

GOVERNMENT OF PUERTO RICO  
PUERTO RICO ELECTRIC POWER AUTHORITY

FIFTH AMENDMENT  
CONTRACT 2019-P00011E

REHABILITATION OF CULEBRA POWER STATION FACILITIES

APPEAR

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

AS SECOND PARTY: Antilles Power Depot, Inc., (Contractor) a corporation organized and existing under the laws of Puerto Rico, authorized to do business in Puerto Rico, represented in this act by its Chief Operation Officer, Ricardo Rosselló Benes, of legal age, single, and resident of San Juan, Puerto Rico by virtue of Corporate Resolution dated as January 24, 2019.-----

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

WITNESSETH

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

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WHEREAS: On August 17, 2018, the Parties executed the Contract 2019-P00011 for an amount of two million two hundred seventy nine thousand nine hundred fifty one dollars (\$2,279,951) (Contract Amount), to complete the rehabilitation of the Culebra Power Station facilities by providing all labor, supervision, equipment, tools, services, engineering, fabrication, construction, testing, startup, and any other necessary items or services. The Contract establishes a term of ninety (90) calendar days for the Contractor to reach the Substantial Completion milestone, starting twenty (20) days after the Notice to Proceed. The Notice to Proceed was released on October 11, 2018, the date for Substantial Completion was January 29, 2019. The Contract was effective until January 31, 2019, as established in the Puerto Rico Comptroller's Office filing.-----

WHEREAS: The scope of this Contract is to complete the unfinished works of the project, which was defaulted by the original contractor on May 2014, but many unexpected and unforeseen existing conditions were found. Some equipment and materials needed to be replaced or repaired by the Contractor to guarantee the safe and reliable operation of the generators and its auxiliary equipment. These changes directly affected the time to perform the project, delaying the schedule of the works, and forcing to amend the validity of the Contract.-----

WHEREAS: On January 31, 2019, the Parties signed the First Amendment to the Contract, which extended its validity term ninety (90) calendar days. This Amendment



established a total of two hundred fifty seven (257) calendar days. Thus, the Contract was in effect until May 1, 2019.-----

WHEREAS: On May 1, 2019, the Second Amendment was signed by the Parties, which extended the term of the validity of the Contract until June 30, 2019. This Amendment established a total of three hundred seventeen (317) calendar days for this term.-----

WHEREAS: On June 30, 2019, a Third Amendment was signed by the Parties to extend the term of the Contract until August 29, 2019 for a total of three hundred and seventy seven (377) calendar days.-----

WHEREAS: The Fourth Amendment was signed by the Parties on August 29, 2019 and extended the term of the validity of the Contract for sixty (60) calendar days for a total of four hundred and thirty seven (437) calendar days for the effective date. Currently, the Contract is in effect until October 28, 2019.-----

WHEREAS: On Article 11, Changes and/or Extra Work, the Contract establishes that: "PREPA may, at any time, make changes or order extra work within the scope of work contracted, subject to previous written acceptance by PREPA's Contracting Officer".-----

WHEREAS: Unexpected and unforeseen existing conditions were found on the project, thus, changes and modifications to the Contract terms were needed. This situation created delays in the project completion.-----

WHEREAS: The additional works caused by the unforeseen or unexpected conditions increases Contract Amount, , which was previously approved by Governing Board's Resolution 4621 of July 13, 2018. On September 26, 2019, the Governing Board, by its



Resolution 4742, authorized to increase the Contract Amount for a quantity not to exceed four hundred fifty five thousand thirty three dollars and fifty seven cents (\$455,033.57).--

WHEREAS: The Parties agreed, as the total amount for the change orders that include the costs of the additional works, the amount of four hundred thirty one thousand five hundred thirty one dollars and thirty one cents (\$431,531.31). This amount does not exceed the amount authorized by the Governing Board in its Resolution 4742. The agreed change orders are the following:-----

