

2019-P00117

PUERTO RICO ELECTRIC POWER AUTHORITY
GENERATION DIRECTORATE

REQUISITION NUMBER 182751
CONTRACT No. 82426

NEW WATER SUPPLY FOR THE AGUIRRE POWER COMPLEX PHASE V
FINAL EFFLUENT TANK & WATER RETENTION TANK REHABILITATION WORK
(EPA-C72-128-19)

APPEAR

AS FIRST PARTY: The Puerto Rico Electric Power Authority (PREPA), a public corporation and government instrumentality of the Government 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, mister José F. Ortiz Vázquez, of legal age, married and resident of San Juan, Puerto Rico.

AS SECOND PARTY: RG Engineering, 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 Vice-President, Michelle Marie Camino Bonilla, of legal age, married, and resident of Guaynabo, by virtue of Corporate Resolution dated as April 30, 2018.

WITNESSETH

WHEREAS, PREPA, by virtue of its enabling act, Act 83 of May 2, 1941, as amended (Act 83), has the authority to engage those professional, technical and consulting services necessary and convenient to the activities, programs, and operations of PREPA;

WHEREAS, as established in Section 205 (1) of Act 83, all purchases and contracts for supplies or services, except personal services, made by PREPA, including its capital construction contracts, shall be made by calling for bids with sufficient time before the date the bids are opened so that PREPA can guarantee proper knowledge and appearance of competitive bidders;

WHEREAS, this Contract was awarded to the Contractor by means of the bid process number 1796.

THEREFORE, in consideration of the mutual covenants hereinafter stated, the Parties hereby agree to execute the Contract as follows:



ARTICLE 1. Scope of Contract

The Contractor shall furnish all labor, materials, equipment, tools, supervision, test and permits and services for the construction of the New Water Supply for the Aguirre Power Complex Phase V – Final Effluent Tank & Water Retention Tank Rehabilitation Work in strict accordance with the provisions of this Contract, including the General Conditions, Special Conditions, Technical Specifications No. 9800, 9900, 15455, 45456 & 15457, Proposal Forms, Contractor's Bidding Proposal, and reference drawings, all of which are hereby made a part hereof (Project). Provided that, on or before the term of this Contract is expired, as part of its obligations herein stated, the Contractor shall deliver to PREPA a true and exact copy of all diagrams, plans, sketches, maps, and other documents used in the performance of contracted works and for which a third party copyright or patent right would not be an impediment for such delivery.

ARTICLE 2. Definitions

Whenever the words defined in this article or pronouns used instead they shall have the meanings here given:

2.1. Act of God – an Act of God is construed herein to mean an earthquake, hurricane or other cataclysmic phenomenon of nature not ordinarily occurring. Rains, windstorms, floods or other natural phenomenon of normal intensity for the particular locality as determined by the preceding five (5) year monthly average from records of the nearest National Oceanic and Atmospheric Administration recording station shall not be construed as an Act of God.

2.2 Applicable Law – shall mean any federal, state or local act, statute, law, code, rule, regulation or order applicable to Contractor's performance of the work.-

2.3 Calendar Day – shall mean each and every 24-hour day shown on the calendar, beginning and ending at midnight.

2.4 Contracting Officer - shall mean the Chief Executive Officer/Executive Director of PREPA, acting directly or through his properly authorized representatives as notified in writing to the Contractor.

2.5 Completion Date – date in which all tasks and project scope had been completed.

2.6 Contract - shall mean, collectively, all the covenants, terms, and stipulations in these articles of agreement, and in all supplementary documents hereto attached which constitute essential parts of the Contract and are hereby made part thereof, to wit:

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Contract
Invitation to Bid and Advertisement for Bids
Instruction to Bidders
Contractor's Bid Including Bid Data and Schedules
Special Conditions
Technical Specifications and Drawings enumerated therein
Proposal Forms
Bid, Performance, and Payment Bonds
Letter of Award

2.7 Contractor - designates the company that will perform all work as defined in ARTICLE 1. Scope of Contract, of this Contract and the Special Conditions and Specifications contained in it. Contractor shall perform, with his own labor force or organization, work amounting to not less than 50% of the total Contract cost.

2.8 Construction Manager - shall mean the professional assigned by the Contractor to provide the construction management services on the project. This professional shall be a professional engineer registered in Puerto Rico and an active member of the Puerto Rico College of Engineers and Land Surveyors.

2.9 Change Order - A written agreement between the Parties that sets out changes (in price, time, or scope of work) to the Contract.

2.10 Critical Path Method (CPM) – A scheduling technique used to plan and control a project which combines all relevant information into a single plan defining the sequence and duration of operations, and depict the interrelationship of the work elements to complete the project. The critical path is defined as the longest sequence of activities in a network which establishes the minimum length of the time for accomplishment the last event of the project.

2.11 Delay - Event that extends (affect) the completion date of the project, by affecting tasks on the critical path. The project schedule shall clearly display that the Contractor has used, in full, all the float time available for the work involve with this request.

2.12 Disruption - The effect of events upon a non-critical path that, while using additional recourses and extending the duration of that particular activity, or path of activities, does not extend the end date of the project.

2.13 Engineer - shall mean the PREPA's Director of Generation, acting directly or through his properly authorized representatives.

2.14 Final Acceptance of Work – shall mean the written approval by PREPA that the entire work has been completed and the final cleaning up of the site has been performed and all Punch List items have been rectified.

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2.15 Force Account Work - Extra work in which the Contractor delegate the administration to PREPA and that is paid for on the basis of actual costs for labor, materials, equipment, bonds, insurance, and taxes, plus an established allowance, as provided in this Contract or Special Conditions.

2.16 Letter of Award (LOA) – Letter signed by the Director of the Generation, Directorate to notify the bidder that the bid is being awarded to him and to require documents prior to contract signing, such as but not limited to; Corporate Resolution, evidence of payment and certificate of the Puerto Rico State Insurance Fund, municipal license taxes, Construction excise taxes, certificate of insurances and endorsements, documents of the Owner Controlled Insurance Program, payment and performance bonds.

2.17 Letter of Release – Letter signed by the Contractor's contracting officer and notarized stating that the Contractor has no debt with, but no limited to, subcontractors, consultants, material and services supplier, Federal and State Agencies, Municipality, manufacturer or Insurance Agency.

2.18 Notice to Proceed – a written order sent to the Contractor by the Contracting Officer, or his designated representative, notifying the Contractor of the date upon which the Contractor is given authority to begin the work.

2.19 Owner – designates the Puerto Rico Electric Power Authority (PREPA).

2.20 Punch List - shall mean the list of non-conforming or incomplete work items that are identified by PREPA as been required for the Final Acceptance of the work.

2.21 Final Acceptance of the Work. – shall mean written approval by PREPA that the entire work has been completed and the final cleaning up of the site has been performed and all Punch List items have been rectified.

2.22 Resident Engineer - shall mean the manager of the field office responsible for, but not limited to, the administrative issues, quality control, and technical aspects of the project. This person shall be a professional engineer register in Puerto Rico and an active member of the Puerto Rico College of Engineers and Land Surveyors. The Resident Engineer shall be present at all times on site in order to the Contractor be able to perform any task of the project.

2.23 Safety Officer – shall be the person designated by the Contractor whose only duty shall be the prevention of accidents and implement, both, the Safety and Health Program and the Site Specific Work Plan. The Safety Officer shall be present at all times on site in order to the Contractor be able to perform any task of the project.



2.24 Special Conditions – are all special requirements, regulations and/or directions covering conditions peculiar to a particular project.

2.25 Substantial Completion - shall mean the date certified by PREPA, that the Contractor shall reached the stage of completion when PREPA accepts the legal and safe use of the facility or system for its intended purposes, even though all work is not completed. At the stage, the time of completion of the entire work shall cease and also the accruing of penalties. However, the Contractor shall finish the items included in the punch list and all other pending task or requirement of the contract documents, as required in the Substantial Completion certificate.

Specifically, for this project shall also mean that:

- A. All pipes have been installed in compliance with, the dimensions, location and elevations required in the drawings and specifications.
- B. All mechanical and electrical equipment have been installed in compliance with drawings and specifications.
- C. Contractor has installed, tested and validated all electrical, mechanical and control systems.
- D. Contractor has performed all excavation work entirely to elevations and dimensions required.
- E. All pipes have been installed and tested by Contractor.
- F. All concrete structures have been constructed to the required dimensions and tested by Contractor.
- G. All required equipment has been installed and tested by Contractor.

2.26 Subcontractor – shall mean any subcontractor, supplier, or vendor of Contractor engaged for the purposes of progressing the work under a subcontract with the Contractor and in which the Contractor has no equity interest or profit-sharing affiliation. Any such entity in which the Contractor owns equity or has a profit-sharing affiliation shall be considered to be the Contractor. Contractor shall comply with requirements set forth on Article 29 – Subcontractors.

2.27 Working Day – shall mean each day Monday thru Friday and hours from 7:00 AM to 11:30 AM and from 12:30 PM to 4:00 PM.

ARTICLE 3. Consideration

The total amount to be paid under this Contract shall not exceed three million forty-eight thousand dollars (\$3,048,000) (the Contract Amount).

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However, nothing herein shall preclude the Parties from agreeing to increase the Contract Amount by written amendment signed by both Parties.

The Contractor shall submit its invoices for work already done according to the payment schedule approved by the Engineer together with the technical supporting documents of required tests. All invoices shall be subject to the Engineer's approval before paid and shall include the actualized progress schedule, S-curve graph and all other documents required in the Special Conditions. All invoices shall be subject to PREPA's approval before being paid, and its payment shall be done within sixty (60) days after the date of PREPA's approval.

Unless otherwise provided in the specifications, partial payment will be made as the work progresses at the end of each month, or as soon thereafter as practicable, on estimates made and approved by the Engineer or the Contracting Officer in accordance with PREPA's internal regulations. In preparing estimates the material delivered on the site may be taken into consideration; provided that, the Contractor submits evidence as signed receipts or other documentary evidence to prove that the actual costs of the materials or equipment (materials or equipment for now on is referred as materials) for which he is to receive advance payment has been paid in full. If said materials have not been paid for in full, the invoice shall be accompanied by a release from Bond Company and the materials dealer expressing their agreement with the payment for such materials to the Contractor by PREPA, in which it expressly state that no claim shall be done against PREPA for non-payment. Materials shall be properly housed or stored at the job site in a manner which will insure the preservation of their quality and fitness for the work and that the Contractor shall not withdraw said material for any purpose other than incorporation into the work. Storage and protection cost, and the cost of replacing lost or damage materials shall be borne by the Contractor.

If at any time after the Contractor has receive advance payment for materials on site, the Engineer obtains evidence indicating that said materials, or any part or parts thereof, are defective, or that said materials, or part thereof, do not conform to the specifications, the Engineer will proceed to deduct from any of the succeeding partial payments due to the Contractor for the work actually performed, a sum sufficient to cover the cost of the materials, or parts thereof, found to be defective.

All payments made by PREPA for equipment and/or materials delivered and accepted and/or services rendered and work performed under this Contract will be charged to a construction estimate. In making such payments, PREPA shall retained ten percent (10%) of each payment until final completion and acceptance of all work covered by the Contract; provided that, on completion an acceptance of each separate structure, building, tank, canal, road, power conduit, tunnel, public work, or other division of the Contract, on which the price is stated separately in the Contract, payment

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may be made in full, including retained percentages thereon, less corresponding deductions.

No payment of invoices or portions thereof shall at any time constitute approval or acceptance of the work under this Contract, nor be considered to be a waiver by PREPA of any of the terms of this Contract. However, title to all materials and equipment to the extent that payments have been received, whether or not the same have been incorporated in the work, shall vest in PREPA and, in any case, shall not be part of Contractor' property or estate in the event the Contractor is judged a bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Contractor's inventory.

After Final Acceptance, PREPA will pay to Contractor all retained percentages less the corresponding deductions. The Contractor shall submit a Letter of Release ("Carta de Relevó"), which shall be notarized and in which the Contractor shall state that there is not debt with any sub-contractor, manufacturer, employee, government agency, municipality and service or materials provider.

All payments performed under this Contract will be charged to a PREPA's budget account number 01-1861-18743-000-000.

The Contractor shall immediately notify PREPA when the billing under the present Contract amounts 75% of the maximum amount under the Contract. Once this notification has been issued, the Contractor, in coordination with PREPA, will ensure that no work will be done in excess of the Contract Price, except that a written amendment is agreed upon by both Parties. In addition, the Contractor shall present an itemized list of the remaining billable works under the Contract.

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 Contract, 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 absolute nullity that no public servant of PREPA is a party or has any interest in the benefit or profit product of the Contract, which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Contract. The only consideration to be received in exchange for the delivery of Services provided is the agreed-upon price that has been negotiated with an authorized representative of PREPA. The total amount shown on this invoice is true and

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correct. The Services have been rendered, and no payment has been received.

Contractor's Signature

ARTICLE 4. Commencement and Completion of Work

4.1 General

The Contractor shall be required to complete all task and project scope within three hundred thirty (330) 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 beginning of commencement of work. Mobilization shall be completed within twenty (20) days after the Notice to Proceed.

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.

4.2 Schedule of Proposed Progress

The Contractor, within fifteen (15) days after receipt of the Notice to Proceed shall file with the Engineer a schedule of proposed progress of the work and the proposed detailed method of carrying on the work including a full statement of equipment and equipment layout for the job. This progress chart and statement of operations shall show the dates of commencement and completion of each item of the work. This schedule shall also include the milestones for the submittals and material ordering, the critical path of the project, and the man-hours per item if said progress chart and/or statement of operations are not satisfactory to the Engineer, they shall be revised by the Contractor to provide for the use of adequate and sufficient equipment and force and a method of operations, which will assure the completion of the work within allotted time. This information shall become a part of this Contract after the Engineer has approved it in writing. The schedule shall be actualized monthly by Contractor and submitted to PREPA for approval. All requirements on the attached Special Conditions shall also apply, specifically Article - Scheduling on the Special Conditions.

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4.3 S-curve Graph

The Contractor within fifteen (15) days after receipt of the Notice to Proceed Contract shall file with the Engineer the S-curve Graph. The S-curve shall be plotted with the percent of work completed in the Y-axis and the cost in the X-axis. This graph shall be based on the proposed schedule as define on Section 4.2 above.

4.4 Contract Quantity Report

The Contractor shall submit weekly and for approval, to the Engineer, the contract quantity report sheet. This sheet will be given to the Contractor at the preconstruction meeting.

4.5 Payment Schedule

The Contractor within fifteen (15) days after receipt of the notification of award of the Purchase Order shall file with the Engineer the Schedule of Payment (Breakdown for Payment). The Schedule of Payment shall be balanced throughout the whole project and if said Schedule of Payment is not satisfactory to the Engineer, it shall be revised by the Contractor and resubmitted for its approval.

ARTICLE 5. Suspension of Work

The Contracting Officer may, at any time, suspend the whole or any portion of the Services under this Contract, but this right shall not be construed as denying the Contractor actual reasonable and necessary expenses due to delays, caused by such suspension. These expenses shall not be allowed when ordered by the Contracting Officer because of a force majeure event, as defined in Article 15, Force Majeure. The cause of such suspension shall be put in writing by the Contracting Officer within two (2) working days after the suspension or as soon as practicable.

ARTICLE 6. Other Work at the Site

PREPA reserves the right to perform other work by force account and/or enter into other contracts in connection with the Project. The Contractor shall afford PREPA and other contractor reasonable opportunity for the introduction and storage of materials and the execution of the work and shall properly connect and coordinate his work with theirs. The Contractor shall inspect and promptly report to PREPA any defects in such work or any conflicts between such work and that of the Contractor.

Wherever work being done by PREPA's own forces or by other contractors is contiguous to work covered by this Contract, the respective rights of the various

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interests involved shall be established by PREPA to secure the completion of the various portions of the work in general harmony. Whenever, in the opinion of PREPA, the orderly progress of the entire project requires the use by PREPA's own forces or by other Contractors, of construction equipment installed and operated by the Contractor for his own use, PREPA will arrange with the Contractor for such use, at times, and in locations which will not interfere with the work being done under this Contract.

ARTICLE 7. Submittals

The Engineer shall be allowed at least fifteen (15) working days to evaluate and to review of submittals and mark them as disapproved, approved as corrected or approved it becomes necessary. The Contractor is responsible to submit three (3) sets of the submittals. All disapproved submittals shall be corrected as required and resubmitted for PREPA's evaluation. In case of discrepancy in the submittals, including Contractor's disagreement with corrections requested by the Engineer or PREPA, the matter shall be immediately submitted to the Engineer, and the Contractor shall not proceed with the Work so affected until the Parties resolve such discrepancy in good faith.

Review or approval of Contractor's submittals shall in no way relieve the Contractor from its responsibilities, obligations or liabilities under this Contract.

The Contractor shall obtain such reviews or approval in writing from PREPA. The Contractor shall keep at the Site one hard-copy of the Contract documents, specifications and drawings, and shall, at all times, give the Engineer access thereto. Anything called for in the Specifications and not shown on the drawings, or shown on the drawings and not mentioned in the Specifications shall be of like effect as if called for or shown on both.

Before commencement of any work or task required in this Contract, the Contractor shall submit for PREPA's approval, required in Article 48. Safety Provisions, the Occupational Safety and Health Program.

ARTICLE 8. Specifications and Drawings

PREPA reserves the right to review and approve all drawings, specifications, methods, and data which the Contractor generates, from its responsibilities, obligations or liabilities under this Contract. The Contractor shall obtain such reviews or approval in writing from PREPA. The Contractor shall keep at the working area a copy of the Contract, its supplementary documents, specifications and drawings, and shall, at all times, give the Engineer access thereto. Anything called for in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications shall be of like effect as if called for or shown on both. In case of discrepancy in the specifications and drawings, the matter shall be immediately submitted to the Engineer, without whose decision said discrepancy shall not be

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adjusted by the Contractor, and the Contractor shall not proceed with the work so affected until it has received written order from the Engineer.

ARTICLE 9. Strict Accordance with Technical Requirements

All construction work called for in the Specifications and/or shown on the drawings to be performed by the Contractor shall be performed in strict accordance with the technical requirements of the Specifications.

ARTICLE 10. Changes and/or Extra Work

PREPA may, at any time, make changes or order extra work within the Scope of Work contracted, subject to previous written approval of PREPA's Contracting Officer. Changes made by PREPA may include, but not limited to, changes:

1. In the specifications including drawings and design.
2. In the method or manner of performance of the work.
3. In PREPA's furnished facilities, equipment, materials, services, or site; and/or,
4. Acceleration in the performance of the work.

Within ten (10) working days after receipt of PREPA's written order of a change in the work (or such shorter or longer period of time as may be reasonably required as agreed by PREPA and the Contractor), Contractor shall promptly notify PREPA of the cost, schedule and other impact(s) Contractor anticipate as a result of the change. If PREPA agrees with the Contractor's statement as to the impact of the change, the Parties shall proceed promptly to enter into a written change order in connection with such change to equitably adjust Contractor's cost (increase or decrease), schedule (lengthen or shorten), or other obligations under Contract in connection with such change. If PREPA disagrees with the Contractor's statement as to the final impact of the change, PREPA shall promptly advise Contractor in writing of the basis for the disagreement and PREPA and Contractor shall negotiate in good faith to resolve any issues in order to, when applicable, enter into a written change order to equitably adjust Contractor's cost (increase or decrease), schedule (lengthen or shorten), or other obligations under the Contract in connection with such change. Acceptance of the change order and an adjustment in the Contract price and/or Contract time shall not be unreasonable withheld. Once a written consent has been executed by PREPA's Contracting Officer, Contractor shall proceed with the change. Except as herein provided, and with the time frames stated, no order, statement, or conduct of PREPA shall be treated as a change under this section or entitle the Contractor to an equitable adjustment hereunder.

If agreement on the prices for the extra work cannot be reached between PREPA and the Contractor, PREPA may order in writing the Contractor to perform the required work on a force account basis and the Contractor shall then execute the order. Payment for such Force Account Work shall be as specified in Article 1.11 - Force Account, of the

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Special Conditions. PREPA may also elect to have such work performed by its own forces or by separate contract.

In order to facilitate review of quotations for extras or credits, all proposals submitted by Contractor in connection with a change in the work by PREPA, except those so minor that their propriety can be seen by inspections, shall be accomplished by a complete itemization of the costs including labor, materials, equipments and subcontracts. When subcontractors perform major cost items, they shall also be itemized.

ARTICLE 11. Inspection

11.1 Periodic Inspection

All material and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination, and test by PREPA's inspectors, at all reasonable times, during manufacture and/or construction. PREPA shall have the right to reject defective material, equipment or workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material and equipment furnished by the Contractor shall be satisfactorily replaced with proper material and equipment, without charge to PREPA. The Contractor shall promptly remove rejected material from the premises. The Contractor shall furnish promptly all reasonable facilities, labor, materials, and equipment necessary for the safe and convenient inspection and tests that may be performed in such manners as not to unnecessarily delay the work.

11.2 Final Inspection

Whenever all the materials have been furnished and all work has been performed, including final cleaning up as contemplated in ARTICLE 45., Cleaning Up, all in accordance with the drawings and specifications, the Contractor shall notify in writing the Engineer that said work is completed and ready for final inspection. Final inspection shall occur within a ten (10) working days period after the Engineer has received notice from the Contractor of the satisfactory completion of the installation of the equipment. After receipt of notice PREPA will notify Contractor of the exact date and time of the final inspection and Contractor shall accommodate PREPA's specific time. If all installation work provided for and contemplated by the Contract is found completed in accordance with the specifications, this inspection shall constitute the final inspection and the Completion Date shall be established as the date of receipt of the notice of the Contractor that the work was completed and ready for final inspection. If, however, upon inspection by the Engineer it is found that any work, in whole or in part, is unsatisfactory, the Engineer shall give the Contractor the necessary instructions as to replacement of material and performance of work necessary to

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final completion and acceptance and the Contractor shall immediately comply with and execute such instructions. Upon satisfactory replacement and performance of such work, the Contractor shall notify the Engineer, and another inspection shall be made which will constitute the final inspection if the said material is found to have been acceptably replaced and the work completed satisfactorily. In such event, the date of receipt of this last notice of the Contractor will be established as the Completion Date of the work or any separable part thereof under the Contract. The Completion Date, thus established, shall be used in calculating the actual time of performance of the work.

The determination of whether a project is substantially completed is at the discretion of PREPA. A project will normally be considered substantially completed as established in the Article 2.25, Substantial Completion, when all the contract work, except for a few very minor details, has been completed, the required final cleaning up has been performed and the project can be fully, legally and safely opened to traffic or used for the intended purpose.

ARTICLE 12. Superintendence by the Contractor

Before commencement of the work, the Contractor shall designate a competent Construction Manager, satisfactory to the Engineer, with the expertise and resources necessary to provide construction management services. The Contractor shall also have a competent Resident Engineer, satisfactory to the Engineer, on the work site, at all times, during progress of the work, with authority to act for him. The Resident Engineer shall only be assigned to this project. The Construction Manager and Resident Engineer shall represent the Contractor on his absence and all directions given to him by the Engineer shall be as binding as if given to the Contractor. The Contractor shall, at all times, enforce strict discipline and good order among his employees and shall not employ on the work any unsuitable or unskilled person in the work assigned to him. In addition, the Contractor shall be fully responsible for the negligent or wrongful acts or omissions of subcontractors or of persons both directly or indirectly employed by the Contractor, and shall be liable to PREPA and/or any affected third parties for such acts or omissions.

ARTICLE 13. Sanitary Facilities

The Contractor shall furnish and maintain satisfactory, sanitary facilities for the use of the workers engaged in the construction, as required by law or regulations.

ARTICLE 14. Access to Work

The Contractor shall permit all persons appointed or authorized by PREPA to visit and inspect the work, or any part thereof at all times, and places during the progress of it.

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ARTICLE 15. Force Majeure

The Parties hereto shall be excused from performing hereunder and shall not be liable in damages or otherwise, if and only to the extent that they shall be unable to perform, or are prevented from performing by a force majeure event. For purposes of this Contract, force majeure means any cause without the fault or negligence, and beyond the reasonable control of, the party claiming the occurrence of a force majeure event. Force majeure may include, but not be limited to, the following: Acts of God, industrial disturbances, acts of the public, enemy, war, blockages, boycotts, riots, insurrections, epidemics, earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to the acts or failure to act of any governmental authority, provided that these events, or any other claimed as a force majeure event, and/or its effects, are beyond the reasonable control and without the fault or negligence of the party claiming the force majeure, and that 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 force majeure.

ARTICLE 16. Penalty for Delays

If the Contractor fails to complete the work, or any separable part thereof, within the time established in the Article 4, Commencement and Completion of Work, the Contractor shall pay to PREPA a penalty of two thousand seven hundred dollars (\$2,700) for each calendar day of delay in completing the Project, up to a maximum of fifteen percent (15%) of the Contract Amount, and the Contractor and his sureties shall be joint and several liable for said amount. In the event that the Contractor, due to his delay, had pay the total amount of the penalty, and has failed to complete the Project or any part separable thereof, it could be considered a breach of the Contract, and PREPA may terminate the Contract, execute the Performance Bond and pursue any other remedies under this Contract, law or equity.

In case of delay, the Contractor shall within ten (10) days from the beginning of any such delay notify the Engineer in writing of the causes of delay, who shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of facts justify such an extension, and his findings of facts thereon shall be final and conclusive on the parties hereto, subject only to appeal by the Contractor as provided in ARTICLE 33. Disputes, hereof; provided that, no claim shall be made by the Contractor against PREPA, its agents, contractors, subcontractors, employees, successors, assignees, for any cause whatsoever, during the progress of any portion of the work embraced in the Contract. Any damages caused by delays or hindrances exclusively by PREPA shall be considered as fully compensated for by the extensions of time as provided above.

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If PREPA does not terminate the right of the Contractor to proceed, the Contractor shall continue the work, in which event shall continue to pay to PREPA the penalty in the amount set forth above for each calendar day of delay until the work is completed, and the Contractor and his sureties shall be liable for the amount thereof; provided that, the right of the Contractor to proceed shall not be terminated or the Contractor charged with a penalty because of any delays in the completion of the work due to Force Majeure events or situations, or failures on the part of PREPA to carry out its obligations.

PREPA shall have the right to the payment or to the withholding of Contractor's payments in case of Contractor's delay in completion of the work. The Contractor agrees that the penalty shall not be subject to reduction, moderation or modification, since this penalty is a pecuniary punishment for the delay, and not a liquidation of damages.

ARTICLE 17. Liabilities

17.1 Civil Responsibility

The appearing Parties agree that their respective responsibilities for damages under this Contract will be governed by the Puerto Rico Civil Code and its case law, as dictated by the Supreme Court of Puerto Rico.

17.2 Protection Against the Occurrence of Damages

The Contractor agrees to make, use, provide, and take all proper, reasonably necessary and sufficient precautions, safeguards, and protection against the occurrence or happenings of injuries, death and/or damages to any person or property during the progress of the work.

17.3 Save and Hold Harmless

The Contractor agrees to save and hold harmless and to indemnify PREPA for all expenses and costs of any nature (including attorneys' fees) incurred by PREPA arising out of any claim made by any person for personal injuries, including death or for property damage, caused by the Contractor or any of its subcontractors, by act or omission, in the performance or nonperformance of its obligations under the Contract.

17.4 Save Harmless for Operation of PREPA's Equipment

The operation of PREPA's equipment by PREPA at its plant site is within the exclusive control of PREPA and PREPA shall indemnify and save harmless the Contractor from loss, expense or liability imposed upon the Contractor for any

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injury to a person, including death resulting therefrom or damage to any property resulting from the operation of such equipment by PREPA.

If the Contractor is allowed to operate PREPA's equipment at the plant site, the Contractor shall indemnify and save harmless PREPA from loss, expense or liability imposed upon PREPA for any injury to a person, including death or damage to any property resulting from the operation of such equipment by the Contractor.

ARTICLE 18. Independent Contractor

The Contractor shall be considered as an independent contractor, for all material purposes under this Contract, and all persons engaged or contracted by the Contractor for the performance of its obligations herein, shall be considered as its employees or agents or those of its subcontractors, and not as employees or agents of PREPA. In consequence, the Contractor is not entitled to any fringe benefits, such as, but not limited to vacations, sick leave, and other.

ARTICLE 19. Termination

Notwithstanding anything to the contrary in this Contract regarding, PREPA may, at any moment, terminate, cancel or accelerate its expiration, after giving Contractor a not less than thirty (30) days prior notice, when in PREPA's judgment such action responds to PREPA's best interests. Provided that, in the event the Contractor fails to comply with any of its obligations under the Contract, PREPA may declare an immediate contract termination, cancellation or rescission, without prior notice to Contractor. The exercise of its right to terminate, cancel or rescind the Contract shall not be understood as a waiver by PREPA to any other remedy it may have under this Contract or under the law for delays or breach incurred by the Contractor in the performance of its obligations under the Contract.

If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the term specified in ARTICLE 4. Commencement and Completion of Work, or any extension thereof, or does not complete the work within such terms; or incurs in negligence in the performance of its obligations; or if he should persistently or repeatedly refuse or should fail to supply enough properly skilled workmen or proper materials; or if he should fail to make prompt payments to a subcontractor or for materials or labor; or persistently disregard laws, ordinances or the instructions of the Engineer, or otherwise be guilty of a substantial violation of any provision of the Contract, PREPA may, and without prejudice to any other right or remedy in law or in equity, terminate the Contract and take possession of the work by whatever method it may deem expedient. In such event, PREPA may take over the work and prosecute the same to completion by contract or otherwise, and the Contractor and his sureties shall be liable to PREPA for

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any excess cost incurred by PREPA. The expense incurred by PREPA as herein provided, and the damage incurred through the Contractor's default shall be certified by the Engineer.

If either party is adjudicated bankrupt under the Bankruptcy Laws of the United States or if either party makes a general assignment for the benefit of creditors, the other party may, by written notice, terminate this Contract, without prejudice to any of such party's rights hereunder.

ARTICLE 20. Insurance, Bonds, and Indemnities

The Contractor shall provide Workers Compensation Insurance as required by the Workmen's Compensation Act of the Commonwealth of Puerto Rico. The Contractor shall also be responsible for compliance with said Workmen's Compensation Act by all his subcontractors, agents, and invitees.

20.1. Commonwealth of Puerto Rico Workmen's Compensation Insurance:

The Contractor shall provide furnish PREPA a certificate from the State Insurance Fund showing that all personnel employed in the work are covered by the Workmen's Compensation Insurance, in accordance with this Contract.

20.2 Employer's Liability Insurance:

The Contractor shall provide Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident, covering against the liability imposed by Law upon the Contractor as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment, outside of and in the course of employment, and outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico.

20.3 Commercial General Liability Insurance:

The Contractor shall provide a Commercial General Liability Insurance with limits of \$2,000,000 per occurrence and \$2,000,000 aggregate. This Policy shall include a completed operations and products coverage.

20.4 Automobile Liability Insurance:

The Contractor shall provide an Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned and hired automobiles.

None

20.5 Professional Liability Insurance:

The Contractor shall provide a Professional Liability Insurance with limits of \$1,000,000 per claim and \$2,000,000 per aggregate.

20.6 Builder's All Risk Insurance/Installation Floater:

The Contractor shall provide a Builder's All Risk Insurance/Installation Floater on a completed value basis insuring the total cost of the Facility, to the extent available on commercially reasonable terms and subject reasonable deductibles with any right of subrogation by the insurance company being waived.

The Commercial General Liability and Automobile Liability Insurance required under this Contract, shall be endorsed to include:

A. As additional insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00936-4267

B. A 30 days cancellation or non-renewable notice to be sent by certified mail with return receipt to the above address.

C. An endorsement including this Contract under contractual liability coverage and identifying it by number, date and Parties to the Contract.

D. Waiver of Subrogation in favour of PREPA.

E. The Breach of any of the Warranties or Conditions in these policies by the Contractor shall not prejudice PREPA's rights under this policy.

Bonds

The Contractor shall furnish at any time before the execution of the Contract:

A performance Bond in the amount of one hundred percent (100%) of the Contract price, with good and sufficient surety satisfactory to PREPA guaranteeing that the Contractor will well and faithfully perform the Contract work within the time specified.

A payment Bond in the amount of one hundred percent (100%) of the Contract price, with good and sufficient surety satisfactory to PREPA to guarantee the prompt payment

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of all labor, supervision, equipment and materials required in the performance of the work.

All bonds shall be presented to PREPA before commencement of any work and shall be executed in the required official for of PREPA.

ARTICLE 21. Permits and Licenses

The Contractor shall obtain and maintain all the licenses, permits, and authorizations required to perform all services and tasks under this Contract, and shall send all notices, pay all fees and related costs, and will comply and will have its subcontractors and agents comply with all laws, ordinances, rules, and regulations applicable to the work, in accordance with the drawings and specifications. Should the Contractor find any discrepancy between the drawings and specifications and the permits, laws, ordinances, rules, and regulations referred to herein, the Contractor shall proceed immediately to notify PREPA of the discrepancy and shall not continue with the work until PREPA issues and notifies an order informing the Contractor what changes are necessary and when to proceed with the work as changed.

ARTICLE 22. Minimum Wage Rates

The Contractor and all subcontractors shall comply with the requirements prescribed by the federal Davis-Bacon Act (Public Law 107-217- August 21, 2002 as amended, 40 USC §3141 et seq.). As therein required, contractors and subcontractors performing on contracts funded directly by or assisted in whole or in part with American Recovery and Reinvestment Act appropriations in excess of \$2,000 shall pay all laborers and mechanics not less than the locally prevailing wage rates and fringe benefits, as determined by the Secretary of Labor, for corresponding classes of laborers and mechanics employed on similar projects in the area.

ARTICLE 23. Contingent Fees

The Contractor guarantees that he has not employed any person to solicit or secure this Contract upon any agreement for a commission percentage, brokerage or contingent fee. Breach of this guarantee shall give PREPA the right to annul the Contract or, at its discretion to deduct from the Contract price or consideration the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by Contractors upon Contract or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

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ARTICLE 24. Other Contracts

PREPA may award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors, in accordance with ARTICLE 6. Other Work at the Site, of this Contract, and carefully fit his own work to that provided under other contracts as may be directed by the Contracting Officer. The Contractor shall not commit or permit any acts, which interfere with the performance of work by any other contractor.

ARTICLE 25. Officials not to Benefit

No officer, employee neither or agent of PREPA, nor of the Government of the Commonwealth of Puerto Rico or Municipal Governments, shall be admitted to any share or part of this Contract or to any benefit that may arise there from.

In addition to the restrictions and limitations established under the provisions of "The Puerto Rico Government Ethics Act" Act No. 12 of July 24, 1985, as amended, retired or former officers or employees of PREPA, whose work was in any way related to the award or management of Contracts, shall in no way benefit from any Contract with PREPA for a period of two (2) years after leaving employment with or ceasing services to PREPA.

ARTICLE 26. Claims for Labor and Materials

The Contractor shall, at his own expense, assume the defense of and save harmless PREPA from claims for labor and materials and not suffer any mechanics or other liens to remain outstanding against any of the property used in connection with the work; and shall, on request, furnish satisfactory evidence that all persons who have done work or furnished materials have been fully paid. If the Contractor fails to comply with his obligations in this respect, PREPA may take such liens or claims and may withhold from any monies due to the Contractor such amounts as may be necessary to satisfy and discharge any such claims and any cost and expense incidental thereto.

ARTICLE 27 Unfair Labor Practice

In the event that the Contractor or any of his subcontractors or agents do not comply with an order issued by the Puerto Rico Labor Relations Board and/or the National Labor Relations Board upon their finding that the Contractor or any of his subcontractors or agents have committed an unfair labor practice, no further payments shall be made by PREPA to the Contractor after the date of the said order. In addition, the Contract may be terminated by PREPA, in which case PREPA may take possession of the materials, tools, and appliances on the job site and finish the work by whatever method it may deem expedient. Any declaration by the Puerto Rico Labor Relations Board and/or by the National Labor Relation Board that the contractors or agents have not complied with an order issued by the Board relating to any unfair labor practice,

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shall be binding, final, and conclusive unless such order is reversed or set aside by a Court of competent jurisdiction.

ARTICLE 28. Assignment

This Contract or any interest therein or any monies due or to become due there under shall not be assigned, mortgaged or otherwise disposed of without the previous consent in writing of the Contracting Officer.

ARTICLE 29. Subcontractors

The Contractor shall not subcontract its rights and obligations under this Contract, except in the event PREPA gives previous written authorization for such actions. Provided that no subcontract shall be considered for PREPA's approval, except when the following requirements are met: (1) the Contractor delivers PREPA a complete, non-marked copy of the signed subcontract, not less than thirty (30) days prior to the effective date of the proposed subcontract; (2) the subcontract includes, as a condition for its legal validity and enforceability, a provision whereby PREPA has the right to substitute, subrogate or assume Contractors' rights under the subcontract, in the event that PREPA declares the Contractor in breach or default of any of the Contract terms and conditions; and (3) the subcontract includes, as a condition for its validity and enforceability, a provision establishing for the subcontractor the obligation to comply unconditionally and entirely with all Contractors' obligations under the Contract (*mirror image rule*), except for such obligations, terms and conditions which exclusively related with works or services not included under the subcontract.

