

2019-P00027A

**COMMONWEALTH OF PUERTO RICO
PUERTO RICO ELECTRIC POWER AUTHORITY**

**FIRST AMENDMENT
AGREEMENT TO RECOGNIZE THE CONTRACTED OBLIGATIONS**

**Contract 77194/2019-P00027 (EPA C-72-096-40)
Collection Station for Effluents Rehabilitation
San Juan Steam Plant**

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 (Act 83), represented in this act by its Chief Executive Officer/Executive Director, José F. Ortiz Vázquez, of legal age, married, professional engineer, and resident of San Juan, Puerto Rico. -----

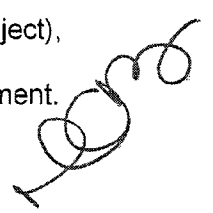
AS SECOND PARTY: RG Engineering, Inc. hereinafter referred to as the Contractor, a corporation organized and existing under the laws of Puerto Rico, authorized to do business in Puerto Rico, represented in this act by its Vice-president, Michelle Marie Camino Bonilla of legal age, married, and resident of Guaynabo, Puerto Rico, by virtue of Corporate Resolution dated as **February 10, 2020**-----

WITNESSETH

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

STATE

WHEREAS: On October 15, 2018, the appearing Parties executed Contract 77194/2019-P00027 (Contract), to provide: engineering, design, equipment, materials and supervision required to successfully rehabilitate and re-commission the existing Collection Station Plant for Effluents at the San Juan Steam Plant (the Project), as well as provided training to PREPA's personnel in the operation of the equipment.

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The Project was awarded through RFP - 1173 at a cost of eight hundred eighty four thousand six hundred and sixty nine dollars (\$884,669) and a construction term of one hundred and fifty (150) calendar days. -----

WHEREAS: One of the most essential parts of the Project was the execution of all the work related to the refurbishing, re-commissioning, validation, re-certification and training to PREPA's personnel of the control system of the Plant by Alfa Laval, subcontractor of the Contractor, and original designer and manufacturer of the control system. -----

WHEREAS: During the development of the project, the Contractor informed PREPA that Alfa Laval's plants controls system division which would perform the work had closed operations. The Contractor argues that he sought alternatives to replace the work that Alfa Laval was supposed to perform on both, the control system and process design. ----

WHEREAS: On November 4, 2019 the Contractor presented for PREPA's approval Submittal No. RGE-202 Rev. 2 titled Execution Plan Rev. 2, which is a revision to the original scope of work plan to execute the project as intended in the original specifications, especially regarding the control system refurbishing and commissioning work. After careful evaluation, PREPA agrees with the Revised Execution Plan. -----

WHEREAS: On December 10, 2019 PRE PA met with the Contractor to settle in an amicable way the arguments presented by both Parties. Among the agreement reached was the presentation of a change order proposal by the Contractor to be evaluated by PREPA and included as part of this Amendment. On December 16, 2019 the Contractor submitted to PREPA a change order proposal, which is broken down as follows:

Rec'd

1. The Contractor shall complete the project as per the Submittal No. RGE-202 Rev. 2 titled Execution Plan Rev. 2. However, said Submittal No. RGE-202 Rev. 2 shall not take precedence over the rest of the Contract documents, as established in Article 40 of the Contract (Correlation of Documents).
2. The Contractor shall replace at its own cost, the existing HMI display. -----
3. The Contractor shall replace at its own cost, two Decanter Pumps Rotors, and two Transfer Pumps Rotors.-----
4. The Contractor shall revised the project schedule and add additional days to achieve a new completion date, which included the time for schedule slippage due to the situation encountered with Alfa Laval, the time for claim evaluation and subsequent negotiation process between both parties, and the time needed to complete the repair and replacement of the Plant's PLC, the Decanter Pumps and the Transfer Pumps and all of the rest of the contract work. On January 15, 2020, the Contractor updated the schedule and added three hundred ninety seven (397) calendar to complete the work which had been delayed by all the abovementioned circumstances particularly the closing of operations of Alfa Laval division in charge of the plant's control system work-----

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

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TERMS AND CONDITIONS

—FIRST: Article 4, Commencement and Completion of Work, is amended to read as

4.1 General

The Contractor shall be required to complete all task and project scope within five hundred fortyseven (547) calendar days from the date of the Notice to Proceed, subject to the provisions stated in Article 10, Changes and/or Extra Work, Article 15, Force Majeure and Article 19, Termination. 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. Mobilization shall be completed within twenty (20) days after the Notice to Proceed. Notwithstanding anything provided on this Contract regarding completion of contracted work, the term of the Contract may be extended for additional periods of ninety (90) calendar days, if PREPA notifies the Contractor its interest on such extension within thirty (30) calendar days prior to the of the original construction term. Both Parties agree that time is of the essence in this Contract. -----