- A. Pull Box Drainpipe – Installation of a pipe to drain the electric pull box and prevent runoff water to get inside the switchgear, for an amount of four thousand fifty six dollars (\$4,056).-----
- B. Concrete Pad for Emergency Generator and Service Transformer – PREPA acquired a 150 kW emergency generator to energize the Cukebra insatallation in case there is no power in the island and the 2 MW units can not be operated, for an amount of fifty eight thousand five hundred forty eight dollars and eighty three cents (\$58,548.83).-----
- C. Mufflers Blasting – When the Contractor accessed the interior of the silencers of the exhaust system, they found that there was corrosion all over the equipment. It was cleaned using a pressure washer and baking soda blasting, for an amount of seven thousand five hundred seventy three dollars and thirty one cents (\$7,573.31).-----

- D. Generators Alignment – The Contractor found that there was a misalignment of the units with respect to the precast walls penetrations for the exhaust pipes. All anchor bolts of the three units had to be cut and replaced, for an amount of thirty three thousand nine hundred sixty three dollars and ninety three cents (\$33,963.93).-----
- E. Replace Batteries for Switchgear Batteries Bank – Batteries for the switchgear batteries bank were supplied on 2012 and with time they lost their energy storage capacity. Contractor replaced the 12 V, deep-cycle batteries, for an amount of three thousand four hundred sixty four dollars (\$3,464).-----
- F. Pre-lube Pumps – Generators sets did not include a pre lubrication system to circulate the lubricant before the units run, this prevents excessive wearing of the engine, for an amount of forty thousand six hundred thirty dollars (\$40,630).-----
- G. Switchgear Repair – Some damages in the switchgear cabinet were unknown and an evaluation and tests from the manufacturer was included as part of the Contract. It was found that some components had to be replaced. The cost for the switchgear repair is forty one thousand thirty six dollars and fifty eight cents (\$41,036.58).-----
- H. EPS Fuel Pumps Commissioning and Parts Replacement – The fuel pumps systems assembler tested the equipment and found some parts that need to be replaced or repair for a proper operation, for an amount of thirty one thousand seventy two dollars and seventy four cents (\$31,072.74).-----

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- I. Coolant Pumps Replacement – After units startup, the coolant system pumps broke and started leaking due to the time elapsed without being operated. The Contractor replaced the pumps for the three units for a cost of twenty three thousand eight hundred seventy eight dollars and nine cents (\$23,878.09).-----
- J. Load Bank – PREPA decided to test the units with a load bank to prevent any interruption or damage to the Culebra system clients while the commissioning process was performed. The cost related to the test is ninety thousand eight hundred ten dollars and nine cents (\$90,810.09).-----
- K. Extended Overhead – The unexpected and unforeseen conditions found and the repair and replacement process caused delays in the completion of the project. The Contractor personnel had to work more time in the project and remain lodged in Culebra for a longer time. Contractor’s payroll, lodging, office, and management additional costs were agreed by the Parties, for an amount of ninety six thousand four hundred ninety seven dollars and seventy four cents (\$96,497.74).-----

WHEREAS: Although the project had to be substantially completed by January 29, 2019, the additional works related to the unforeseen conditions and work performed by PREPA, such as the protection system parameters calculations, caused delays in the completion of the project. The units’ tests were completed on July 16, 2019 and the project was substantially completed that date. Since these delays were not caused by the Contractor, the project substantial completion date shall be extended one hundred sixty eight (168) calendar days.-----



WHEREAS: Since these actions need to be completed, and to keep in force all the terms and conditions contained in the Contract, the term of the Contract shall be extended accordingly.-----

THEREFORE, in consideration of the mutual covenants hereinafter stated, the Parties hereby agrees to amend the Contract as follows:-----

TERMS AND CONDITIONS

FIRST: The Parties agree to amend Article 5, Consideration, to increase its Contract Amount by four hundred thirty one thousand five hundred thirty one dollars and thirty one cents (\$431,531.31), from two million two hundred seventy nine thousand nine hundred fifty one dollars (\$2,279,951) to two million seven hundred eleven thousand four hundred eighty two dollars with thirty one cents (\$2,711,482.31). All payments to be made under this Contract, as amended will be charged to account number 01-1747-17571-555-309.-

