value. 2 C.F.R. § 200.318(c)(1).

22.9.4. Organizational Conflicts of Interest.

22.9.4.1. Parent, Subsidiaries, and or Affiliates. The **DEPARTMENT** maintain written standards of conduct governing organizational

conflicts of interest. Organizational conflicts of interest within this context means that because of relationships with a parent company, affiliate, or subsidiary organization, the **DEPARTMENT** is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. 2 C.F.R. § 200.318(c)(2).

22.9.4.2. Other Contractors. An organizational conflict of interest can also arise within the context of contractors that are not related organizations. An organizational conflict of interest arises in these cases where a person, because of other activities or relationships with other persons, is unable or potentially unable to render impartial assistance of advice to the **DEPARTMENT**, the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

To ensure objective **CONTRACTOR** performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such requirements. 2 C.F.R. § 200.319(a)

22.10. CLEAN AIR ACT:

22.10.1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

22.10.2. The contractor agrees to report each violation to the **DEPARTMENT** and understands and agrees that the **DEPARTMENT** will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

22.10.3. The **CONTRACTOR** agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance. 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.

22.10.4. The **CONTRACTOR** acknowledges that FEMA, HUD, or other federal financial disaster funds will be used to fund this Agreement. The **CONTRACTOR** shall comply will 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.

22.10.5. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, the **CONTRACTOR**, or any other party pertaining to any matter resulting from the Agreement.

22.11. FEDERAL WATER POLLUTION CONTROL ACT:

22.11.1. The **CONTRACTOR** agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

22.11.2. The **CONTRACTOR** agrees to report each violation to the **DEPARTMENT** and understands and agrees that the **DEPARTMENT** will,

in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

22.12. SUSPENSION AND DEBARMENT:

- 22.12.1.** This **CONTRACT** is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the **CONTRACTOR** is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- 22.12.2.** 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.

- 22.12.3.** This certification is a material representation of fact relied upon by the **DEPARTMENT**. If it is later determined that the **CONTRACTOR** did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the **DEPARTMENT**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- 22.12.4.** 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.

- 22.13. PROCUREMENT OF RECOVERED MATERIALS:** In the performance of this contract, the **CONTRACTOR** shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: (a) Competitively within a timeframe providing for compliance with the contract performance schedule; (b) Meeting contract performance requirements; or (c) At a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The **CONTRACTOR** also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

- 22.14. DOMESTIC PREFERENCES FOR PROCUREMENTS:** Domestic Preference for Procurements As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

- 22.15. ACCESS TO RECORDS:** The following access to records requirements applies to this **CONTRACT**:

- 22.15.1.** The **CONTRACTOR** agrees to provide the **DEPARTMENT**, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions until three (3) years after final payment under the **CONTRACT**.
- 22.15.2.** 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.
- 22.15.3.** The **CONTRACTOR** agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- 22.15.4.** In compliance with the Disaster Recovery Act of 2018, the **DEPARTMENT** and the **CONTRACTOR** acknowledge and agree that no language in this **CONTRACT** is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
- 22.16. DHS SEAL, LOGO, AND FLAGS:** The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- 22.16.1.** The **CONTRACTOR** agrees to faithfully comply with the provisions of Executive Order No. 2018-033 of July 30, 2018, the Project Labor Agreement signed by the **DEPARTMENT** and the **CONTRACTOR**, as well as the provisions of Circular Letter No. 2018-01 issued by the Department of Labor and Human Resources (DLHR).
- 22.17.** The **CONTRACTOR** compromise to acquire and use cement produced in Puerto Rico in accordance with Act No. 109-1985, for the execution of the Project. The **CONTRACTOR** acknowledges that this is an essential condition of the **CONTRACT**, and the breach of this requirement, or by any **SUBCONTRACTOR**, will release the **DEPARTMENT** from disbursing funds for any part or section of the Project and in non-compliance with Executive Order No. 2018-033. In addition, the **CONTRACTOR** acknowledges that non-compliance with this clause could entail the cancellation of the **CONTRACT** without further notice.
- 22.18.** The **CONTRACTOR** must include in every contract that it grants to carry out the Project of the **DEPARTMENT**, a clause in which the **SUBCONTRACTOR** is obliged to comply with all the provisions of Executive Order No. 2018-033 (including everything that refers to the acquisition of cement produced in Puerto Rico and the minimum compensation for the workers who work in the Project, the Project Labor Agreement signed between the **DEPARTMENT** and the **CONTRACTOR**, as well as any other document issued under Administrative Bulletin No. OE-2018-033. The clause to be included by the **CONTRACTOR** must provide for the **SUBCONTRACTOR** to include a similar compliance clause in any subcontract that it grants for the discharge of its obligation towards the **CONTRACTOR**.

