



GOVERNMENT OF PUERTO RICO
PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY

October 20, 2021

**U.S. House of Representatives
Committee on Natural Resources**

Attention: Ivan Robles, Policy Aide for the Office of Insular Affairs
Email: Ivan.Robles@mail.house.gov

Re: P3 Authority Responses to Additional Questions Following October 6, 2021
Hearing on LUMA Contract

Dear Chairman Grijalva, Ranking Member Westerman and Members of the
Committee:

Thank you for the opportunity to testify before the Committee on Natural Resources on October 6, 2021 for the hearing titled, "PREPA Post-Implementation of the LUMA Transmission and Distribution Contract." The hearing held on October 6, 2021 was an important step for Congress and the people of Puerto Rico to gain more clarity on (i) the procurement process leading up to the execution of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020 (the "LUMA Contract"), (ii) the terms and conditions of the LUMA Contract and (iii) the importance of the LUMA Contract to the transformation of Puerto Rico's electric grid in the aftermath of Hurricane Irma and Hurricane Maria.

The Puerto Rico Public-Private Partnerships Authority (the "P3 Authority") would also like to thank you for the opportunity to further clarify any questions or concerns of the members of the Committee by providing responses to such questions for inclusion in the final hearing record.

Pursuant to your request, enclosed please find the P3 Authority's responses to the additional questions submitted by certain members of the Committee for inclusion in the final hearing record.

Once again, thank you for your extensive effort in making this a valuable hearing.

Sincerely,

Fermín E. Fontanés Gómez
Executive Director
Puerto Rico Public-Private Partnerships Authority

RESPONSES FROM
FERMÍN E. FONTANÉS GÓMEZ
EXECUTIVE DIRECTOR OF THE
PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY

TO ADDITIONAL QUESTIONS FROM THE

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

OCTOBER 20, 2021

Introduction

Reference is made to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020 (the “O&M Agreement”) among (i) the Puerto Rico Electric Power Authority (“PREPA”), (ii) the Puerto Rico Public-Private Partnerships Authority (the “P3 Authority”) and (iii) LUMA Energy, LLC (“LUMA”).

You have asked me to provide responses to certain questions from the members of the House Committee on Energy and Natural Resources (the “Committee”) following the hearing on the O&M Agreement, PREPA and the P3 Authority, held on October 6, 2021.

A. Responses to Questions From Rep. Gregorio Sablan (Democrat)

- 1. Can you describe the relationship and responsibilities between PREPA and LUMA as defined in the existing contract? For example, if the AES Coal Plant were to close before 2028, would LUMA play a role in that decision? What changes to the contract, if any, do you think are needed?***

PREPA and LUMA’s Relationship and Responsibilities Under the O&M Agreement

PREPA has two distinct roles with respect Puerto Rico’s electric energy system under the O&M Agreement: (i) as required by the Puerto Rico Energy Policy Act of 2019, Act No. 17-2019 (“Act 17”), it is the owner of Puerto Rico’s transmission and distribution system (the “T&D System”) and, as such, is charged with cooperating with LUMA in its operation and management of the T&D System; and (ii) it is the owner and operator of the base-load generation plants and gas turbine peaking plants located throughout Puerto Rico (the “Legacy Generation Assets”), pending the completion of the procurement process to delegate its operation and maintenance responsibilities to one or more private operators. Accordingly, PREPA continues to be responsible for generating the electricity that is then transmitted and distributed by LUMA to the people of Puerto Rico.

LUMA's role under the O&M Agreement is to act as the "Operator" of the T&D System. In its role as Operator, LUMA is responsible for the day-to-day operation of the T&D System, which includes, among other things: (i) electric transmission, distribution and load servicing; (ii) asset management and maintenance; (iii) public and employee safety; (iv) managing and administering Federal funds; (v) human resources; (vi) information technology; (vii) customer services and communicating with the public; (viii) billing and collection; (ix) system planning and operations; (x) implementation and planning of capital improvements; (xi) accounting and financial services; (xii) communicating with, and appearing before, the Puerto Rico Energy Bureau (the "PREB"); (xiii) preparation of the Integrated Resource Plan (the "IRP") subject to approval by the PREB; (xiv) emergency response; and (xv) communications with the Government of Puerto Rico (the "Government"), community and the media (the "O&M Services"). Accordingly, LUMA is responsible for cooperating with PREPA (and, upon completion of the ongoing procurement for the Legacy Generation Assets, with operators of the Legacy Generation Assets) and the other generators of electric energy on Puerto Rico, but it is not responsible for any of the operation, repair, replacement, maintenance or improvement of the Legacy Generation Assets or any other privately-owned generation asset.

In addition, under the O&M Agreement, prior to transferring to LUMA the operation of the T&D System on June 1, 2021 (the "Service Commencement Date"), LUMA and PREPA, along with various other government entities, including the P3 Authority, the Central Office for Recovery, Reconstruction and Resiliency ("COR3") and the PREB, were required to work together to prepare for the transfer to LUMA of the T&D System, including by collaborating to (i) develop the requisite operating plans, performance metrics, procedures and policies needed for a successful transaction; (ii) hire employees to operate the T&D System; (iii) establish LUMA's presence on Puerto Rico; and (iv) refine the arrangements between LUMA as operator of the T&D System and PREPA as operator of the Legacy Generation Assets.

AES Coal Plant Hypothetical

Under the O&M Agreement, LUMA is responsible for (i) acting as agent of PREPA in administering certain contracts relating to the operation and maintenance of the T&D System ("System Contracts"), including the power purchase and operating agreement (the "AES PPOA") between PREPA and AES Puerto Rico (the "AES Operator"), the private operator of the AES Coal Plant, (ii) ensuring that the T&D System, Legacy Generation Assets and all generation assets not owned by PREPA operate in a reliable and economic fashion, and (iii) ensuring that sufficient generation capacity is available and maintained to meet resource adequacy goals ("Resource Adequacy") in accordance with Puerto Rico's energy public policy.

If the AES Coal Plant were to close before 2028, LUMA's role under the O&M Agreement would be to prepare a risk assessment and analysis in support of Resource Adequacy concluding that the AES Coal Plant can be shut down at such time. In addition, prior to commencing any work in furtherance of such determination, LUMA would be required to obtain the PREB's approval to begin shutting down the AES Coal Plant.

Changes to the O&M Agreement

The P3 Authority is of the position that no changes to the O&M Agreement are needed at this time.

First, the O&M Agreement is part of the Government's broader public policy preference to depoliticize PREPA and incorporate the private sector in the operation of assets and the rendering of electrical power services. Such public policy aims to finance infrastructure projects and provide public goods and services through public private partnerships.

For years, Puerto Rico's dated and fragile electric system has faced significant operational and reliability challenges. In 2017, these challenges were both highlighted and significantly aggravated by Hurricanes Irma and Maria, two devastating hurricanes which struck Puerto Rico within two weeks of each other. The combined impact of Irma and Maria led to a complete failure of the electrical grid, resulting in the longest power outage in U.S. history. Irma left approximately 70% of Puerto Rico without power and, shortly thereafter, Maria, the strongest hurricane to hit Puerto Rico in close to 100 years, made landfall and left 100% of Puerto Rico's residents without power for significant periods of time. On average, households went 84 days without power, however it was approximately 11 months before power was restored to 100% of Puerto Rico's residents.

Confronted with this reality, the Government determined that a critical component of the transformation of Puerto Rico's energy sector was to bring in private sector operators who would be able to bring to bear their world-class expertise, experience, and know-how to execute on the transformation of the island's electric system.

Second, the O&M Agreement is the result of a two-year-long robust and transparent competitive procurement process, conducted pursuant to and in compliance with the requirements of the Puerto Rico Electric System Transformation Act, Act No. 120-2018, as amended ("Act 120"), and the Puerto Rico Public-Private Partnership Authority Act, Act No. 29-2009 ("Act 29"). Over the course of these two years, multiple drafts of the contract were distributed to the proponents, with each new draft reflecting the comments from the proponents that the partnership committee established for the O&M Agreement procurement process (the "Partnership Committee") had accepted. Specifically, the request for proposals required that each proponent (i) provide written comments to and markups of three drafts of the contract and (ii) meet with the P3 Authority and various other government entities, including the FOMB, to walk through and discuss the proponent's comments to each successive draft of the contract. In addition, there were over 700 diligence questions, more than 19 Partnership Committee meetings and over 15 diligence meetings. Accordingly, each provision of the O&M Agreement was carefully negotiated between the main stakeholders, which resulted in the best market terms and conditions.

Finally, the Government cannot amend the O&M Agreement unilaterally, as it can only be amended by written agreement between LUMA, PREPA and the P3 Authority. Furthermore, amendments to the O&M Agreement do not enter into effect until (i) the parties have obtained approval from the PREB and the FOMB (if then in existence), to the extent required by applicable law, and (ii) the P3 Authority has received the relevant tax opinions providing that the amendment in question does not jeopardize the tax-exempt status of the PREPA bonds.

In light of the above, it is not clear that reopening contract negotiations with LUMA or re-starting a procurement process would result in an agreement that is more favorable to the Government and the people of Puerto Rico.

B. Responses to Questions From Rep. Nydia M. Velázquez (Democrat)

1. How many employees within the P3 Authority are charged with providing oversight to the O&M Agreement?

It is important to point out that the PREB is the entity in charge of overseeing all technical and operational aspects of LUMA's performance under the O&M Agreement. The O&M Agreement acknowledges PREB's authority in all matters under its jurisdiction. The P3 Authority has a very specific role as the Administrator to the O&M Agreement, which is directed to making sure that LUMA complies with its obligations thereunder. Specifically, the P3 Authority's responsibilities as Administrator under the O&M Agreement are the following: (i) review and approve LUMA's budgets to ensure compliance with the rate orders issues by PREB from time to time; (ii) review and approve the incentive fee payable to LUMA for a given contract year; (iii) cooperate with LUMA such that budgets and funds are sufficient in amount to enable LUMA to meet the Contract Standards and provide reasonable opportunity for LUMA to achieve the Performance Metrics, as both terms are defined by the O&M Agreement; (iv) exercise oversight in relation to LUMA's compliance with the budgets approved by the PREB, performance of its obligations under O&M Contract, and compliance with federal funding requirements; (v) respond within 30 days to all requests of LUMA with respect to matters requiring approval, review or consent of Administrator under O&M Agreement; (vi) cooperate with LUMA by providing information, data and assistance as may be reasonably necessary; (vii) declare an event of default and exercise remedies under O&M Agreement; (viii) coordinate any audits that the P3 Authority is entitled to perform with any audits being undertaken by PREPA and any other governmental body; and (ix) cooperate with LUMA to obtain and effectuate approvals of any governmental body.

To achieve such purposes, the P3 Authority currently has six employees responsible for overseeing LUMA and PREPA's performance of its contractual obligations. Also, the P3 Authority team communicates with LUMA on a daily basis, serving as liaison between Luma, other stakeholders and governmental agencies. The P3 Authority is in the process of interviewing candidates for the P3 Authority's office of administration of the O&M Agreement, which recruitment process must strictly comply with local administrative and human resources laws and regulations. Specifically, under local law, the P3 Authority is required to interview and give priority to all prospective candidates within the Government before announcing any job openings to the public and expanding its search beyond the Government.

2. Did the P3 authority have to engage outside experts to help with the oversight of the O&M Agreement?

Yes, the P3 Authority has engaged outside experts to help with its oversight of the O&M Agreement.

3. If so, can you share the names of those experts and the agreements for the members of this Committee?

The outside experts hired by the P3 Authority to help oversee the O&M Agreement are (i) FTI Consulting (“FTI”), (ii) Ximmena, LLC (“Ximmena”), (iii) Eclipse Management, LLC (“Eclipse”), and (iv) Scott Madden, LLC (“Scott Madden”).

FTI assists with overseeing LUMA’s technical and financial compliance with the O&M Agreement. Ximmena assists with overseeing the technical and regulatory compliance with the O&M Agreement. Eclipse Management assists with overseeing LUMA’s compliance with certain financial obligations under the O&M Agreement. Scott Madden was hired to assist with the creation of the necessary administrative framework required to oversee the O&M Agreement. Copy of the Agreements with the named advisors are attached as **Exhibit A** herewith.

C. Responses to Questions From Rep. Jenniffer González-Colón (Republican)

1. Multiple groups like UPR Resiliency Law Center and even Members of Congress have argued that:

- *The O&M Agreement should be canceled or amended.*
- *That FEMA should condition its recovery funds to immediate action being taken by the Puerto Rican Government, so a thorough investigation and report is produced on the O&M Agreement.*
- *That Congress and FEMA should ensure that federal funds are used to “move away from fossil fuels, advancing the use of renewable energy, protecting workers rights and improving the health of people and the environment.”*

a. How do you answer to that?

b. How much would that drag on the already painfully slow recovery?

Response to the Argument that the O&M Agreement Should be Canceled or Amended:

The P3 Authority is of the position that the O&M Agreement should not be canceled and does not require amendments. The O&M Agreement is the result of a two-year-long robust competitive procurement process, conducted pursuant to and in compliance with the requirements of Act 120 and Act 29. As such, the terms of the O&M Agreement were thoroughly negotiated between key stakeholders and subject to multiple rounds of the review and comment by, among others, technical experts, as well as experts in local law, environmental law, federal funding requirements, and the applicable regulatory framework which resulted in the best market terms and conditions.

In addition, the O&M Agreement is part of the Government’s broader public policy preference to finance infrastructure projects and provide public goods and services through public private partnerships. Specifically, the O&M Agreement is the result of the Government’s determination that a critical component of the transformation of Puerto Rico’s energy sector would be to bring in a private sector operator who would be able to bring to bear its world-class expertise, experience and know-how to execute on the transformation.

Accordingly, it is not clear that reopening contract negotiations with LUMA or re-starting the procurement process would result in an agreement that is more favorable to the Government and the people of Puerto Rico. What is certain is that reopening contract negotiations would result in

further delays to Puerto Rico's recovery process, the envisioned transformation of the electric grid and significant expenses to the Government of Puerto Rico. Cancellation of the O&M Agreement would also bring the threat of protracted litigation.

Response to the Argument that FEMA Should Condition Recovery Funds:

Any use by LUMA of FEMA recovery funds is, in fact, subject to a number of terms and conditions. The O&M Agreement requires LUMA to fully comply with State and Federal requirements and procedures that govern FEMA recovery funds. Further, the specific projects to be built using these funds must meet FEMA eligibility criteria, including the environmental and historic preservation reviews that apply to any facility built or repaired with federal funds. In light of this, LUMA may only use FEMA funds as permitted by FEMA's Public Assistance Program and in accordance with all statutory and regulatory requirements applicable to projects funded by Public Assistance grants.

It is worth mentioning that FEMA does have the authority to impose conditions on a grant award that require funds to be used for a particular purpose or manner that is consistent with Federal statute, regulation, or Executive Order (*see* 2 C.F.R. §§ 200.100(a)(1) and 200.211 for information on how agencies can impose conditions on grant awards). Therefore, the applicable regulation provides for sufficient Federal intervention with respect to the use of the grant funds destined to Puerto Rico's power generation, transmission, and distribution.

Furthermore, the O&M Agreement includes certain requirements intended to provide additional assurance that any goods and services acquired by LUMA for federally funded projects are properly procured and administered. For example, under the O&M Agreement, prior to the Service Commencement Date, LUMA was required to prepare a procurement manual in collaboration with the P3 Authority and COR3 (the "LUMA Procurement Manual"), which LUMA must now use to manage the end-to-end procurement or purchasing of any third-party goods and services in connection with its performance of the O&M Services, including its performance of any O&M Services related to FEMA funded projects. Of note, the scope and contents of the Procurement Manual was the subject of multiple discussions with FEMA and the OIG Office to assure compliance with federal regulations.

Finally, because the argument that FEMA should condition its recovery funds on the Government taking immediate action to conduct a thorough O&M Agreement is similar to the Whitefish and Cobra contracts, it is worth noting two critical differences between the O&M Agreement, on the one hand, and the Whitefish and Cobra contracts, on the other. First, unlike the Whitefish and Cobra contracts, each of which was the result of a non-competitive procurement process for emergency restoration services conducted in the immediate aftermath of Hurricanes Irma and Maria, the O&M Agreement is the result of a two-year-long robust competitive procurement process conducted pursuant to and in compliance with the requirements of Act 120 and Act 29. Second, unlike the Whitefish and Cobra contracts, which were paid for using FEMA funds, the O&M Agreement is not a federally funded contract. Rather, payments made to LUMA in exchange for the O&M Services come out of the revenues from the tariff paid by PREPA's consumers.

Response to the Argument that Congress and FEMA Should Ensure Federal Funds Are Used to Advance Renewable Energy:

The Government is committed to increasing renewable energy in Puerto Rico. Act 17 establishes the Puerto Rico public policy for the execution of the Renewable Portfolio Standard. The Renewable Portfolio Standard requires, among other things, that the renewable portfolio for the Puerto Rico energy system increase to 20% by 2022, 40% by 2025, 60% by 2040 and 100% by 2050. Act 17 also requires that LUMA implement energy efficiency programs to obtain 30% energy efficiency savings by 2040.

Under the O&M Agreement, LUMA's role is limited to the operation of the T&D System and does not include power generation. In other words, the O&M Agreement does not authorize LUMA to purchase or contract for power generation. What is more, the O&M Agreement requires LUMA to comply with Act 17 and to ensure Resource Adequacy in accordance with the Puerto Rico energy public policy.

Given that the PREB is the public entity generally responsible for the oversight and correct execution of Puerto Rico's energy public policy, by making the PREB entity responsible for overseeing LUMA's compliance with Puerto Rican law and public policy on energy, including renewable energy policy such as the Renewable Portfolio Standard, the O&M Agreement ensures that LUMA will perform the O&M Services in furtherance of the Government's goals with respect to the advancement of renewable energy in Puerto Rico.

Regarding the Impact on Puerto Rico's Already Painfully Slow Recovery if the Government Were to Capitulate to Any of the Preceding Three Arguments

Capitulating to any of the three arguments outlined above will ultimately hurt the people of Puerto Rico by further delaying the Government's mission to transform Puerto Rico's electric grid and promote economic recovery and growth following the devastation caused by Hurricane Irma and Hurricane Maria. Specifically, if the O&M Agreement is terminated, the people of Puerto Rico will never be able to reap the benefits of the significant amount of time and resources that have already been invested into the transaction by the Government. In addition, if Congress and/or FEMA were to take actions to further delay the disbursement of federal funds to PREPA, Puerto Ricans who, at this point, have been waiting for FEMA to approve a permanent power grant for four years will have to continue waiting, which will, in turn, foment further public distrust in both the Government and the Federal government.

- 2. How much would it cost to rescind the O&M Agreement? What would be the difference between doing it for cause, vs. as a policy decision? What would be the impact on the recovery and mitigation action plan for the electric system of a reset of the whole process?***

Cost of Rescinding the O&M Agreement

The O&M Agreement can be terminated by LUMA and/or the Government prior to the end of the term of the agreement under a number of circumstances, including, among others, bankruptcy, failure to pay undisputed amounts owed under the O&M Agreement and a representation and warranty of a party being proved to be false or inaccurate in any material respect when made and thereby materially and adversely affects the legality of the O&M Agreement or LUMA's ability to carry out its obligations. However, the O&M Agreement only requires the Government to pay

LUMA a termination fee (the “Termination Fee”) in the event that the O&M Agreement is terminated under certain limited circumstances not due to LUMA’s fault.

Specifically, the Government must pay the Termination Fee in the event that the O&M Agreement is: (i) terminated, revoked, nullified, cancelled or otherwise rendered invalid by any duly enacted Puerto Rican law, as determined by a final non-appealable judgment by a court of competent jurisdiction; (ii) terminated by LUMA or the P3 Authority as a result of the T&D System being sold, transferred or assigned, in whole or in part, to a private entity; or (iii) terminated by LUMA as a result of any change, amendment or modification to any applicable Puerto Rican law or any adoption of, or change to, any administrative or judicial interpretation (having the force of law) of any such law or any regulation that (A) renders unenforceable or invalid, in whole or in part, any right or privilege granted to LUMA under the O&M Agreement, (B) subjects LUMA to rate or other substantive regulation by the PREB in a manner that materially and adversely affects LUMA’s ability to perform its obligations under the O&M Agreement to the extent not otherwise mitigated by the terms thereof, or that constitutes a default by the FOMB under the terms of the FOMB Protocol Agreement (as such term is defined by the O&M Agreement), subject to certain exceptions, or (C) caps or has the effect of capping rates charged to customers, other than a temporary cap on rates to address an certain outage events.

