

AGREEMENT FOR INDEPENDENT CONTRACTOR CONSULTING SERVICES

This **AGREEMENT FOR INDEPENDENT CONTRACTOR CONSULTING SERVICES** ("Agreement") is made this 7th day of December, 2017 ("Effective Date") by and between:

AS FIRST PARTY: The Puerto Rico Electric Power Authority ("PREPA"), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, represented in this act by its Acting Executive Director, Mr. Justo Luis González Torres, of legal age, married, engineer, and resident of Juana Díaz, Puerto Rico.

AS SECOND PARTY: Filsinger Energy Partners, Inc. ("FEP") a corporation formed and existing under the laws of the State of Colorado, United States of America, with a principal place of business in 290 Fillmore St, Ste 4 Denver, CO 80206, herein represented by its Senior Managing Director, Mr. Todd W. Filsinger, of legal age, married, and resident of, Denver, Colorado, who has authority to enter into this Agreement by virtue of Corporate Resolution, dated December 29, 2016.

PREPA and FEP are individually referred to herein as a "Party" and together as the "Parties."

PREPA desires FEP, as an independent contractor, to perform certain work and professional services for PREPA ("Work") as outlined in the Professional Services Engagement Letter between the Parties, which Professional Services Engagement Letter is attached hereto and incorporated herein by reference.

In consideration of the above recitals and the covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, each intending to be legally bound, agree as follows:

1. **BILLING AND PAYMENT.** FEP shall be paid on the basis of actual time and expenses at the hourly rates outlined in the Professional Services Engagement Letter; provided, that FEP personnel shall not be compensated for hours spent on non-working travel time. FEP shall provide PREPA with an itemized invoice for its fees and accrued expenses on a monthly basis. FEP shall allocate any invoiced fees between (i) activities undertaken outside of Puerto Rico and (ii) activities undertaken inside of Puerto Rico.

FEP shall submit monthly invoices within the first thirty (30) days following the period invoiced that will include a description of the services rendered and the number of hours spent by each person. Each invoice for professional services shall be itemized and must be duly certified by an authorized representative of FEP. PREPA reserves the right to conduct the audits it deems necessary and it will not be subject to finance charges regarding invoice payments subject to an audit. FEP will comply with the terms of the Compensation Order in invoicing its fees and PREPA shall pay FEP in accordance with the Compensation Order.

Invoices must also include a written and signed certification stating that no officer or employee of PREPA, and their respective subsidiaries or affiliates, will personally derive or obtain any benefit or profit of any kind from this Agreement, with the acknowledgment that invoices that do not include this certification will not be paid. This certification must read as follows:

"We certify under penalty of nullity that no public servant of the Puerto Rico Electric Power Authority, their respective subsidiaries or affiliates, 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 services provided is the agreed-upon price that has been negotiated with an authorized representative of the Puerto Rico Electric Power Authority. The total amount shown on this invoice is true and correct. The services have been rendered, and no payment has been received."

As compensation for the Work, PREPA and FEP agree that the total amount to be paid under this Agreement shall not exceed Five Million Dollars (\$5,000,000.00) (the "Agreement Amount"). However, nothing herein shall preclude the Parties from agreeing to increase said amount. PREPA will only pay for services already rendered before the submitted invoice date.

FEP shall be entitled to reimbursement for expenses incurred (including reasonable expenses of counsel, if any) in connection with or arising out of activities under or contemplated by, this Agreement. Reimbursable expenses shall not exceed eight percent (8%) of the Agreement Amount and will be reimbursed by PREPA through the presentation of acceptable evidence for such expenses. Reimbursement for air travel expenses is restricted to economy class fares, including restricted fares. All expenses shall be subject to PREPA's internal expense limitation and requirements, and will be reimbursed pursuant to the Compensation Order.

Any travel and lodging expense for which a reimbursement is requested shall be reasonable and necessary, and any extraordinary travel and lodging expenses shall be authorized in writing and in advance by PREPA. PREPA will not reimburse expenses that do not comply with this provision. Under no circumstances will expenses for alcoholic beverages be reimbursed.

FEP shall promptly notify PREPA when the billing under the present Agreement amounts to seventy five percent (75%) of the Agreement Amount. Once this notification has been issued, FEP, in coordination with PREPA, will ensure that no services will be rendered in excess of the Agreement Amount, except when a written amendment is agreed upon by both Parties. In addition, FEP shall present a reasonably itemized list of the remaining billable work that is in progress under the Agreement.

Appendix A attached hereto provides a schedule of the professionals initially assigned to this matter. Should FEP assign another person not included in **Appendix A** to attend to PREPA's matters pursuant to this Agreement, FEP shall promptly send PREPA an amended schedule to include such person's name and/or position, and request approval of the Governing Board for such amended schedule. Such approval from PREPA shall not be unreasonably withheld.

All payments performed under this Agreement will be charged to PREPA's budget account number 01-4019-92320-556-673.

FEP shall not request any payment for the Work until it has been registered by PREPA at the Office of the Comptroller of Puerto Rico. PREPA undertakes to register this Agreement pursuant to such Act as soon as practicable after the execution of this Agreement.

2. **TERM.** This Agreement shall be effective as of the Effective Date and shall continue in effect through June 30, 2018 unless earlier terminated pursuant to the terms of Sections 3 or 4 or renewed by the written, mutual agreement of PREPA and FEP.

3. **TERMINATION FOR CONVENIENCE.** Either Party may terminate this Agreement for any reason upon 30 days advance written notice to the other Party. In the event of such a termination and notwithstanding any other provision of the Agreement to the contrary, FEP shall be entitled to payment for (a) the portion of Work completed through the date of termination and (b) any expenses incurred through the date of termination, as well as any other expenses that FEP is not able to reasonably cancel by the date of termination. PREPA shall be entitled to receive the Work generated by FEP through the date of termination. Time is of the essence in this Agreement. If either Party terminates this Agreement, such termination shall not affect FEP's right to receive all amounts owed by PREPA to FEP or the accrued rights of PREPA to receive the Work generated by FEP through the date of termination.

4. **TERMINATION FOR DEFAULT.** If either Party materially breaches any term or provision of this Agreement and does not remedy such material breach within 72 hours after receipt of a prior written notice of default, the non-breaching Party may immediately terminate this Agreement upon written notice, and such termination shall be effective as of the date of such written notice. Time is of the essence in this Agreement. If either Party terminates this Agreement, such termination shall not affect FEP's right to receive all amounts owed by PREPA to FEP, or the accrued rights of PREPA to receive the Work generated by FEP through the termination date.

5. **ACCESS/CONDUCT OF WORK.** PREPA will provide access to its facilities and such other cooperation in working with FEP, as FEP may from time to time reasonably determine to be necessary for FEP to render the Work; provided, such access and cooperation shall not interfere with PREPA's operations. PREPA also will provide all

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documentation, including, but not limited to, all information, records, personnel, documents, and reports, necessary for FEP to perform the Work.

FEP and its officers, directors, employees, and agents shall conduct the Work in accordance with all applicable governmental laws, rules, regulations, and good standard industry practices, in a professional manner, and in accordance with the terms of this Agreement.

6. FORECASTS AND RECOMMENDATIONS FOR THE WORK. All forecasts and recommendations made by FEP as part of the Work are based on the information available to FEP and certain analyses and will be made in good faith. However, forecasts are not a representation, undertaking, or warranty as to any outcome or achievable result. PREPA acknowledges (a) FEP is not making any representation or warranty concerning the Work (other than as expressly set forth in Section 5) and (b) FEP is not providing either an expressed or implied warranty for the Work. In addition, PREPA acknowledges FEP is not guaranteeing or promising that certain forecasts or recommendations by FEP with respect to the Work will take place or occur, and PREPA will not hold FEP to any such guarantees or promises concerning the Work. EXCEPT FOR THE EXPRESS WARRANTIES IN SECTION 5, FEP DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, UNDER THIS AGREEMENT OR THE APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

7. CONFIDENTIALITY. In performing the Work and all terms of this Agreement, each Party may have access to, and may provide the other Party with information or documentation that constitutes, confidential information (“Confidential Information”). Confidential Information includes, but is not limited to, any non-public information about customers or potential customers (regardless of whether it is personally identifiable or anonymous information), business and marketing plans, employee information, systems, manuals, policies and procedures, and products and services, including the disclosure of the engagements covered under this Agreement.

From the Effective Date through 3 years following the end of the term of this Agreement or termination of this Agreement (whichever is earlier), each Party shall hold all such Confidential Information in strict confidence and disclose such Confidential Information only to those officers, directors, employees or agents whose duties reasonably require access to such information. If receiving Party proposes to disclose Confidential Information, including the engagements covered under this Agreement, to a third party in order to perform under the Agreement or otherwise, the receiving Party must first obtain the consent of the disclosing Party to make such disclosure and enter into a confidentiality agreement with such third party under which that third party would be restricted from disclosing, using or duplicating such Confidential Information in a manner consistent with the terms of this Section 7. Receiving Party may use such Confidential Information only in connection with its performance under this Agreement or as otherwise required by applicable law. Receiving Party shall protect such Confidential Information using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use or disclosure of such Confidential Information as receiving Party uses to protect its own confidential information. Confidential Information shall be returned to the disclosing Party or destroyed upon disclosing Party’s request once the Work contemplated by this Agreement has been completed or upon termination of this Agreement (whichever is earlier).

Receiving Party shall establish and maintain commercially reasonable policies and procedures to ensure compliance with this Section 7. Such policies and procedures shall include administrative, technical, and physical safeguards that are commensurate with the scope of the Work and the sensitivity of the Confidential Information. Receiving Party’s policies will ensure the security and confidentiality of Confidential Information, protect against any anticipated threats or hazards to the security or integrity of such information, and protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to disclosing Party. In the event of any incident of unauthorized access to the Confidential Information or breach of the confidentiality obligations set forth herein, the receiving Party shall solely bear all costs and expenses incurred in notifying persons and entities affected by such breach. For the avoidance of doubt, the receiving Party shall obtain the disclosing Party’s prior written approval of any oral or written notice or other communication proposed to be made to persons and entities affected by such breach. Receiving Party acknowledges the unauthorized use or disclosure of any such Confidential Information is likely to cause irreparable injury to disclosing Party for which there is no adequate remedy at law. Accordingly, receiving Party

hereby consents to the entry of injunctive relief against it to prevent or remedy any breach of the confidentiality obligation described herein without the disclosing Party being required to post bond.

The foregoing restrictions shall not apply to any such Confidential Information that is: (a) known by the receiving Party at the time of disclosure or publicly known or becomes publicly known through no fault of the receiving Party; (b) received from a third party that, to the knowledge of the receiving Party, is free to disclose the information to the receiving Party; (c) independently developed by the receiving Party without the use of information received from the disclosing Party; (d) communicated to a third party with the express prior written consent of the disclosing Party; or (e) either (i) required to be disclosed by law or pursuant to an order of court or other competent government or regulatory authority or (ii) disclosed due to a bona fide settlement, arbitration, or pre-litigation request; provided that in each case that the receiving Party notify the disclosing Party in writing of such disclosure as soon as commercially possible, and the receiving Party must use all commercially reasonable efforts to prevent or limit such disclosure and to ensure that any person to whom the Confidential Information is disclosed is aware of the confidential nature of the information and takes steps to prevent further disclosure of the same. The receiving Party shall indemnify the disclosing Party against any losses arising out of the unauthorized use or redistribution by a person of any Confidential Information provided pursuant to this Section 7.

Notwithstanding anything contrary in this Section 7, FEP may share Confidential Information with (i) AAFAF, (ii) representatives of the Commonwealth and its agencies and instrumentalities, and (iii) with the FOMB under a common interest privilege, or as PREPA's Title III representative. In furtherance of Mr. Filsinger's duties as CFA, Mr. Filsinger may also share Confidential Information with other stakeholders and parties in interest in his business judgment, provided that a confidentiality agreement is entered into between PREPA and such stakeholder or party in interest which Mr. Filsinger views as commercially reasonable.

8. INDEPENDENT CONTRACTOR. PREPA and FEP agree that FEP's status hereunder, and the status of any agents, employees and subcontractors engaged by FEP, shall be that of an independent contractor only and not that of an employee, agent, director or officer of PREPA nor shall they be considered a public servant of PREPA or the Commonwealth of Puerto Rico. FEP, its subcontractors, and their officers, directors, and employees are not agents or employees of PREPA and have no authority to obligate or bind PREPA in any way; provided, however, Mr. Filsinger shall have the authority to bind PREPA, solely in his capacity as the CFA.

Consistent with the foregoing, PREPA and FEP acknowledge and agree that neither the role of CFA performed by Todd W. Filsinger, nor his role as Senior Managing Director and equity holder of FEP will render the certification required under Section 1 of this Agreement false or inaccurate,


FEP, its subcontractors, and their officers, directors, and employees are not eligible for PREPA's employee benefit programs, such as (without limitation) vacations, sick leave, retirement benefits and others because of its condition as an independent contractor. FEP is fully and solely responsible for all taxes, assessments, penalties, fines, and interest relating to wages and benefits paid to FEP's employees under this Agreement, pursuant to all federal, state and local laws, including required withholding from wages of employees, regardless of the characterization of those employees by the Parties, administrative agencies, or the courts.

9. NON-EXCLUSIVE NATURE OF AGREEMENT. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, or similar relationship between the Parties. This Agreement is non-exclusive in nature, and FEP may perform other similar work for other entities or groups or individuals, in the sole and absolute discretion of FEP.


10. DELAYS. If FEP is unable to perform any Work by an act beyond FEP's reasonable control, FEP will give written notice to the PREPA as soon as practicable and such delay in Work shall not be deemed a material breach of this Agreement; provided that the foregoing shall not otherwise limit any right of PREPA to terminate the Agreement or specific Work pursuant to its rights in Section 2.

11. **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE WORK, WHETHER SUCH DAMAGES ARE FORESEEABLE, WHETHER SUCH PARTY WAS ADVISED OF SUCH LOSSES OR DAMAGES IN ADVANCE, AND WHETHER SUCH LIABILITY IS IN CONTRACT, TORT (INCLUDING NEGLIGENCE, BREACH OF STATUTORY DUTY OR OTHERWISE), AND BOTH PARTIES SPECIFICALLY AND EXPRESSLY WAIVE, ANY SUCH DAMAGES. THE PARTIES AGREE, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE AGGREGATE LIABILITY OF FEP, ITS PARENT, AFFILIATES AND SUBCONTRACTORS, AND ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS (THE "FEP PARTIES" AND INDIVIDUALLY, A "FEP PARTY"), TO THE COMPENSATION RECEIVED BY FEP FOR THE WORK PERFORMED PURSUANT TO THIS AGREEMENT (THE "LIABILITY CAP"). THIS LIMITATION OF LIABILITY IN FAVOR OF FEP SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS AND DAMAGES OF ANY NATURE, INCLUDING ANY CLAIMED LEGAL FEES AND EXPENSES, ARISING FROM OR RELATED TO THIS AGREEMENT OR THE WORK AND WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED. IN THE EVENT EITHER PARTY ASSERTS A CLAIM, ACTION, PROCEEDING, LOSSES, COSTS, OR DAMAGES WAIVED IN THIS SECTION 11, THE OTHER PARTY MAY ASSERT THIS SECTION 11 AS A DEFENSE AND SHALL BE ENTITLED TO ALL REASONABLE ATTORNEYS' FEES AND COSTS INCURRED IN DEFENDING AGAINST SUCH CLAIM, ACTION, PROCEEDING, LOSS, COST, OR DAMAGE.

THE FEP PARTIES SHALL HAVE NO LIABILITY FOR ANY CLAIMS ARISING FROM, UNDER OR IN CONNECTION WITH SAFETY OR OPERATIONAL PROCEDURES.

 THE FEP PARTIES SHALL NOT BE LIABLE TO PREPA OR ANY PARTY ASSERTING A CLAIM ON BEHALF OF PREPA, EXCEPT FOR DIRECT DAMAGES FOUND IN A FINAL JUDGMENT TO BE THE DIRECT RESULT OF THE GROSS NEGLIGENCE, BAD FAITH OR INTENTIONAL MISCONDUCT OF FEP. THE FEP PARTIES SHALL NOT BE LIABLE FOR CONSEQUENTIAL DAMAGES UNDER ANY CIRCUMSTANCES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY IN FAVOR OF THE FEP PARTIES SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS AND DAMAGES OF ANY NATURE BY ANY PARTY, INCLUDING ANY CLAIMED LEGAL FEES AND EXPENSES, ARISING FROM OR RELATED TO THIS AGREEMENT OR THE WORK AND WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED. THE LIABILITY CAP IS THE TOTAL LIMIT OF THE FEP PARTIES' AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS OR DEMANDS BY ANYONE PURSUANT TO THIS AGREEMENT, INCLUDING LIABILITY TO PREPA, TO ANY OTHER PARTY MAKING CLAIMS RELATING TO THE WORK PERFORMED BY FEP PURSUANT TO THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

12. **USE OF THE WORK.** PREPA shall not assert any suit, claim, action, or proceeding against FEP, its patent, affiliates, and subcontractors and its and their respective directors, officers, employees, or agents for any loss, cost, or damage loss sustained by PREPA arising out of or resulting from the Work or PREPA's use of the Work.

 13. **DEFENSE, INDEMNIFICATION, AND SUBROGATION.** To the fullest extent permitted by the applicable law, PREPA shall defend, indemnify and hold harmless FEP, its patent, affiliates, and subcontractors and its and their respective directors, officers, employees, or agents ("Indemnitees") from and against any and all claims, liabilities, liens, costs, damages, citations, penalties, fines, attorneys' fees, losses, and expenses of whatever nature ("Indemnified Claim") arising out of or resulting from the performance of or failure to perform the Work, regardless of whether or not the Indemnified Claim is caused in part by one or more Indemnitees. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity, which would otherwise exist as to any Indemnitee. Such obligation shall not apply where the Indemnified Claim is caused by the gross negligence or intentional misconduct of the Indemnitees. PREPA's defense and indemnity obligations shall survive the end of the term of the Agreement or termination of the Agreement (whichever is earlier).

Notwithstanding any provision to the contrary in the applicable law, including any statute of limitations, an Indemnitee's claim for indemnification shall not accrue, and any applicable statute of limitations shall not begin to run, until Indemnitee's payment of a final judgment, arbitration award, or settlement arising out of any Indemnified Claim.

With respect to any matter to which PREPA's defense and indemnity obligations apply, the Indemnitee shall have the right to assume its own defense if, in its sole discretion, it determines that the defense being provided by PREPA is inadequate or where PREPA has a conflict of interest in defending the Indemnified Claim. If the Indemnitee assumes its own defense, or if the Indemnitee incurs expenses or fees in connection with a defense undertaken by PREPA, PREPA shall reimburse the Indemnitee for all reasonable attorneys' fees and other expenses related to the preparation and defense obligations to the Indemnitee, such payment to be made within 30 calendar days after PREPA's receipt of a statement of such fees and expenses. PREPA's obligations to defend the Indemnitee shall be independent of and in addition to PREPA's indemnity obligations and shall apply to the fullest extent permitted by law.