SECOND: The first paragraph of Article 3, Commencement and Completion of Work, is amended to read as follows:-----

The term of this Contract shall be extended thirty (30) calendar days for a total of four hundred sixty seven (467) calendar days from the effective date. Therefore, the Contract will be in effect until November 27, 2019. The Contractor shall be required to reach the Substantial Completion stage in two hundred fifty eight (258) Calendar Days from twenty (20) days after the Notice to Proceed is issued, subject to the provisions stated in Article 11. Changes and/or Extra Work, Article 16. Force Majeure, Article 6. Suspension of Work and Termination, and Article 40. Unforeseen Repairs and Damages. The



Contractor shall receive a written order, stating the date on which the Contractor shall commence to execute the contracted work. Thus, Notice to Proceed date marks the commencement of work. Mobilizations shall be completed within twenty (20) calendar days after Notice to Proceed. Both Parties agree that time is the essence of the Contract.-

THIRD: The Contractor will comply with all applicable State Law, Regulations and Executive Orders that regulate the contracting process and establish the requirements for governmental contracting in the Commonwealth of Puerto Rico, including but not limited to those mentioned in this Article. Also, the Contractor shall provide, before the execution of the Contract the following documents and certifications:-----

- A. Executive Order Number OE-1991-24 of June 18, 1991 to require certification of compliance with the Internal Revenue Services of the Commonwealth of Puerto Rico: Pursuant to Executive Order Number OE-1991-24 of June 18, 1991, the Contractor will certify and guarantee that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. The Contractor further will certify that it has complied and is current with the payment of any and all income taxes that are, or were due, to the Government of Puerto Rico. The Contractor shall provide, to the satisfaction of PREPA, and whenever requested by PREPA during the term of this Contract, the necessary documentation to support its compliance with this clause. The Contractor will be given a specific amount of time to produce said documents. During the term of this Contract,



the Contractor agrees to pay and/or to remain current with any repayment plan agreed to by the Contractor with the Government of Puerto Rico.-----

B. Executive Order Number OE-1992-52 of August 28, 1992 to require certification of compliance with the Department of Labor of the Commonwealth of Puerto Rico. Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, the Contractor will certify and warrant that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. The Contractor accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every Contractor and Subcontractor whose service the Contractor has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement.-----

C. Government of Puerto Rico Municipal Tax Collection Center: The Contractor will certify and guarantee that it does not have any current debt with regards to property taxes that may be registered with the Government of Puerto Rico's Municipal Tax Collection Center (known in Spanish as *Centro de Recaudación de Ingresos Municipales* ("CRIM")). The Contractor further will certify to be current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. The Contractor shall provide, to the satisfaction of PREPA and whenever



requested by PREPA during the term of this Contract, Certification issued by the Municipal Revenues Collection Center (MRCC), assuring that Contractor does not owe any tax accruing to such governmental agency. To request such Certification, Contractor will use the form issued by the MRCC (called "*CRIM-Certificados, Radicación, Estado de Cuenta y Todos los Conceptos*" in the website). The Contractor will deliver upon request any documentation requested by PREPA. During the Term of this Contract, the Contractor agrees to pay and/or to remain current with any repayment plan agreed to by the Contractor with the Government of Puerto Rico with regards to its property taxes.-----

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



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



- J. Special Contribution for Professional and Consulting Services: As required by Act 48-2013, as amended, PREPA will withhold a special contribution of one point five percent (1.5%) of the gross amounts paid under this Contract.-----
- K. Social Security and Income Tax Retentions: In compliance with Executive Order 1991 OE- 24; and C.F.R. Part 404 et. Seq., the Contractor will be responsible for rendering and paying the Federal Social Security and Income Tax Contributions for any amount owed as a result of the income, from this Contract.-----
- L. Income Tax Retention Law: PREPA shall deduct and withhold ten percent (10%) of any and all payments to residents of the Commonwealth of Puerto Rico as required by the Internal Revenue Code of Puerto Rico. In case of US citizens and Non-US citizens, which are nonresidents of the Commonwealth of Puerto Rico the Contractor will retain twenty percent (20%) and twenty-nine percent (29%) respectively. PREPA will remit such withholdings to the Government of Puerto Rico's Treasury Department (known in Spanish as *Departamento de Hacienda de Puerto Rico*). The Contractor will request PREPA not to make such withholdings if, to the satisfaction of PREPA, the Contractor timely provides a release from such obligation by the Government of Puerto Rico's Treasury Department. 3 L.P.R.A. § 8611 et seq., 2011 L.P.R. 232; 232-2011.-----
- M. Compliance with Act 1-2012 of Governmental Ethics: The Contractor will certify compliance with Act 1-2012, as amended, known as the Ethics Act of the Government of Puerto Rico, which stipulates that no employee or executive of PREPA nor any