ARTICLE 30. Novation

Contractor and PREPA agree that no amendment, during the Contract term, it is understood as a contractual novation, unless both Parties agree to the contrary, specifically and in writing. The previous provision shall be equally applicable in such other cases where PREPA gives the Contractor a time extension for the compliance of any of its obligations under the Contract or where PREPA dispenses the claim or demand of any of its credits or rights under this Contract.

ARTICLE 31. Patents and Copyrights

The Contractor, at its own expense, shall defend any suit or action brought against PREPA based on a claim that any equipment or part thereof, copyright or un-copyrighted composition, secret process, patented or unpatented invention, article, or appliance manufactured or used in the performance of this Contract, including their use by PREPA, constitutes an infringement of any patents or copyrights of the United States, if notified promptly in writing by PREPA, and given the authority, information, and assistance for the defense of the same, and the Contractor shall pay all

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damages and costs awarded therein against PREPA. If in such suit the equipment or any part thereof, or the composition, secret process, invention, article or appliance, is held to constitute infringement and its use is enjoined, the Contractor, at its option and expense, shall either procure for PREPA the right to continue using the same or replace it with non-infringing equipment, composition, secret process, invention, article or appliance, or modify it so it becomes non-infringing; or remove it and refund the purchase price.

ARTICLE 32. Waivers

No waiver of any breach of this Contract shall be held to be a waiver of any other subsequent breach. All remedies afforded by PREPA in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

ARTICLE 33. Disputes

Except as otherwise specifically provided in this Contract, all disputes concerning questions of fact arising under this Contract shall be decided by the Engineer, subject to written appeal by the Contractor within thirty (30) days to the Executive Director. As soon as practicable thereafter, the Executive Director shall inform each party hereto of his decision regarding the dispute, which decision shall be final and conclusive upon the parties hereto, unless such decision is challenged on the basis of being arbitrary, malicious or capricious. If such challenge is made, either party may pursue its remedy at law or equity. In the meantime, the Contractor shall diligently proceed with the work as directed.

ARTICLE 34. Correction of Work After Final Payment

Neither the final certificate for payment nor any provision in the Contract documents shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, he shall remedy any defects due thereto and pay for any damage to other work resulting therefore, which shall appear within a period of one (1) year after final acceptance. PREPA shall give notice of observed defects with reasonable promptness. All questions arising under this Article shall be decided by the Engineer, subject to appeal by the Contractor, as provided in ARTICLE 33. Disputes, of this Contract.

ARTICLE 35. Laws to be Observed

The Contractor shall observe and comply with any and all Federal, State and Municipal Laws, by-laws, ordinances, and regulations in any manner affecting the work, the equipment or the materials used in the proposed rehabilitation and/or installation or construction, and those employed on the work or the conduct of the work, and with all

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such orders and decrees as exist at present or may be enacted prior to the completion of the work by bodies or courts having any jurisdiction or authority over the work. The Contractor shall save and hold harmless and to indemnify PREPA and its representative's officers, agents, and servants against any claim or liability arising from or based on the violation of any such law, by-law, ordinance, regulation, order or decree, whether by himself or his employees.

ARTICLE 36. Change in Law

During the term of this Contract, any change in law, including, but not limited to changes in applicable tax law, which causes an increase in Contractor's costs when supplying the products or services to be acquired by PREPA, shall be of Contractor's responsibility and PREPA shall not be obliged to make additional payments nor to pay additional sums to the price or canon originally agreed for those products or services.

ARTICLE 37. Choice of Law

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. Also, the contracting parties expressly agree that only the state courts of Puerto Rico will be the courts of competent and exclusive jurisdiction to decide over the judicial controversies that the appearing Parties may have among them regarding the terms and conditions of this Contract

ARTICLE 38. Separability

If a court of competent jurisdiction declares any of the Contract provisions as null or invalid, such holding will not affect the validity and effectiveness of the remaining provisions of the Contract and the Parties agree to comply with their respective obligations under such provisions not included by the judicial declaration.

ARTICLE 39. Warranty

The Contractor warrants that all materials, parts, equipment used, and work performed under this Contract comply in all respect with its terms and conditions; that they are free from any and all latent and patent defects in design, materials, and workmanship; that they 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, and that the services provided under this Contract will conform with the highest standards of care and practice appropriate to their nature. The warranty period will begin the date on which PREPA finally accepts the service and/or installation of the contracted product and will continue for a period of one (1) year. The Contractor will, upon written notice by PREPA, fully remedy, free of expense to PREPA, such defects as may develop on said services, materials, parts or equipment, provided that they have been properly stored,

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installed, maintained, and operated within the specified parameters. The Performance Bond shall cover and serve as guarantee for this warranty.

For those materials, parts, equipment, which prove defective or deficient during the warranty period, the Contractor shall, at his own expense, repair or replace, transport-in, from Contractor's facilities to PREPA's site, and transport-out, from PREPA's site to Contractor's facilities, such materials, parts, and/or equipment. The Performance Bond shall cover and serve as guarantee for the Contractor's failure, in whole or in part, to properly perform his obligations under this Contract.

For parts and equipment to be procured by Contractor from other suppliers, and which will be furnished by Contractor to PREPA under this Contract, a written warranty shall be obtained by the Contractor from each supplier and legally tendered to PREPA prior to the commencement of work.

ARTICLE 40. Correlation of Documents

The Contract documents are complementary and what is required by one shall be as binding as if required by all. The Contractor shall keep in the work site a copy of the Contract documents relating to the work and any supplementary documents, specifications and drawings relating thereto and shall give PREPA access thereto during all normal working hours.

In case of discrepancy or in the event of conflict among the different Contract documents such as: Contract, Special Conditions, Technical Specifications, Drawings, Proposal Forms, and the Contractors Bidding Proposal, these shall take precedence in the order given.

The terms and conditions contained in the Contract shall prevail over any conflictive terms and conditions contained in the Contractor's Bidding Proposal.

ARTICLE 41. Notice

Any required notice to be given hereunder shall be in writing and will be sufficiently served when delivered in person or properly mailed to the following addresses:

To PREPA: Puerto Rico Electric Power Authority
PO Box 364267
San Juan, Puerto Rico 00936-4267

Attention: Carlos Negrón Alfonso
Administrator on Generation

LCMS

To Contractor: RG Engineering, Inc.
 605 Condado Street Suite 322
 Santurce, Puerto Rico 00907

Attention: José M. Robles
 Project Manager

ARTICLE 42. Income Tax Withholding

PREPA will deduct and withhold at source to the Contractor the equivalent of ten percent (10%) from payment for services rendered under this Contract, in compliance with the Internal Revenue Code for a New Puerto Rico, Act No. 1-2011, as amended, section 1062.03. Notwithstanding, the withholding to be done by PREPA as herein stated could be increased to twenty percent (20%) in the event that the Contractor is a non resident individual, which is a U.S. citizen, as provided by the Act No. 1-2011, section 1062.08; or twenty-nine percent (29%) in the event that the Contractor is a non resident and non U.S. citizen individual; or a foreign corporation or partnership which is not dedicated to industry or business in Puerto Rico, as provided by Act 1-2011, section 1062.08.

If a Release Letter is issue to the Contractor by the Treasury Department, the Contractor shall be responsible to submit a copy of said Release Letter to PREPA for every calendar year; otherwise, payments under the Contract shall remain subject to withholding at source.

All invoices shall be segregated by concepts (services, materials, equipment, etc.), to identify the amounts subject to withholding and avoid undue deductions.

ARTICLE 43. Discrimination

The Contractor certifies that he is an employer with equal opportunity employment, and do not discriminate by race reason, color, gender, age, national or social origin, social status, political ideas or affiliation, religion; for being or perceived to be a victim of domestic violence, sexual aggression or harassment, regardless of marital status, sexual orientation, gender identity or immigration status; for physical or mental disability, for veteran status or genetic information.

ARTICLE 44. Other Taxes

All unemployment, retirement, and other Social Security contributions and taxes; all sales, use and excise, privilege, business and occupational taxes, and any other taxes or fees payable by the Contractor are and shall be included as part of his prices.

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ARTICLE 45. Cleaning Up

The Contractor shall remove from PREPA's property and from all public and private property all temporary structures no longer required, rubbish, and waste materials resulting from his operations.

Upon completion of the Project, the Contractor shall remove all remaining rubbish, unused materials and other like material, belonging to him or used under his direction during the installation of the equipment. In the event of his failure to do so, PREPA may remove the same at the Contract's expense, and his surety or sureties shall be liable therefore.

ARTICLE 46. Use of Completed Portions

PREPA shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the fact that the time for completion of the entire work may not have expired, but such taking possession and use shall not be deemed an acceptance of the work so taken or used or any part thereof. PREPA may require the Contractor to expedite the completion of any part of the work for provisional use by PREPA and the Contractor shall comply with such request. If such order of completion or prior use increases the cost of the work or delays the work, the Contractor shall be entitled to such extra compensation or extension of time as agreed by the Parties.

ARTICLE 47. Quality Assurance

The Contractor shall submit for evaluation and approval by PREPA a quality control program and establish a quality assurance program, also evaluated and approved by PREPA, to satisfy all applicable regulation and requirements specified in the procurement documents and satisfactory to PREPA. The program shall contain all those measures necessary to assure that all basic technical requisites ask for in the drawings, codes, tests, and inspections for design, fabrication, cleaning, installation, packing, handling, shipping, long term storage, when necessary, and test equipment are fulfilled. PREPA reserves the right to conduct audits and inspections to the facilities, activities, and/or documents when estimated and without previous notification necessary in order to assure that the quality control program is adequate and properly implemented.

The Contractor shall allow PREPA access to its facilities and documents, so that PREPA, through audits and inspections can verify the quality of the labor, equipment, products, services, and any other related items provided by the Contractor. In every case in which the materials or services furnished to PREPA are subcontracted partially or totally, by the Contractor, the Contractor shall request the subcontractor to accept and comply with all the requirements of this Article.

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ARTICLE 48. Safety Provisions

- 48.1 The Contractor shall have an Occupational Safety and Health Program. A copy of this Program will be delivered to the Occupational Safety Department. The Program shall comply with the following minimum requirements of a health and safety program:
- a. It shall comply with all requirements from all applicable regulations included in the 29 CFR 1900.1. The Program shall have been updated within the past year from the delivery date to PREPA.
 - b. It shall establish the mechanisms used to update and audit compliance with itself.
 - c. It shall include an accident or incident investigation procedure. This procedure will always include the preparation of a report, which will be submitted to the Occupational Safety Department of PREPA.
- 48.2 The Contractor shall submit, for evaluation by the Occupational Safety Department, a copy of a Site Specific Work Plan. This plan shall include, but not be limited to, the following aspects:
- a. Objectives of the Work Plan
 - b. Description of the activities
 - c. Occupational safety and health considerations to be addressed before commencement of the project.
 - d. Procedures for achieving compliance with the applicable regulations, including, but not limited to:
 - i. Occupational Exposure to Lead (29 CFR 1926.62)
 - ii. Scaffolds (29 CFR 1926 Subpart L)
 - iii. Confined Spaces (29 CFR 1910.146)
 - iv. Occupational Exposure to Noise (29 CFR 1910.95)
 - v. Hazardous Materials (29 CFR 1910 Subpart H)
 - vi. Personal Protective Equipment (29 CFR Subpart I)
 - vii. Hazard Communication (29 CFR 1910.1200)
 - viii. HAZWOPER (29 CFR 1910.120)

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- ix. Fire Protection (29 CFR 1910 Subpart L)
 - x. Commercial Diving (29 CFR 1910 Subpart T)
 - xi. Respiratory Protection (29 CFR 1910.134)
 - xii. Fall Protection (29 CFR 1926 Subpart M)
 - xiii. Electrical (29 CFR 1926 Subpart K)
 - xiv. Welding (29 CFR 1926 Subpart J)
 - xv. Excavations (29 CFR 1926 Subpart P)
 - xvi. Demolitions (29 CFR 1926 Subpart T)
 - xvii. Blasting & Explosives (29 CFR 1926 Subpart U)
 - xviii. Ventilation (29 CFR 1926.57)
 - xix. Tools, Hand, and Powered (1926 Subpart I)
 - xx. Electric Industry (29 CFR 1910.269)
 - xxi. Lockout/Tagout (29 CFR 1910.147)
 - xxii. Asbestos (29 CFR 1910.1001)
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- e. It will also include any other regulation or guidelines related to safety and health that could be applicable to the scope of work, and contingency procedures that include how to proceed in an emergency situation, such as fire or chemical spill, among others.
 - f. A list of all specialized personnel needed. Also, include copy of all training certificates, licenses or certifications required, according to the scope of work. For example: pesticide applicator, electrician, spill responder, refrigeration technician, DOT training for hazardous substances, etc. All these certificates and licenses shall be up to date.
 - g. Copy of the Material Safety Data Sheets (MSDS) of all chemical products to be used during the project, for evaluation and approval by PREPA's Occupational Safety and Health Office (Hazard Communication Section).
 - h. Certification of compliance with medical surveillance requirements, according to scope of work.
 - i. Certification of compliance with Fit Test requirements for the use of respirators that make a face seal.
 - j. Safety equipment and materials to be used during the project.

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- k. Procedures to verify the work area after each work day and at the end of the project.
 - l. Each Contractor/Subcontractor shall comply with a 100% drug /alcohol free work zone. At minimum, pre-project and post accident testing is required. A positive post accident test or positive pre-project test will result in worker dismissal from the project. Testing will be performed in following closely the NIDA standards.
- 48.3 Before commencement of work, the Contractor shall take part in a coordination meeting with the designated Safety Officer and Construction Manager, and the project manager on PREPA's behalf. During this meeting the areas to be worked on will be toured, the site specific work plan will be discussed and reviewed, and amendments to it could be required.
- 48.4 If the contracted services include demolition activities (as defined per ANSI A10.6 – 1990: Demolition – the dismantling, razing or wrecking of any fixed building or structure or any part thereof) that will be carried out in buildings or structures, that because of their construction date or prior use, are suspected to contain asbestos, lead based paint or other hazardous materials, the Contractor will require a certification from the project manager or owner stating that the building or structure is free of such materials.
- 48.5 Services including activities inside buildings occupied by working personnel, that could create a hazard to their safety or health, will be offered AFTER PREPA'S WORKING HOURS. The Contractor will take all steps necessary to assure the area will be free of nuisance odors or vapors before is reoccupy by PREPA's personnel. All these will be done in coordination with PREPA's local supervisor.
- 48.6 The Contractor shall assure that all wastes are removed and properly disposed of, in accordance with all applicable laws and regulations, at the end of every work shift and after the completion of the project.
- 48.7 All chemical products to be used shall be classified as Approved or Conditionally Approved by PREPA's Hazard Communication Section.
- 48.8 Welding operations will comply with the requirements of OSHA, ANSI and NFPA.
- 48.9 If the project involves the handling of non-asbestos insulation or other dust generating materials, like gypsum board, steps shall be taken to prevent the release of the dust to adjacent areas 49.10 The Contractor shall take all

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reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to all employees on the work and all other persons who may be affected. Also, to the work, property, material and equipment on or off the site, under the care, custody or control of the Contractor or any of his subcontractors.

- 48.10 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.
- 48.11 The Contractor shall designate a responsible Safety Officer of his organization, evaluated and approved by PREPA, who shall be at all times at the project site, whose only duty shall be the prevention of accidents, implement both the Safety and Health Program and the Site Specific Work Plan in coordination with the Safety Officer from PREPA. The Contractor's Safety Officer shall have successfully completed the thirty (30) hours Occupational Safety and Health Administration course in occupational safety and health standards for the construction industry. Contractor shall also have on site available at any time the latest revision of the OSHA Standards for the Construction Industry Manual.
- 48.12 Compliance with all safety provisions by subcontractors shall be the responsibility of the Contractor.
- 48.13 Contractor agrees that it shall perform all work in compliance with federal, state and local occupational safety and health regulations, as described in the Site Specific Work Plan.
- 48.14 Contractor will obtain and maintain, during the duration of the Contract, the proper permits from all federal, state and local regulatory authorities or other applicable government agency with respect to discharge, disposal, use, storage, handling and transportation of hazardous chemicals and substances as and when applicable law or regulation requires. For projects including the handling of asbestos, lead, or spilled hazardous substances, the notification to EPA or the EQB will be done by the Contractor, but in coordination with the Safety Officer and the Environmental Advisor or Officer.
- 48.15 Contractor will not cause or permit any hazardous chemical or product containing a hazardous chemical to be at, or in the vicinity of, any place where any employee, agent, or contractor of PREPA, or any employee of any such

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agent or Contractor, may be at risk or exposed to hazard as a result thereof during normal use or any foreseeable emergency.

48.16 Contractor will defend, indemnify and hold harmless, PREPA, its employees, agents or assignees for any and all direct liabilities and expenses arising out of contractor noncompliance with these clauses irrespective of any other terms of this Contract.

ARTICLE 49. Environmental Liabilities

The Contractor agrees to indemnify PREPA for all expenses and costs of any nature arising out of any claim due to an environmental violation, caused by his agents, employees, subcontractors or assigns during the performance or non-performance of its obligations under the Contract. The Contractor shall have available, and close to the working area, the necessary equipment to control and pick-up any spills that could occur during the performance of the work required by the Contract. The equipment should include all the necessary materials for the waste disposal. All equipment to be used in the work area should be free of oil, transmission fluid or hydraulic fluid leakages. If the equipment develops a leakage during the work process, it should be repaired or replaced immediately. The Contractor shall inform and coordinate with the Supervisor of the Environmental Section any work to be done to avoid any environmental violation. The Contractor shall comply with all the arrangements established in the Consent Decree between PREPA and the Environmental Protection Agency.

PREPA shall dispose of all waste generated because of this work, according to the Environmental regulations. The use of PREPA's waste disposal equipment by the Contractor is not permitted.

The Contractor, upon completion of the work, shall hand-in the assigned work area free of contaminants according to the laboratory analysis before and after the work. Before starting the work, the Contractor shall submit the work plan to PREPA for evaluation of the Environmental Protection Division.

All chemical analysis shall be performed by PREPA at an approved laboratory. PREPA's personnel will audit the sampling and the disposal of waste material.

The disposal of non-hazardous and hazardous waste material shall be done in a PREPA approved landfill.

The Contractor shall submit evidence of compliance with 49 CFR 72 Sub. Part H (DOT).

A company previously approved by PREPA will perform all remedial actions and environmental work. All work shall be performed according to the Best Management Practice Plan (BMPP), which is part of the Special Conditions of the NPDES Permit.

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ARTICLE 50. Transfer of Funds

If Contractor decides to assign or transfer an amount, due or payable, to which he is entitled for services rendered or goods provided during the term of this Contract, Contractor shall notify PREPA of such transfer of funds, in accordance to the provisions of Act 21-2012. Said notice shall clearly indicate the rights granted, including a copy of the contract under which the assignment or transfer of funds is made, the exact amount of funds to be assigned or transferred, and specific identification information regarding the assignee (full name of the person or company), address and any other contact information.

Contractor acknowledges and agrees that PREPA may deduct any amount, due or payable under this Contract, that Contractor owes; PREPA may retain any said amount if Contractor fails to fulfill its obligations and responsibilities under this Contract, or a claim arises for warranty or defects regarding the services rendered or goods provided under this Contract. Contractor also acknowledges and agrees that PREPA's payment obligation under any assignment of funds will cease upon payment of the outstanding amounts under this Contract. PREPA shall not be required to make payments or transfer any funds for an amount that exceeds the payment to which Contractor is entitled to under this Contract.

Contractor shall include with its notice of assignment of funds a cashier's check or money order for two hundred dollars (\$200), payable to "Puerto Rico Electric Power Authority", to cover administrative costs in processing such assignment. -

ARTICLE 51. Compliance with the Commonwealth of Puerto Rico Contracting Requirements

The Contractor will comply with all applicable State Law, Regulations or Executive Orders that regulate the contracting process and requirements of the Commonwealth of Puerto Rico. Particularly:

- A. Executive Order 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 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

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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. Executive Order 1991OE24.

- B. Executive Order 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 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 Sub Contractor 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. Executive Order 1992OE52.
- C. 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. Executive Order 1991OE24; C.F.R. Part 404 et. Seq.
- D. 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).

- E. 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

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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.

- F. Certificate of Incorporation, or Certificate of Organization or Certificate of Authorization to Do Business in Puerto Rico issued by the Puerto Rico Department of State.
- G. Good Standing Certificate issued by the Puerto Rico Department of State.
- H. The Contractor hereby certifies that it does not represent particular interests in cases or matters that imply conflicts of interest, or of public policy, between the executive agency and the particular interests it represents.
- I. Articles extracted, produced, assembled, packaged or distributed in Puerto Rico by enterprises with operations in Puerto Rico, or distributed by agents established in Puerto Rico shall be used when the service is rendered, if they are available.
- J. Anti-Corruption Code for a New Puerto Rico. 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.

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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.

- K. 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.

Contractor recognizes that submittal of the aforementioned certifications and documents is an essential condition of this Contract; and even in the case that they are partially incorrect, there will be sufficient cause for PREPA to terminate, cancel or rescind the Contract, and Contractor have to refund all payments received.

ARTICLE 52. Provisions Required Under Joint Memorandum 2017-001 of the Governors Chief of Staff and the Office of Management and Budget

- (1) Both contracting parties acknowledge and accept that the contracted services may be rendered to any entity of the Executive Branch with which the contracting entity enters into an interagency Contract with or as determined by the office of the Chief of Staff. These services shall be rendered under the same terms and conditions with respect to work hours and compensation, as set forth in this Contract. For purposes of this provision, the term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico as well as all instrumentalities and public corporations.
- (2) The office of the Chief of Staff shall have the authority to terminate this Contract at any time.

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ARTICLE 53. Complete Agreement

This document, together with all attachments referenced herein, constitutes the complete agreement between the Parties.

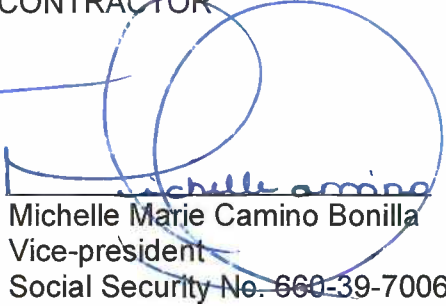
IN WITNESS WHEREOF, the Parties hereto have executed this Contract this 24 day of May of 2019, in San Juan, Puerto Rico.

PUERTO RICO ELECTRIC POWER
AUTHORITY OF PUERTO RICO

CONTRACTOR



José F. Ortiz Vázquez
Chief Executive Officer/Executive Director
Social Security No. 660-43-3747



Michelle Marie Camino Bonilla
Vice-president
Social Security No. 660-39-7006