PREPA waives all rights against the Indemnitees for the recovery of losses, costs, or damages to the extent these losses, costs, or damages are covered by commercial general liability, commercial umbrella liability, business auto liability, workers compensation, employers' liability insurance, and any other insurance to be maintained pursuant to this Agreement.

In addition to the above indemnification, if Todd Filsinger is deemed by a court of competent jurisdiction an officer, director, employee or fiduciary of PREPA, PREPA hereby covenants and agrees to provide Todd Filsinger the most favorable indemnification provided by PREPA to its officers, directors, employees or fiduciaries, whether under PREPA's charter or by-laws, by contract or otherwise.

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14. **OWNERSHIP OF INFORMATION.** All reports, recommendations, specifications, data or other information prepared or furnished by FEP to PREPA or prepared in performance of the Work shall be the sole and exclusive property of PREPA and may be used by PREPA as PREPA deems appropriate in any other fashion, or any other client or customer, and on any other project. Through this Agreement, PREPA grants to FEP a non-exclusive and non-transferable license to such reports, recommendations, specifications, data, and other information to the extent necessary for FEP's performance under this Agreement and the Work.

15. **SUBCONTRACT.** FEP shall not subcontract the Work to be provided under this Agreement, or contract firms or other services without the prior written authorization of the Executive Director of PREPA or any of its authorized representatives.

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16. **CONFLICT CERTIFICATION.** FEP acknowledges that in executing the Work, it has an obligation of complete loyalty towards PREPA, including having no adverse interests. "Adverse interests" means representing clients who have or may have interests that are contrary to PREPA, but does not include rendering services to such clients that are unrelated to this engagement. This duty includes the continued obligation to disclose to PREPA all circumstances of its relations with clients and third parties which would result in an adverse interest, and any adverse interest which would influence FEP when executing the Agreement or while it is in effect. PREPA acknowledges FEP is a firm having multiple financial institutions and investors as clients, and with or without FEP's knowledge, any of such clients may from time to time acquire, hold or trade interests adverse to PREPA or its affiliates. FEP representations of those clients in unrelated matters shall not be deemed conflicts or undue influences on FEP or adverse interests held by FEP within the meaning of this Agreement.

Conduct by one of FEP's partners, members, directors, executives, officers, associates, clerks or employees shall be imputed to FEP for purposes of this prohibition. FEP shall endeavor to avoid even the appearance of the existence of a conflict of interest that has not otherwise been waived.

FEP acknowledges the power of the Governing Board to oversee the enforcement of the prohibitions established herein. If the Governing Board determines the existence or the emergence of adverse interest with FEP, he shall inform FEP of such findings in writing and his intentions to terminate the Agreement within a fifteen (15) day term.

Within such term, FEP can request a meeting with the Governing Board to present its arguments regarding the alleged conflict of interest. This meeting shall be granted in every case. If such meeting is not requested within the specified term, or if the controversy is not settled satisfactorily during the meeting, this Agreement shall be terminated at the end of said fifteen (15) day period.

FEP certifies that at the time of the execution of this Agreement, it does not have adverse interests that are in conflict with PREPA and that it does not maintain any claim, judicial or otherwise, against the Government of Puerto Rico, its agencies or instrumentalities. If such conflicting interests arise after the execution of this Agreement, FEP shall, to the extent consistent with its obligations to other clients, notify PREPA immediately. If FEP determines it does represent anyone who has adverse interests that are in conflict with PREPA, FEP shall notify PREPA and take all necessary and sufficient measures to safeguard PREPA's interests and ensure its Confidential Information remains confidential. Any employee of FEP representing anyone with adverse interests to PREPA shall be restricted access to any and all information regarding PREPA and FEP shall take all necessary measures to ensure the proper procedures are in place to protect PREPA's interests.

17. CERTIFICATION OF ACT NO. 84 AND GOVERNMENT ETHICS LAW, ACT NO. 1. FEP certifies that it has received copies of (a) Act No. 84, enacted on June 18, 2002, as amended, which establishes the Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Executive Agencies of the Government of the Commonwealth of Puerto Rico and (b) the Government Ethics Law, Act No. 1, enacted on January 3, 2012, as amended from time to time, and its implementing regulations. FEP agrees that it, as well as all of its personnel providing services under this Agreement, will comply with such acts.

18. PUBLIC OFFICIALS' INTEREST IN THE AGREEMENT. The Parties hereby declare that, to the best of their knowledge, no public officer or employee of the Commonwealth of Puerto Rico, its agencies, instrumentalities, public corporations or municipalities or employee of the Legislative or Judicial branches of the Government has any direct or indirect interest in the present Agreement.