member of his/he immediate family (spouse, dependent children or other members of his/her household or any individual whose financial affairs are under the control of the employee) shall have any direct or indirect pecuniary interest in the services to be rendered under this Contract, except as may be expressly authorized by the Governor of Puerto Rico in consultation with the Secretary of Treasury and the Secretary of Justice of the Government. 3 L.P.R.A. § 8611 et seq.;-----

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

O. Act 127-2004: Contract Registration in the Comptroller's Office of Puerto Rico Act: Payment for services object of this Contract will not be made until this Contract is properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Law 18 of October 30, 1975, as amended.-----

P. Prohibition with respect to execution by public officers: 3 L.P.R.A. 8615(c): No public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has



had direct or indirect economic interest during the last four (4) years prior to his/her holding office.-----

Q. Prohibition with respect to contracting with officers or employees: 3 L.P.R.A. 8615(d):

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

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

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

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

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



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

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

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

If any of the previously required Certifications shows a debt, and Contractor has requested a review or adjustment of this debt, Contractor will certify that it has made such request at the time of the Contract execution. If the requested review or adjustment is denied and such determination is final, Contractor will provide, immediately, to PREPA a proof of payment of this debt; otherwise, Contractor accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments.-

FOURTH: Contractor agrees to comply with the provisions of Act 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico. The Contractor hereby certifies that it does not represent particular interests



in cases or matters that imply a conflicts of interest, or of public policy, between the executive agency and the particular interests it represents.-----

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

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

PREPA shall have the right to terminate the Contract in the event Contractor is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics



of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.-----

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

FIFTH: The Parties acknowledge that PREPA is undergoing a transformation process, and therefore, both Parties agree that in the eventuality of the execution of a Partnership Contract, Sale Contract or any other PREPA Transaction (as these terms are defined in Act 120-2018), PREPA may sell, assign, convey, transfer, pledge, mortgage, sublease, delegate, hypothecate, or otherwise dispose (each, a “Transfer”) any of its rights, title, or interest in this Contract as permitted by applicable law and at any time, and without Contractor’s consent or cost, expense or incremental liability to PREPA, to any future operator of Puerto Rico’s electric power transmission and distribution system or any of its



affiliates, or to any governmental agency, body, public corporation or municipality of Puerto Rico; provided, that PREPA shall notify Contractor no later than thirty (30) days before the effective date of any such Transfer.-----

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

SIXTH: The Parties agree that all other terms and conditions established in the Contract, shall remain unaltered and fully enforceable.-----

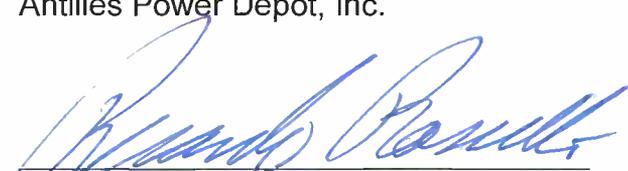
In WITNESS WHEREOF, the Parties hereto have agreed to execute this Fifth Amendment in San Juan, Puerto Rico, on this 28 day of October, 2019.-----

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Puerto Rico Electric Power Authority

Antilles Power Depot, Inc.

  
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José F. Ortiz Vázquez  
Chief Executive Officer  
Tax ID: 660-43-3747

  
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Ricardo Rosselló Benes  
Chief Operation Officer  
Tax ID: 660-58-1300