-----ARTICLE 23: OTHER PROVISIONS: (If Applicable)

- 23.1.** Both parties acknowledge that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- 23.2.** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

- 23.3. The **CONTRACTOR** acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the **CONTRACTOR'S** actions pertaining to this **CONTRACT**.
- 23.4. The **CONTRACTOR** will ensure that procedures and mechanisms are in place to monitor compliance with all flood insurance requirements as found in the Flood Disaster Protection Act of 1973, 24 CFR § 570.605.
- 23.5. The **CONTRACTOR** must comply with the regulations regarding lead-based paint found in 24 CFR § Part 35 on prevention of lead-based paint poisoning in certain residential structures with respect to all CDBG-DR funded assisted living units.
- 23.6. Both parties agree to refrain from using the funds related to this Agreement for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytizing.
- 23.7. The work to be performed under the **CONTRACT** 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. As evidenced by their execution of the **CONTRACT**, the parties to the contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations. The **CONTRACTOR** agrees to send to each labor organization or representative of workers with which the **CONTRACTOR** has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the **CONTRACTOR'S** commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin. The **CONTRACTOR** agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The **CONTRACTOR** will not subcontract with any subcontractor where the **CONTRACTOR** has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135. The **CONTRACTOR** will certify that any vacant employment positions, including training positions, that are filled: (1) after the **CONTRACTOR** is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the **CONTRACTOR'S** obligations under 24 C.F.R. part 135. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of the contract for default, and debarment or suspension from future HUD assisted contracts. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25U.S.C. § 450e) also applies to the work to be performed under the **CONTRACT**. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b). For contracts exceeding \$100,000, the **CONTRACTOR** shall submit Form HUD 60002 (Section 3 Summary Report) to the **DEPARTMENT** on a quarterly basis,

notwithstanding the annual reporting requirement set forth in that form's instructions.

- 23.8. **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 based on 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.
- 23.9. **Section 503 of the Rehabilitation Act of 1973:** The **CONTRACTOR** will not discriminate against any employee or applicant for employment because of physical or mental handicap regarding any position for which the employee or applicant for employment is otherwise qualified. The **CONTRACTOR** agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The **CONTRACTOR** agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act. In the event of the **CONTRACTOR'S** noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act. The **CONTRACTOR** agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Department of Labor. Such notices shall state the **CONTRACTOR'S** obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees. The **CONTRACTOR** will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the **CONTRACTOR** is bound by the terms of Section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals. The **CONTRACTOR** will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, 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 Non-Federal Entity or other Government officials may direct to enforce such provisions, including action for noncompliance.
- 23.10. **Section 504 of the Rehabilitation Act of 1973:** The **CONTRACTOR** shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations. The **CONTRACTOR** agrees that no qualified individual with handicaps shall, solely based on handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.
- 23.11. **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.

-----**ARTICLE 24: REMAINING OBLIGATIONS:**

- 24.1. In any case of early termination of the **CONTRACT** for any reason, or due to the end of it, the Parties must comply for a term of five (5) years from the termination of the **CONTRACT**, with any of the following obligations:
- 24.1.1. Any Section and/or Article that expressly indicates so in this Contract. Retention of documents
 - 24.1.2. Insurance.
 - 24.1.3. Indemnity.
 - 24.1.4. Information Requirements.
 - 24.1.5. Confidential Information.
 - 24.1.6. Notifications.
 - 24.1.7. Performance Bond
 - 24.1.8. Applicable Law and Dispute Resolution

-----**ARTICLE 25: PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each provision of law and clause required by federal law, regulation, executive order, policy, procedure, directive, Federal grant award or agreement, or cooperative agreement with any Federal agency to be inserted in this **CONTRACT** or the resulting amendments shall be deemed to be inserted herein and the contract 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 contract shall be amended to make such insertion or correction.

The parties have read this **CONTRACT** carefully and understand each of its terms and conditions. Each party has sought independent legal counsel of choice to the extent the party deemed such advice necessary in connection with the review and execution of this **CONTRACT**.

*In witness of which the **DEPARTMENT** and the **CONTRACTOR** have signed this contract, in San Juan, Puerto Rico, this ____ day of _____, 2023.*

<hr/> <p>Anaïs Rodríguez Vega Secretary Department of Natural and Environmental Resources THE DEPARTMENT SSP</p>	<hr/> <p>The CONTRACTOR SSP:</p>
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Draft revised by: