

**GOVERNMENT OF PUERTO RICO  
DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS**

**CONTRACT FOR EMERGENCY WORKS  
CONTRACT NO. \_\_\_\_\_**

**AS FIRST PARTY:** The **PUERTO RICO DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS** (the "DEPARTMENT"), an instrumentality of the Government of Puerto Rico, represented herein by the Secretary of the Department of Transportation and Public Works, Eng. Carlos M. Contreras Aponte, of legal age, married, and resident of San Juan, Puerto Rico, acting under the authority of Law No. 6, June 24, 1952, as amended, and Reorganization Plan No. 6 of 1971.

**AS SECOND PARTY:** ----- INC., (the "CONTRACTOR"), a company duly registered and authorized to do business in Puerto Rico, represented in this act by its President, \_\_\_\_\_, of legal age, married, and resident of \_\_\_\_\_.

**WITNESSETH**

**WHEREAS:** That the DEPARTMENT needs to acquire the services offered by the CONTRACTOR to execute the following emergency project (the "PROJECT"): **AS DEFINED IN ATTACHMENT A HERE TO**, as stated in the Emergency Declaration, in virtue of Executive Order OE-2017-047.

**WHEREAS:** That the CONTRACTOR has the capacity to perform the PROJECT, thus, in consideration of the mutual agreements, covenants, representations and warranties set forth herein, the parties hereto do hereby agree to celebrate this agreement subject to the following:

**TERMS AND CONDITIONS**

**FIRST:** CONTRACTOR agrees to complete the PROJECT according to the prices of items and services in **Exhibit A** of this Agreement and in conformity with the General Contracting Conditions of the DEPARTMENT and the proposal for RFP-2018-02 and further agrees to execute all Work and provide all materials, equipment and labor required by the DEPARTMENT to complete the PROJECT.

**SECOND: SCOPE OF SERVICES:** Shall include all the work items identified in **Exhibit A** and all work necessary to perform them in accordance with General Contracting Conditions of the DEPARTMENT.

Should the DEPARTMENT understand that the scope of the services to be performed by the CONTRACTOR should be reduced, or expanded to include other tasks not contemplated herein, then the DEPARTMENT shall, issue, in advance and in writing, a MODIFICATION TO SCOPE OF SERVICES ORDER. Such order shall become effective upon the acceptance by both parties and shall constitute an amendment to the contract.

**THIRD:** In consideration of the performance of the Services hereunder, the CONTRACTOR shall be paid up to a maximum amount of XXXXXXXX MILLION **DOLLARS (\$0,000.00) according to Exhibit B Fee Schedule**. This amount shall be paid from the account number \_\_\_\_\_. CONTRACTOR agrees to carry out the work, which entails providing all of the materials, equipment, and labor required by the DEPARTMENT for the PROJECT.

**FOURTH:** This contract shall be effective as of the date of the last signature hereto, and shall terminate on March 20, 2018. In no event shall the term of this contract extend beyond March 20, 2018 unless such as extension is approved by the Commonwealth of Puerto Rico and the Federal Emergency Management Agency ("FEMA").

**FIFTH:** The DEPARTMENT will designate a representative for the PROJECT (the "PROJECT MANAGER"), who will be in charge of overseeing performance pursuant to this contract, and the CONTRACTOR agrees to comply with the instructions of the PROJECT MANAGER or its representative in reference to the execution of the Works, contracted herein.

**SIXTH:** The PARTIES agree that the contracted work will be executed in harmony with the minimum contract requirements of the Department of Transportation and Public Works and the

conditions set forth in 2 CFR 200, which are incorporated by reference herein. Also, the CONTRACTOR must collect and submit to the DEPARTMENT the data required by the FEMA Reimbursement Procedure for Public Assistance.

**SEVENTH:** The CONTRACTOR agrees to comply with all applicable Laws, Rules, Regulations, and such, throughout the Term of this Contract.

**EIGHTH:** CONTRACTOR represents that it has purchased and shall maintain the insurance coverage required by the DEPARTMENT, in full force and effect throughout the Term of this Contract.

**NINETH:** The CONTRACTOR agrees to indemnify and hold harmless from any claims initiated against the DEPARTMENT and/or the DEPARTMENT. The CONTRACTOR shall be solely responsible to the AUTHORITY for the acts or defaults of its officers, agents, and employees, each of whom shall, for this purpose be deemed to be the agent or employee of the CONTRACTOR by nature of its contract.

**TENTH:** Any violation or breach of terms of this Contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties to this Contract. The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

**ELEVENTH:** The DEPARTMENT reserves the right to cancel immediately the agreement resulting for cause by a written Notice to the CONTRACTOR. If through any cause, as defined in Article THIRTEEN under this agreement, or if the CONTRACTOR shall violate any of the covenants, components or stipulations of this agreement, the DEPARTMENT shall have the right to terminate this agreement immediately by giving to the CONTRACTOR the corresponding Notice of Termination.

- (a) In the event of any termination, the DEPARTMENT shall compensate the CONTRACTOR based on the work completed and accepted up to the Date of Termination.
- (b) The DEPARTMENT has no obligation to the CONTRACTOR of any kind, after the Date of Termination.
- (c) Notwithstanding the above, nothing in this agreement shall relieve the CONTRACTOR from liability to the DEPARTMENT for damages sustained by the DEPARTMENT by virtue of any breach of this agreement by the CONTRACTOR, and the DEPARTMENT may withhold any payments to the CONTRACTOR until such time as the exact amount of damages due the DEPARTMENT from the CONTRACTOR is determined.

**TWELVETH:** The DEPARTMENT reserves the right to terminate this agreement for cause. Cause usually results when there is an event of default. An event of default shall be construed as a material breach of this agreement, and occurs when:

- (a) The CONTRACTOR fails to provide the contractual services in the quantity and/or the quality as required in this agreement;
- (b) The CONTRACTOR fails to begin work in accordance with the terms of this agreement;
- (c) The CONTRACTOR in the judgment of the DEPARTMENT is unnecessarily, or unreasonably, delaying the performance and completion of the works and services herein contracted;
- (d) The CONTRACTOR abandons the work or service to be undertaken;
- (e) The CONTRACTOR cannot complete the work to be performed under this agreement within the time herein provided or within such time as the completion has been extended, provided, however, that the impossibility of timely completion

is, in the DEPARTMENT'S reasonable judgment, solely attributable to conditions within the CONTRACTOR's control;

- (f) The CONTRACTOR transfers, conveys or otherwise disposes of this agreement in whole or in part, without prior approval of the DEPARTMENT;
- (g) Any DEPARTMENT's officer or employee acquires an interest directly or indirectly in this agreement;
- (h) The CONTRACTOR violates any of the provisions of this agreement, disregards applicable laws, ordinances, permits, licenses, instructions or orders dictated by the DEPARTMENT and applicable to this agreement according to the Laws of the Commonwealth of Puerto Rico;
- (i) The CONTRACTOR fails in any of the agreements herein contained;
- (j) The CONTRACTOR ceases to conduct business in the normal course by reason of insolvency, bankruptcy, or any similar proceedings whether voluntarily or involuntarily, filed under any present or future bankruptcy or other applicable law; and,
- (k) The CONTRACTOR admits in writing its inability to pay its debts generally as they become due.

In the event of default, the DEPARTMENT shall notify, in writing, its decision to terminate the services immediately subject to Articles TENTH and ELEVENTH.

The DEPARTMENT may terminate this Contract, or any portion thereof, at any time and for any reason by giving at least thirty (30) calendar days' notice in writing to the CONTRACTOR. Upon termination, the Contractor will be entitled to payment, determined on a pro-rata basis, for services satisfactorily performed prior to termination.

The Chief of Staff of the Governor of Puerto Rico may terminate this Agreement at any time.

If the Contract is terminated for any reason, the CONTRACTOR shall stop work as specified in the termination notice provided by the DEPARTMENT, and shall be prohibited from incurring additional obligations of Contract funds. The DEPARTMENT may allow costs that the CONTRACTOR could not reasonably avoid during the termination process to the extent that said costs are determined to be necessary and reasonable.

In the event of a termination, all work in process, finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports, property and any other items or deliverables prepared by the CONTRACTOR that would be furnished to the DEPARTMENT, the Commonwealth of Puerto Rico, or the Federal government if the Contract had been fully performed shall, unless otherwise stated in writing by the DEPARTMENT, become the DEPARTMENT's property.

Following termination, the CONTRACTOR shall submit a final termination settlement proposal to the DEPARTMENT in the form and with the certification prescribed by the DEPARTMENT. The CONTRACTOR shall submit the final termination settlement proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the DEPARTMENT upon written request of the Contractor within this one-year period. The CONTRACTOR and the DEPARTMENT may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount may not exceed the total Contract price as reduced by (1) the amount of payments previously made and (2) the Contract price of work not terminated. The Contract shall be modified, and the CONTRACTOR paid the agreed amount.

**THIRTEEN:** The CONTRACTOR understands that in the discharge of its professional duties, the CONTRACTOR has the obligation of complete loyalty towards the DEPARTMENT and Puerto Rico. This includes not having, and avoiding, any interests that are adverse to the DEPARTMENT or Puerto Rico. These adverse interests include the representation of clients that

have or might have a conflict of interest with the DEPARTMENT or Puerto Rico. Furthermore, this obligation includes the continuing obligation to divulge to the DEPARTMENT all the circumstances of its relationships with clients and third parties, as well as any interest, that may have an effect on the DEPARTMENT or Puerto Rico at the time of granting this Agreement or during its effectiveness.

- (a) A conflict of interest exists when, for the benefit of a client, it is the CONTRACTOR's obligation to promote that which it should oppose in the fulfillment of its obligation towards a former, actual, or potential client. Also, a conflict of interest takes place when conduct is defined as such in the ethical rules and standards recognized in the applicable profession, or in the laws and regulations of Puerto Rico.
- (b) It will be a violation of the prohibitions described herein, if any CONTRACTORs officer or personnel, directors, principals, partners, associates or employees, engage in the aforementioned conduct. The CONTRACTOR will avoid even the appearance of a conflict of interest.
- (c) If the DEPARTMENT believes that there is or has been a conflict of interest, or the appearance of a conflict of interest, it will notify the CONTRACTOR of the DEPARTMENT'S findings. The CONTRACTOR shall make full disclosure of all material facts, and shall have a period of thirty (30) days after receipt of such notice to cure the conflict of interest or the appearance of conflict of interest, including the right to request a meeting with the DEPARTMENT to set forth or explain its position. This meeting will always be granted when timely requested.
- (d) If the conflict of interest or appearance of conflict or interest is not cured to the satisfaction of the DEPARTMENT, or the controversy is not otherwise resolved prior to the expiration of such 30-day period, the DEPARTMENT may terminate this agreement as provided in Article Twelfth clause above, provided that payments to be made in accordance with paragraph a of the twelfth clause will not include payments to the CONTRACTOR employee which caused the conflict, or the appearance of a conflict, of interest.
- (e) The CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services under this Agreement. The CONTRACTOR further covenants that in the performance of this Agreement no person having any such interest shall be employed or granted a subcontract.
- (f) The CONTRACTOR covenants that no member of the governing body of the DEPARTMENT, and no other official, agent, or employee of the DEPARTMENT, nor any officer, director, agent, employee or consultant of the Project Manager, nor their family members who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement, has any personal or financial interest, direct or indirect, in this Agreement or in the proceeds thereof.
- (g) The CONTRACTOR warrants that it will not and has not employed or retained any company or person, other than bona fide employees working solely for the CONTRACTOR, to solicit or secure the work to be performed under this Agreement, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or execution of this Agreement.
- (h) The CONTRACTOR certifies that none of its officers or employees, nor any principals, associates, officers, directors or shareholders, are public officials or employees within the meaning of Article 3.3 of Law No. 12 of July 24, 1985, as amended, 3 L.P.R.A. § 1823. The CONTRACTOR certifies the receipt of a copy of this law at the moment of signing this agreement.
- (i) The CONTRACTOR also hereby agrees to comply with the provisions of Act Num. 84 of June 18, 2002, establishing the Code of Ethics for Contractors, Suppliers and Petitioners of Economics Incentives, of the executive agencies of the

Commonwealth of Puerto Rico and certifies the receipt of a copy of this law at the moment of signing this agreement.

- (j) The CONTRACTOR represents that it has secured or will secure at its own expense, all personnel required in performing the services under this agreement. Such personnel shall not be employees of, or have any contractual relationship with, the DEPARTMENT.
- (k) No person employed in the work covered by this agreement shall be discharged or in any way discriminated against because he/she has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding relating to the labor standards applicable hereunder to this employer.
- (l) The CONTRACTOR certifies that it does not have, nor shall have during the term of this Agreement, any other contract or agreement with agencies and instrumentalities of the Government of Puerto Rico which is, or could be, in conflict with this Agreement, unless specifically approved by the DEPARTMENT.
- (m) An organizational conflict of interest arises in these cases where a person, because of other activities or relationships with other persons, is unable or potentially unable to render impartial assistance of advice to the [contracting agency/municipality], the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- (n) The Contractor shall take precautions to ensure that no organizational conflicts of interests ("OCI") arise in the performance of this Contract.
- (o) In the event that the Contractor believes that it or any of its potential subcontractors may have an OCI it shall notify the DEPARTMENT, in writing, within five (5) work days after it becomes aware of the potential or actual OCI. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the OCI. The DEPARTMENT will review the circumstances and the proposed mitigation plan and notify the Contractor stating whether: (i) no mitigation is required; (ii) the conflict cannot be mitigated; or (3) the conflict can be mitigated and DEPARTMENT accepts the proposed measures, or recommends other and/or additional measures.
- (p) The failure of the Contractor to identify such perceived conflicts may result in the contract award being rescinded or the Contract being terminated.

**FOURTEENTH:** The CONTRACTOR certifies that is has not failed to file any tax return due and payable during the past five (5) fiscal years, if applicable. The CONTRACTOR herein certifies that it does not owe any taxes to the Commonwealth of Puerto Rico, and that it has complied with the Puerto Rico Department of the Treasury's circular letter 1300-26-08, as amended. It is expressly recognized that this is an essential condition of this agreement and if false, shall be cause for the termination of this agreement and the CONTRACTOR shall reimburse to the DEPARTMENT any amount received under this agreement. The DEPARTMENT shall retain from the CONTRACTOR invoices the corresponding amount provided by Law to comply with the Puerto Rico Income Tax Law. At the date of the signing of this agreement, the CONTRACTOR shall provide to the DEPARTMENT all of the certifications required by the Circular Letter 1300-26-98, issued by the Secretary of the Treasury Department, that are pending for submission, which include the following:

- (a) Return Filing Certificate, Form SC 2888 and the Debt Certificate, Form SC 6096, both issued by the Treasury Department of Puerto Rico.
- (b) Certificate of real or chattel property issued by the Center for Municipal Revenue and Income.(CRIM)
- (c) Certificate in concept of unemployment insurance, temporary incapacity, social Security for drivers (whichever applies) issued by the Department of Labor and Human Resources.

- (d) Certificate of Incorporation
- (e) Good Standing Certificate issued by the Department of State of Puerto Rico.

Said Certificates are due at the signing of this contract. If CONTRACTOR fails to provide all the Certificates at said date, the DEPARTMENT will grant a time an extension of thirty (30) days from the signature date to comply with said requirement due to the emergency weather conditions. Notwithstanding the above, full compliance with the aforementioned requirements constitutes a condition precedent for payment under this Contract. Accordingly, CONTRACTOR agrees and accepts that the DEPARTMENT will not process any certification for payment submitted by CONTRACTOR until said requirements are fully met by CONTRACTOR.

**FIFTEENTH:** The CONTRACTOR hereby certifies that it is duly authorized to do business under the laws of the Commonwealth of Puerto Rico and the execution, delivery and performance thereof are within the CONTRACTOR's authorized powers and are not in contravention of law.

**SIXTEENTH:** The CONTRACTOR certifies that at the time of execution of this Agreement, it has not been convicted, nor has admitted culpability, or has knowledge that it is been investigated as part of a criminal or civil process in either federal or state courts for felonies related to the misuse of national or public funds or property. The CONTRACTOR expressly acknowledges that this certification is an essential condition of this Agreement, and that if it is proven false, in whole or in part, it shall be grounds to terminate this Agreement immediately without limitation of any other rights herein established and the CONTRACTOR will have to reimburse all sum of money earned to the date. The CONTRACTOR accepts the continuing nature of this obligation through the term of this Agreement. In accordance with the Circular Letter number 2009-01 issued by the Department of Justice of the Government of Puerto Rico on March 9, 2009, the CONTRACTOR:

- (a) Certifies that he has not been convicted, nor has probable cause been found for his arrest for any crime against the State, faith or public function; against the governmental exercise; or that involves funds or public property, in the federal or state scope.
- (b) Certifies that neither he nor any of the company shareholders, partners, officials, managers, employees, subsidiaries or holding companies has been convicted, nor has probable cause been found for their arrest, for no crime against the State, faith or public function; against the governmental exercise; or that involves funds or public property, in the federal or state scope.
- (c) He is committed to inform continuously, during the term of the contract, any fact related to any investigation for the commission of a crime against the State, faith or public function; against the governmental exercise; that involves funds or public property, in the federal or state scope. This obligation will have to be continuous during all the stages of the hiring and execution of the contract.
- (d) Certifies that during ten years previous to the formalization of the contract has not committed any crime against the State, faith or public function; against the governmental exercise; or that involves funds or public property, in the federal or state scope.
- (e) He is committed to inform even about those cases in which probable cause for the arrest has not been found, when no allegation of guilt has been made, an accusation against the contractor has been filed, but statements or admissions of a crime have been made against him/her.

The **CONTRACTOR** herein also certifies that it is not on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions. In the event that the CONTRACTOR is in such List, this agreement shall be canceled, terminated or suspended by the DEPARTMENT. The CONTRACTOR shall comply with the non-procurement debarment and suspension certification requirements of 49 CFR Part 29, and shall submit evidence to the DEPARTMENT by providing an eligibility affidavit upon the execution of this agreement.

If these certifications are not partially or completely correct, it will be reason enough for the DEPARTMENT or the DEPARTMENT to terminate this contract immediately, without a previous notice and the CONTRACTOR will have to reimburse the money received until that day. This obligation is continuous during all the stages of the hiring. If the CONTRACTOR is a corporation, it certifies that its shareholders and officials fulfill with the above mentioned conditions.

**SEVENTEENTH:** The CONTRACTOR shall at all times observe and comply with the provisions of all U.S. Government and Commonwealth of Puerto Rico Laws and local ordinances and regulations applicable to the prosecution of all work covered by this agreement. Attention is called to Law Number 120, approved on October 31, 1994, as amended, known as Commonwealth Income Tax Act of 1994 and to Federal and Commonwealth Labor Laws. The DEPARTMENT shall retain the corresponding amount per taxes, on revenues obtained from this agreement as set forth in the regulations approved by the Secretary of the Department of Treasury. The CONTRACTOR shall be responsible of furnishing evidence of any partial or total exemptions from such retention as certified by the Department of Treasury.

**EIGHTTEENTH:** The CONTRACTOR shall be solely responsible for and shall save the DEPARTMENT harmless from any claim or action for any injury or damage to any person, employee and/or property to the extent such injury or damage was sustained through negligence or misconduct of any employee of the CONTRACTOR in connection with the performance of the services hereunder.

The DEPARTMENT shall save the CONTRACTOR harmless from any claim or action for any injury to any person, employee, and/or damage to property, including property of the CONTRACTOR, to the extent such injury or damage was sustained through negligence or misconduct of any DEPARTMENT's official.

**NINETEEN:** All notices required or necessary to be given to the parties shall be forwarded in writing, via U.S. Mail, certified and with return receipt requested, to the following addresses:

To the DEPARTMENT:

Eng. Carlos M. Contreras Aponte  
Secretary  
Department of Transportation and Public Works  
P.O. Box 41269  
San Juan, Puerto Rico 00940-1269

To the CONTRACTOR:

Mr. XXXXXXXX  
COMPANY NAME  
ADRESS  
ADRESS  
USA, 00000

**TWENTY:** In connection with the execution of this agreement, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The CONTRACTOR shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

**TWENTY-ONE:** The DEPARTMENT and the United States Department of Transportation (U. S. DOT) shall be the sole owners of any patentable results arising out of this agreement, as well as all information, designs, specifications, know-how, data and findings, and/or copyrights. These shall be made available to the Federal Government for public use, unless the U. S. DOT in a specific case, where it is legally permissible to do so, shall determine that it is in the public interest that it is not to be made available.