19. FEP CERTIFICATION REGARDING FEP EMPLOYEES. FEP certifies that neither it nor any of its partners, directors, executives, officers, and employees receives salary or any kind of compensation for the delivery of regular services by appointment in any agency, instrumentality, public corporation, or municipality of the Commonwealth of Puerto Rico.

20. FEP CERTIFICATION REGARDING NO OUTSTANDING TAX OBLIGATIONS TO PUERTO RICO. FEP certifies that at the execution of this Agreement it does not have, and has not had, to submit income tax returns, or Sales and Use tax returns, in Puerto Rico during the past five (5) years, and that it has no outstanding debts with the Commonwealth of Puerto Rico for income taxes, real or chattel property taxes.

FEP also certifies it does not have outstanding debts regarding its treatment of unemployment insurance premiums, workers' compensation payments, Social Security for chauffeurs in Puerto Rico or the Administration for the Sustenance of Minors (known by its Spanish acronym as ASUME).

Accordingly, all Government issued certificates that are applicable and that confirm the aforementioned information including, but not limited to those certifications issued by the Treasury Department, the Municipal Revenues Collection Center, the State Department, the Administration for the Sustenance of Minors and the Department of Labor and Human Resources of Puerto Rico, will be submitted by FEP within the fifteen days after the execution of this Agreement or according to the Executive Order OE-2017-053 that provides to all government entities 90 days after the state of emergency ceases to require all documentation.

It is expressly acknowledged that the certifications provided by FEP, pursuant to this Section 20, are essential conditions of this Agreement, and if these certifications are incorrect, PREPA shall have sufficient cause to terminate this Agreement immediately.

21. **TAX PAYMENTS.** Except as set forth in the next paragraph, no withholding or deductions shall be made from payments to FEP for income tax purposes. FEP shall be responsible for paying: (i) all applicable income taxes in accordance with any and all applicable income tax laws, and (ii) any corresponding contributions to the Social Security Administration. Payments due to FEP shall be paid into a bank account in the United States designated to FEP.

Income tax withholding – Section 1062.11 of the Puerto Rico Internal Revenue Code of 2011, as amended (the “PR Code”), provides for a 29% income tax withholding on payments of income generated in Puerto Rico by a corporation or partnership that is not engaged in a trade or business in Puerto Rico. By its terms, said withholding does not apply to corporations and partnerships that are engaged in a trade or business in Puerto Rico. Regulations 5901 issued by the Puerto Rico Treasury Department on December 31, 1998 (the “Regulations”) provide further guidance with regards to this withholding. In particular, it provides under Article 1150-2 that a withholding agent will not be required to withhold when the taxpayer can provide written notification that it is not subject to this withholding, with an explanation of why the withholding does not apply and the address of the taxpayer’s office or place of business in Puerto Rico signed by an officer of the corporation or by the managing partner of the partnership. The Regulations referred to in this paragraph are in full force and effect under the provisions of Section 6091.01 of the PR Code. Based on Section 1062.11 of the PR Code and Regulation 1150-2. If FEP will not provide the certification of the Puerto Rico Treasury Department, PREPA will be made the withholding of the 29% regarding the fees to be paid under this Agreement.

Notwithstanding the foregoing, PREPA shall deduct and withhold one point five percent (1.5%) of the gross amounts paid under this Agreement, in accordance with Article 1 of Act No. 48 of June 30, 2013. PREPA shall forward such amounts to the Department of Treasury of Puerto Rico.

During the term of this Agreement, any change in law, including, but not limited to, changes in applicable tax law, which causes an increase in FEP’s costs when providing the services, shall be FEP’s responsibility.

22. **NO DISCRIMINATION.** FEP agrees that it will not discriminate against any employee or applicant for employment on account of race, color, religion, sex, sexual orientation, disability or national origin.

23. **CFA APPROVAL RIGHTS OVER CONTRACTS IN EXCESS OF \$2 MILLION.** All contracts or series of related contracts, inclusive of any amendments or modifications, with an aggregate expected value of \$2 million or more must be submitted to the CFA for its approval before execution, unless otherwise provided by PREPA’s Contracting and Procurement Procedures Protocol (once such protocols are adopted and implemented).

24. **INSURANCE.** FEP shall secure and maintain in full force and effect, during the term of this Agreement as provided herein policies of insurance covering all operations engaged in under this Agreement as follows: (1) FEP shall provide Workmen’s Compensation Insurance as required by the Workmen’s Compensation Act of the Commonwealth of Puerto Rico. FEP shall also be responsible for compliance with said Workmen’s Compensation Act by all its subcontractors, agents and invitees, if any, or shall certify that such subcontractors, agents and invitees have obtained said policies on their own behalf. FEP shall furnish to PREPA a certificate from the Puerto Rico’s State Insurance Fund showing that all personnel employed in the work are covered by the Workmen’s Compensation Insurance, in accordance with this Agreement. (2) FEP shall provide a Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate. (3) FEP shall provide a Professional Liability Insurance with limits of \$1,000,000 per claim and \$1,000,000 aggregate.