The Termination Fee ranges between \$158 million and \$104 million, depending on when in the 15-year term such termination occurs. Accordingly, the Termination Fee is only payable to LUMA under certain circumstances, which include termination on the basis of public policy but exclude termination for cause.

Impact of Rescinding the O&M Agreement

Considering the Termination Fee described above, terminating the O&M Agreement would not only be costly to the people of Puerto Rico, but it would also deprive the people of Puerto Rico from being able to reap the benefits of the significant amount of time and resources that have been invested into the transformation of the electric grid by the Government. This would ultimately hurt the people of Puerto Rico by further delaying the Government’s mission to transform Puerto Rico’s electric grid and promote economic recovery and growth following the devastation caused by Hurricane Irma and Hurricane Maria.

In addition, it is worth noting that rescinding the O&M Agreement would undo many of the benefits LUMA has been able to achieve to date in its capacity as operator of the T&D System. For example, virtually no permanent restoration projects had been submitted to FEMA before LUMA undertook the operation of the T&D System. Since Commencement Date, LUMA has successfully submitted more than 65 projects to FEMA. Further, LUMA has another 29 projects in the pipeline that are expected to be submitted to FEMA before 2022. Additionally, during their first 100 days, LUMA’s Net Energy Metering Program and Distributed Generation Interconnection teams processed over 23,000 applications, seven times PREPA’s historical monthly average. LUMA has also been able to make an electric connection in a Culebra community that had been without electric power for more than 15 years. These are just a few of the multiple achievements LUMA has had since June 1, 2021.

3. On the LUMA Project Labor Agreement issue that was brought up, where LUMA has required of its contractors and subcontractors a Project Labor Agreement (PLA) modeled after its agreement with IBEW Union:

- a. Does P3 Authority have any involvement or authority in that process and with its effect to consumers and ratepayers as well the economic impact in the general reconstruction?**

When the O&M Agreement was signed, LUMA stepped into PREPA's position in negotiating collective bargaining agreements including agreements with contractors and subcontractors for services to be provided in connection with the O&M Services. As such, LUMA was able to bring the experience and expertise of ATCO Ltd and Quanta Services, Inc. in negotiating similar contracts with unions to bear in its capacity as operator.

The P3 Authority was not involved in the negotiation between LUMA and the International Brotherhood of Electrical Workers, Local Union 222 ("IBEW") regarding the Project Labor Agreement ("PLA"). Per LUMA's representations to the P3 Authority and the Government of Puerto Rico, the main purposes of the PLA are to (1) stabilize wages, hours and working conditions to encourage close cooperation between the parties; (2) enhance cooperative effort for the timely completion of work without interruption or delay; (3) satisfy the need for a substantial number of workers with craft possessing skills and qualifications which are vital to succeed; (4) avoid undue delays in the completion of the construction work as the Contractors agree to not engage in lockout and IBEW agrees to not engage in strike, slow-down, or other disruptions or interferences.

- b. If the answer [is] it does, is there any involvement in a prior public participation process, or in reviewing impact on economic development reconstruction of such company decisions? If the answer is yes, then what would be the procedure for cases such as this?**

See answer to 3(a) above.

- c. Has P3 reviewed the complaint of various private sector organizations, that this Agreement in effect extends LUMA's labor terms to the rest of the local private sector? Does that in any way violate the letter or spirit of the agreement or of the enabling law?**

The P3 Authority is aware of the complaints raised by various sector organization and has met with their representatives in order to discuss their concerns. Per LUMA's representations to the P3 Authority and the Government of Puerto Rico, the PLA will only apply to new construction and maintenance of electrical transmission lines, distribution lines, catenary and trolley facilities, switch yards and substation in Puerto Rico on PREPA's property as specifically defined in the PLA. Further, the PLA will only apply to the following category of workers: general foreman, foreman, journeyman lineman, heavy equipment operator, operator, cable splicer, groundman-truck driver, and apprentice lineman.

4. Future Generation:

a. What is the current status of the Renewable Energy and Storage RFPs?

The P3 Authority is not currently managing any RFPs for Renewable Energy and Storage. Those RFPs are currently managed by PREPA.

b. What is the status of proposals for privatizing the legacy generation fleet?