**TWENTY-TWO: DAVIS-BACON ACT, 40 U.S.C. 276 et seq:**

- (a) Contractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the PROJECT MANAGER or subcontractor and such laborers and mechanics.
- (b) The scale of wages to be paid shall be posted by the PROJECT MANAGER in a prominent and easily accessible place at the site of the work.
- (d) There may be withheld from the PROJECT Managers much of accrued payments as may be considered necessary by the AUTHORITY to pay to laborers and mechanics employed by the PROJECT MANAGER or any subcontractor on the work the difference between the rates of wages required by the Contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the Contractor, subcontractors, or their agents.
- (e) "Compliance with Copeland" "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.
- (f) The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract. (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses. Current as of 1-9-17 5 (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

**TWENTY- THREE: BUY AMERICA REQUIREMENT:** The PROJECT MANAGER agrees that in accordance with Federal Regulations, neither the PROJECT MANAGER nor any vendor or its will use Federal funds for a project for the construction, alternation, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor/vendor understands that this requirement may only be waived by the applicable federal agency in limited situations.

**TWENTY-FOUR: DBE PARTICIPATION.** This project requires the utilization of disadvantage business enterprises in accordance with the Disadvantaged Business Enterprises (DBE) Program Contract Provisions which has been included in this contract book.

**TWENTY-FIVE: Compliance with the Contract Work Hours and Safety Standards Act**

- 1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in such he or she is employed on such work to work in excess of



forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one half times the basic rate of pay for all hours worked in excess of forty (40) in such work week.

- 2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the Government of Puerto Rico, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- 3) Withholding for unpaid wages and liquidated damages. The DEPARTMENT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any Federal contract with the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- 4) Subcontractors. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraph (1) through (4) of this section.

## **TWENTY-SIX: Required Clauses**

**Reporting Requirements.** The Contractor shall complete and submit all reports in such form and according to such schedule, as may be required by the DEPARTMENT.

### **Clean Air Act and the Federal Water Pollution Control Act.**

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U. S. C. 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U. S. C. 1251 et seq.
2. The contractor agrees to report each violation to the DEPARTMENT and understands and agrees that the DEPARTMENT will in turn, report each violation as required to assure notification to the recipient, Federal Emergency Management Agency and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### **Federal Water Pollution Control Act**

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

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal Current as of 1-9-17 8 government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

### **Debarment and Suspension.**

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, H; and Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual Chapter IV, 6.d, and Appendix C, 2 [hereinafter PDAT Supplement]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530; In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient. e. Specifically, a covered transaction includes the following contracts for goods or services: (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000. (2) The contract requires the approval of FEMA,

regardless of amount. (3) The contract is for federally-required audit services. (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000. d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified: "Suspension and Debarment (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If, through mistake or otherwise, any provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.

The Contractor shall not use the U.S. Department of Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

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

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the DEPARTMENT.

**TWENTY-SEVEN: Suspension and Debarment.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals or its affiliates are excluded or disqualified. The contractor must comply with of 2 C.F.R. pt. 180 subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. If it is later determined that the contractor did not comply with of 2 C.F.R. pt. 180 subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the DEPARTMENT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

**TWENTY- EIGHT: Byrd Anti-Lobbying Amendment.** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**TWENTY- NINE:** Procurement of Recovered Materials.

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-
  - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - (ii) Meeting contract performance requirements; or
  - (iii) At a reasonable price.
2. Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

**THIRTY :** The CONTRACTOR shall submit for approval of the Secretary of the PUERTO RICO DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS or its designated representative any variation to the task orders that might exceed ten percent (10%) of the estimated Cost and/or the excess Time necessary to perform the works. The CONTRACTOR acknowledges that any work executed in contravention to this requirement voids and nulls any payment for the exceeding costs by the DEPARTMENT.

**THIRTY-ONE:** Access to Records. The CONTRACTOR agrees to provide the DEPARTMENT, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, papers, records, accounts, documents, information of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcription. Also the Contractor agrees to permit any of the foregoing parties to reproduce by any means or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide FEMA Administrator or its authorized representatives access to any work sites pertaining to the work being completed under the contract.