The Commercial General Liability Insurance required under this Agreement, shall be endorsed to include: (a) As additional Insured: Puerto Rico Electric Power Authority, PO Box 364267, San Juan, PR 00936-4267; (b) A thirty (30) day cancellation or nonrenewable notice to be sent to the above address by FEP.

All required policies of insurance shall be in a form acceptable to PREPA and shall be issued only by insurance companies authorized to do business in Puerto Rico. FEP shall furnish a certificate of insurance in original signed by an authorized representative of the insurer in Puerto Rico, describing the acquired coverage.

FEP may, at its option, purchase a separate D&O Insurance or similar insurance policy that will cover FEP employees and agents only. The cost of the policy shall be invoiced to PREPA as an out-of-pocket expense as set forth in this Agreement (but such expense shall not count against FEP's expense cap).

25. GENERAL PROVISIONS.

(a) Governing Law; Venue. THIS AGREEMENT AND ANY CLAIM, COUNTERCLAIM OR DISPUTE OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE WORK, WHETHER DIRECT OR INDIRECT ("CLAIM"), SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PUERTO RICO. NO CLAIM MAY BE COMMENCED, PROSECUTED OR CONTINUED IN ANY COURT OTHER THAN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER THE ADJUDICATION OF ANY CLAIM. PREPA AND FEP CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION OF SUCH COURT AND PERSONAL SERVICE WITH RESPECT THERETO. FEP AND PREPA WAIVE ALL RIGHT TO TRIAL BY JURY FOR ANY CLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE).

(b) No Waiver. The failure of either Party to insist, in any one or more instances, upon the performance of any of the terms of the Agreement shall not be construed as a waiver or relinquishment of such term as respects further performance.

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(c) Third-Party Beneficiaries. AAFAF, in its capacity as fiscal agent for PREPA, is a third-party beneficiary to this Agreement and is entitled to rights and benefits hereunder and may enforce the provisions hereof as if it was PREPA. Except the foregoing, the Agreement is solely for the benefit of the Parties and shall not confer any rights, remedies or benefits upon anyone other than the Parties and their successors and assigns. In no event shall FEP incur any third party liability or responsibility by virtue of the Agreement or performance of the Work.

(d) For purposes of this Agreement, tax debt shall mean any debt that FEP, may have with the Commonwealth of Puerto Rico for income taxes, excise taxes, real or chattel property taxes, including any special taxes levied, license rights, tax withholdings for payment of salaries and professional services, taxes for payment of interests, dividends and income to individuals, corporations and non-resident partnerships, for payment of interests, dividends and other earnings shares to residents, unemployment insurance premiums, workers' compensation payments, and Social security to chauffeurs.

(e) Severable. Each provision of this Agreement is intended to be severable, and if any portion of this Agreement is held invalid, illegal, unenforceable, or void for any reason, the remainder of this Agreement will remain in full force and effect. Any portion of the Agreement held to be invalid, unenforceable, or void will, if possible, be deemed amended or reduced in scope, but such amendment or reduction in scope will be made only to the minimum extent required for purposes of maximizing the validity and enforceability of this Agreement.

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(f) Mutual Preparation. The Parties mutually contributed to the preparation of and have had the opportunity to review and revise this Agreement. Accordingly, no provision of this Agreement shall be construed against any Party to this Agreement because that Party, or its counsel, drafted or assisted in the drafting of the provision. This Agreement and all of its terms shall be construed equally as to both FEP and PREPA.

(g) Headings. Headings in this Agreement are for convenience only and will not be considered in the interpretation of this Agreement.

(h) Notices. Any notice or communication required or permitted to be given by a Party hereunder will be in writing and made by hand delivery, electronic transmission, facsimile transmission (with confirmation), or overnight delivery with a corresponding email, or at such other addresses as the Party may specify in writing. Any such notice or written communication will be deemed duly received (i) on the date of hand delivery, electronic transmission or transmission by facsimile (unless sent after 5 p.m. Eastern Standard time, in which case on the next business day) or (ii) the next


business day after sent by overnight delivery service. All notices or written communications hereunder shall be delivered to the addresses, facsimile numbers or email addresses set forth below:

if to FEP, to:

Filsinger Energy Partners, Inc.
290 Fillmore St, Ste 4
Denver, CO 80206
Attention: Controller
Email: accounts@filsingerenergy.com

if to PREPA, to:

Puerto Rico Electric Power Authority
PO Box 364267
San Juan, Puerto Rico 00936-4267
Attention: Mr. Justo L. González Torrez
Email: justo.gonzález@prepa.com


 (i) Representation. Each Party represents it has authority to enter into this Agreement and to perform all terms of this Agreement, and neither the execution of this Agreement, nor the performance of any work under this Agreement will violate any agreement or obligation of any Party or violate any statute, regulation, or court order.