The currently ongoing procurement process to delegate the operation and maintenance functions of the Legacy Generation Assets began with the launch of a request for qualifications to which fifteen private parties responded.

The P3 Authority evaluated the statements of qualifications received from those private parties and submitted its analyses to the partnership committee established to oversee the process. The partnership committee short-listed eight private parties with best-in-class expertise and experience (the “Proponents”) to participate in the request for proposals (“Generation RFP”) phase. On November 10, 2020, the P3 Authority launched the Generation RFP phase with the issuance of the Generation RFPs to the Proponents.

Since the issuance of the Generation RFP, this process has advanced steadily. The P3 Authority has shared with Proponents a draft operation and maintenance agreement and held multiple videoconferences with Proponents to clarify certain business and legal elements of the agreement, as well as various regulatory features of the project in general. Currently, interested Proponents are conducting due diligence on the opportunity and engage on the draft contract.

The P3 Authority expects that a proponent will be selected by the end of December 2021.

5. Is there any entity in Puerto Rico that has the legal power to unilaterally command the elimination or non-use of a system or a power plant, NOT due to imminent security/safety problems or for causes listed in the law and regulation, but simply as a matter of choice or policy?

Ultimately, the decision to eliminate or cease use of a system or power plant is a matter of public policy. As the island’s independent regulator, PREB is the entity with jurisdiction to implement the public policy in the energy sector and approves the IRP which establishes the energy generation sources. The O&M Agreement, in conjunction with the Puerto Rico Power Authority Act of 1941, Act 83-1941, requires that LUMA submit an IRP to the PREB, which must include, among other things, an evaluation of the existing electric power plants or facilities of PREPA that takes into account the improvements in the operations efficiency of plants, the useful life of existing plants, and the retirement date and decommissioning costs thereof. Once received, the PREB reviews the submitted IRP and issues findings and orders related to, among other things, the retirement date and decommissioning costs of existing plants.

Exhibit A

PROFESSIONAL SERVICES AGREEMENT

by and between

THE PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY

and

FTI CONSULTING, INC.

Dated as of June 30, 2021



PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") for financial consulting and advisory services is made and entered into as of this 30th day of June, 2021, by and between **THE PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY**, a public corporation of the Government of Puerto Rico, established and authorized to enter into this Agreement by Act No. 29-2009, as amended, and represented herein by its Deputy Executive Director, Nelson Pérez Méndez, of legal age, attorney, married, and resident of _____ (the "Authority") and **FTI CONSULTING**, a corporation incorporated under the laws of the state of Maryland, USA with its executive headquarters in Washington DC, represented herein by its Senior Managing Director Ellen Smith, of legal age, married, consultant, and resident of _____ (the "Consultant"), and together with the Authority, the "Parties".

RECITALS

WHEREAS, the Authority, by virtue of the powers conferred to it under the Public-Private Partnerships Act, Act No. 29 of June 8, 2009, as amended ("Act 29"), is authorized to engage professional, technical and consulting services that are necessary and convenient to the activities, projects, and operations of the Authority.

WHEREAS, on May 19, 2021, the Consultant submitted to the Authority a proposal for financial advisory and consulting services in connection to certain Puerto Rico Electric Power Authority Public-Private Partnerships Projects (the "Projects"), attached hereto as **Appendix A** and made a part of this Agreement (the "Proposal"). If any part of the Proposal is found to be inconsistent with the terms and conditions set forth herein, the terms and conditions set forth herein shall take precedence over the Proposal and govern the matter in question.

WHEREAS, the Authority is authorized to enter into this Agreement pursuant to Resolution No. 2021-37 approved by the Board of Directors of the Authority.

WHEREAS, after considering the Proposal, the Authority wishes to engage the Consultant to act as financial and consulting advisor to the Authority in relation to the implementation of the Project under consideration of the Authority.

WHEREAS, the Consultant is willing to provide such services.

NOW, THEREFORE, the Authority and the Consultant agree to enter into this Agreement under the following:



TERMS AND CONDITIONS

ARTICLE I PURPOSE OF AGREEMENT; TERM

Section 1.1 Purpose of Agreement. The Authority engages the Consultant to provide financial consulting and advisory services to the Authority in connection with the Puerto Rico Electric Power Authority Public-Private Partnerships Projects, as detailed in the Proposal. In the event that the Authority desires to engage the Consultant to advise the Authority in any other matter that is not within the scope of the Proposal, the Parties shall negotiate in good faith a separate agreement or an amendment hereto with respect to such mandate.