The Contractor agrees to maintain all books, records, accounts and reports and all other records produced or collected in connection with this Contract for a period of not less than six (6) years after the date of final payment and close-out of all pending matters related to this Contract. If any litigation, claim, or audit is reasonably anticipated to arise or is started before the expiration of the 6-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

**THIRTY-TWO** The CONTRACTOR acknowledges that FEMA financial assistance will be used to fund this contract and agrees to comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

**THIRTY- THREE:** The CONTRACTOR acknowledges that 31 U.S.C. Chapter 38- Administrative Remedies for False Claims and Statements, applies to the contractor's actions pertaining to this contract.

**THIRTY-FOUR:** Both parties acknowledge that the Federal Government is not a party to this contract and is not subject to any obligations or liabilities pertaining to any matter resulting from the contract.

**THIRTY- FIVE:** The Contractor shall not use the DHS seals, logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FEMA pre- approval.

**THIRTY -SIX:** Any dispute, regardless of the amount, will be litigated in a Commonwealth of Puerto Rico court of competent jurisdiction, in San Juan.

**THIRTY -SEVEN:** All exhibits are made part of this agreement. In case of any discrepancies between the exhibits and this agreement, the latter shall prevail.

**THIRTY -EIGHT:** The invalidity of any Article, Section, Subsection, Clause or provision of this agreement shall not affect the validity of the remaining Articles, Sections, Subsections, Clauses or provisions hereof.

**THIRTY -NINE:** This contract does not in any way create the relationship of principal and agent between the DEPARTMENT and the CONTRACTOR and under no circumstance shall be considered to be an agent of DEPARTMENT. The execution of this contract shall not generate any right or benefit for the CONTRACTOR, its employees, officers or employees, as employees of the DEPARTMENT or the Commonwealth of Puerto Rico or of any agency, instrumentality, public corporation or municipality may be entitled on account of their status as such, pursuant to law or regulation including, but not limited to vacation and sick leave, worker compensation or any such benefits.

**FORTY:** The DEPARTMENT shall remit a copy of this Agreement to the Office of the Comptroller within fifteen (15) days following the date of the execution of this Agreement or any subsequent amendment of this Agreement.

**“No provision or consideration of services object of this contract may be demanded until the same has been filed for registration with the Office of the Comptroller pursuant to the provisions of Act No. 18 of October 30, 1975, as amended”.**

Upon document registration, the Office of the Comptroller will remit form: Model 0C-08-08 entitled "CERTIFICATION", regarding the execution of contracts, deeds, and other related documents."

**FORTY -ONE: NON-COLLUSION STATEMENT.** The Contractor affirms that they are duly authorized to execute this contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid.

The prices in this proposal have been arrived at independently without any collusion, consultation, communication, or agreement with any other bidder or with any competitor for the purpose of restricting competition.

No attempt has been made or will be made by myself or any member of my organization to induce any other person or organization to submit or not to submit a proposal for this bid, or otherwise taken any action in restraint of free competitive bidding.

**FORTY -TWO:** Both contracting parties acknowledge and agree that the contracted services may be provided to any entity of the Executive Branch with which the contracting entity makes an interagency agreement or by direct provision of the Chief of Staff of the Governor of Puerto Rico these services will be performed under the same terms and conditions in terms of hours and work compensation set forth in this contract, provided that such entity shall comply with all the obligations of the DEPARTMENT under this Contract. For purposes of this clause, the term Executive Branch entity includes all agencies of the Government of Puerto Rico, as well as public instrumentalities and corporations and the Office of the Governor.

IN WITNESS WHEREOF, the parties hereto sign this Agreement, in San Juan, Puerto Rico, on this \_\_\_\_ day of October, 2017.

**PUERTO RICO DEPARTMENT OF  
TRANSPORTATION AND PUBLIC WORKS**

**COMPANY NAME**

\_\_\_\_\_  
Eng. Carlos M. Contreras Aponte  
Secretary  
Tax Identification No. 660-43-6728

\_\_\_\_\_  
Company Representative's Name  
Title  
Tax Identification No. 660-\_\_\_\_\_

**REVIEWED IN ITS LEGAL FORMAT BY:**

**Juan M. Maldonado De Jesus, Esq.**