(j) Assignment. Neither Party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other Party.

(k) Mandatory Clauses Pursuant Act 3-2017 and Circular Letter 141-17 dated January 30, 2017.

(1) Both Parties acknowledge and agree that the contracted services herein may be provided to another entity of the Executive Branch which enters into an interagency agreement with PREPA or by direct disposition of the Secretariat of Government. These services will be performed under the same terms and conditions in terms of hours of work and compensation set forth in this Agreement. For the purpose of this clause, the term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as public instrumentalities, public corporations and the Office of the Governor.

(2) The Secretariat of the Executive Branch shall have the power to terminate this Agreement at any time.

 (l) Act No. 458-2000, as amended. FEP certifies that, as of the effective date, neither FEP nor any of its chairperson, vice chairperson, directors, executive director, any member of its board of directors or board of officials, or any person performing equivalent functions for FEP; or its subsidiaries or alter egos has pled guilty to, has been convicted of, or is under judicial, legislative, or administrative investigation in Puerto Rico, the United States of America, or any other country for any of the crimes enumerated in Act of December 29, 2000, No. 458, as amended, 3 L.P.R.A. §928-928i, or its equivalent for purposes of this Act 458. In accordance with Article 6 of Act 458-2000, as amended, FEP acknowledges that its conviction or guilty plea for any of the crimes as enumerated in Article 3 of such Act shall entail, in addition to any other applicable penalty, the automatic rescission of this Agreement. In addition, but only to the extent required by Act 458-2000, PREPA shall have the right to demand the reimbursement of payments made pursuant to this Agreement that directly result from the committed crime.


(m) Counterparts and Copies. This Agreement may be executed in separate counterparts and upon execution by all Parties such counterparts will constitute one and the same instrument. The Parties further agree that electronic scans, photocopies or faxed copies of this Agreement and the signatures herein shall be as valid and effective as originals.

(n) Interpretation. Unless a clear contrary intention appears, (i) the singular includes the plural and vice versa; (ii) “include” or “including” means including without limiting the generality of the description preceding such term; (iii) the word “or” is not exclusive; (iv) the phrase “this Agreement” and the terms “hereof,” “herein,” “hereby,” and derivatives or similar words refer to this entire Agreement; and (v) reference to any document, law, or policy means such document, law, or policy as amended from time to time.


(o) Entire Agreement. This Agreement is the final, complete, and exclusive statement of the Agreement between FEP and PREPA and supersedes all proposals, prior agreements, and all other communications between FEP and PREPA, oral or in writing, relating to the subject matter of the Agreement. Neither FEP, nor PREPA shall be bound by any terms, conditions, statements, warranties, or representations, oral or written, not contained in this Agreement. In entering into this Agreement, FEP and PREPA specifically and expressly disclaim any reliance upon any terms, conditions, statements, warranties, or representations, oral or written, made by the FEP and PREPA, together with any the FEP’s and PREPA’s predecessors, successors, assigns, shareholders, officers, directors, agents, attorneys, and personal representatives, that are not contained in this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the Effective Date.

Filsinger Energy Partners, Inc.

By: 
Name: Todd W. Filsinger
Title: Senior Managing Director

Puerto Rico Electric Power Authority

By: 
Name: Justo L. González Torres
Title: Acting Executive Director



APPENDIX A

Schedule of Filsinger Energy Partners Professionals who may be Assigned to this Matter

Professional	Title
Todd W. Filsinger	Senior Managing Director
Gary Germeroth	Managing Director
Stephen Kopenitz	Managing Director
Paul Harmon	Managing Director
Dave Andrus	Director
Norm Spence	Director
Carl Thomason	Director
Robert Monday	Director
Timothy Wang	Director
A. Scott Davis	Director
Mike Green	Director
Don Chambless	Managing Consultant
Nathan Pollak	Managing Consultant
Laura Hatanaka	Managing Consultant
Mashiur Bhuiyan	Managing Consultant
Samuel Schreiber	Managing Consultant
Jill Kawakami	Managing Consultant
L. Ben Russo	Managing Consultant
Sean Costello	Managing Consultant
Pamela Morin	Consultant

Discounted Rate Table (subject to biannual adjustment)

Title	Discounted Hourly Rate
Senior Managing Director	\$738 - \$842
Managing Director	\$558 - \$765
Director	\$455 - \$612
Managing Consultant	\$365 - \$549
Consultant	\$293 - \$374
Analyst and Technical Writer	\$203 - \$297

Hourly rates shown have been discounted by 10%, as described in Filsinger Energy Partners' Professional Services Engagement Agreement.