The demand of the obligations of either party under this Contract will be subject to the filing of the Contract at the Office of the Comptroller of the Commonwealth of Puerto Rico, in compliance with Act of October 30, 1975, No. 18, as amended. -----

The Contractor shall, no later than ten (10) working days, after receipt of the Letter to proceed (LTP) signed by the Engineer, furnish all documents required therein.-----

----SECOND: The Contractor shall complete the project as per Submittal No. RGE-202 Rev. 2 titled Execution Plan Rev. 2, included as and made part of this amendment. Also, the Contractor shall replace at its own cost, the existing HMI display and

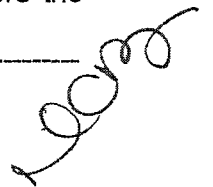


the two Decanter Pumps Rotors, and two Transfer Pumps Rotors. All costs related to these tasks, will be absorbed by the Contractor at no costs to PREPA. -----

----THIRD: PREPA shall not be liable to the contractor for any extended overhead costs and the Contractor hereby accepts the time extension as full settlement for the above mentioned delays. -----

----FOURTH: PREPA and the Contractor waive any claims regarding the extended period of time of three ninety seven (397) calendar days agreed on this amendment, with the exception of claims related to warranty terms on job performance or materials and equipment provided and installed by the Contractor. -----

----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 the Contractor 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 the Contractor no later than thirty (30) days before the effective date of any such Transfer.-----



First Amendment, – Agreement to Recognize the Contracted Obligations

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The Contractor acknowledges that all its 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) days period. -----

-----SIXTH: The Contractor shall provide, before the execution of this First Amendment, the following documents and certifications: -----

A. Certification issued by the Treasury Department of Puerto Rico which indicates that the Contractor does not owe taxes to the Commonwealth of Puerto Rico, or is paying such taxes by an installment plan in full compliance with its terms. -----

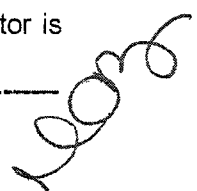
B. An Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that the Contractor has filed his Income Tax Return for the last five (5) tax years. -----

C. A Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that the Contractor has filed its Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods. -----

D. Certification issued by the Municipal Revenues Collection Center (MRCC), assuring that the Contractor does not owe any tax accruing during the last five (5) years to such governmental agency. -----

E. A Personal Property Tax Filing Certification, issued by the MRCC which indicates that the Contractor has filed its Personal Property Tax Return for the last five (5) contributory terms. -----

F. Certification, issued by the Child Support Administration, assuring that the Contractor is in compliance with the withholdings required by law as an employer. -----



- G. Certificate, issued by the Department of Labor and Human Resources of Puerto Rico, assuring that the Contractor has paid to the Department of Labor and Human Resources of Puerto Rico its employees' contributions accruing during the last five (5) years, in accordance with the Puerto Rico Employment Security Act (unemployment, temporary disability or sickness or social security for drivers/chauffeurs); or is paying such contributions by an installment plan in full compliance with its terms. ---
- H. Copy of the Contractor Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico. -----
- I. Good Standing Certificate issued by the Department of State of Puerto Rico. -----
- J. Certification of Incorporation, or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.-----

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

-----SEVENTH: The Contractor shall furnish a sworn statement to the effect that neither the 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 the 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. -----

The 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 the Contractor is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.547 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.-----

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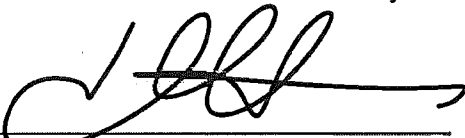
The Contractor expressly agrees that the conditions outlined throughout this Article are essential requirements of this Contract. Consequently, should any one of these representations, warranties or certifications be incorrect, inaccurate or misleading, in whole or in part, there shall be sufficient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

----EIGHT: All payments performed under this Agreement will be charged to PREPA's budget account number **01-1861-18743-000-000**.-----

THEREFORE: The parties agree that all other terms and conditions, stipulations, insurances and requirements established in the Contract shall remain unaltered and fully enforceable.

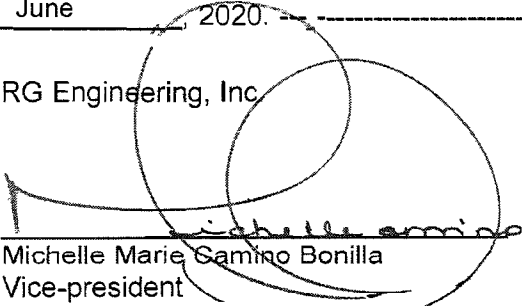
In WITNESS WHEREOF, the parties hereto have agreed to execute this First Amendment in San Juan, Puerto Rico, on this 4 day of June, 2020.

Puerto Rico Electric Power Authority



José F. Ortiz Vázquez
Executive Director

RG Engineering, Inc



Michelle Marie Gamino Bonilla
Vice-president