Section 1.2. Term. This Agreement shall be in effect from July 1, 2021 until June 30, 2022 (the "Expiration Date"), provided that the Expiration Date may be extended by amendment executed in writing by both Parties.

ARTICLE II SCOPE OF SERVICES; ADVICE AND RECOMMENDATIONS; SUBCONTRACTING

Section 2.1 Scope of Services. Subject to the terms and conditions of this Agreement, the Consultant's services shall be consistent with the provision of the deliverables, tasks and services described in the Proposal and such other tasks delegated to it by the Authority and within the capabilities of the Consultant.

Section 2.2. Advice and Recommendations. The services to be provided under this Agreement may include advice and recommendations for the benefit of the Authority and/or the Government of Puerto Rico, but the Consultant will not make any decisions on behalf of the Authority or the Government of Puerto Rico in connection with the implementation of such advice and recommendations.

Section 2.3 Subcontracting. The Consultant shall not subcontract the services under this Agreement, or contract third party experts or other persons to render the services under this Agreement, without prior written authorization from the Authority. A request to hire another service consultant shall specify the matters in which the subcontracted consultant would take part.

ARTICLE III COMPENSATION; INVOICES; OUT OF POCKET EXPENSES

Section 3.1 Professional Fees. The Authority shall compensate the Consultant for the actual time incurred in delivering the services and completing the tasks, assignments and deliverables set forth in **Appendix A**, at the applicable hourly rates listed in the Budget/Level of Effort Schedule provided in **Appendix A** of this Agreement. Should the Consultant assign an additional team member not included in Appendix A to attend the Authority's matters, the Consultant shall promptly send the Authority an amended schedule to include such person's name, position, and hourly rate, and request written approval from the Authority for such amended schedule.

Handwritten signature in blue ink, possibly reading 'M. S.', with the date '2/28' written below it.

The total amount to be paid by the Authority in relation to the services rendered under this Agreement shall not exceed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00), including reimbursable expenses, unless otherwise agreed to by the Parties. The Consultant will submit monthly invoices to the Authority within thirty (30) days of performing the services being provided, which shall include a detailed description of the services rendered by the Consultant, complying with the Authority's billing guidelines attached hereto as **Appendix B** of this Agreement. Each invoice shall be itemized with entries for fractions of an hour based on tenths of an hour (.10) and must be duly certified by an authorized representative of the Consultant. The Authority will not honor invoices submitted after one hundred twenty (120) days of services having been rendered. The Consultant accepts and agrees to this requirement, and understands that if it does not comply accordingly, it waives its right to payment for rendered services covered by such invoices. The Authority reserves the right to review the invoices and if they are in compliance with the requirements set forth in this Agreement, it will proceed with payment.

The Consultant agrees to notify the Authority within five (5) working days after having reached 75% of the maximum amount to be paid under this Agreement. The written notification shall include a report of projected services for the duration of the Agreement that entail a possible increase to the limit established and a request addressed to the Executive Director to increase said amount. The Consultant hereby agrees to comply with these responsibilities with respect to the notification requirements and the report to be submitted. Furthermore, the Consultant understands and accepts that it may not exceed the amount established in the Agreement unless and until the Agreement is amended accordingly and the increase is authorized by the Authority. If the Consultant does not comply with the amendment requirement, it waives its rights to payment for services rendered, even after they have been provided. The Authority acknowledges and understands that to the extent services are required of the Consultant beyond the "not-to-exceed" fee cap above, the Consultant cannot provide those additional services until the Authority agrees to pay additional compensation and expenses, and the Agreement is amended in writing accordingly.

The Consultant acknowledges and agrees that retroactive contracting is contrary to government contracting requirements and that the Authority will not issue retroactive payments. The Consultant acknowledges and agrees that Services rendered before the date of execution or before the effective date of the Agreement, as applicable, will not be paid by the Authority.

Each invoice must include a written certification stating that no officer or employee of the Authority will derive or obtain any benefit or profit of any kind from this Agreement, with the acknowledgment that invoices which do not include this certification will not be paid. This certification must read as follows:

"We certify under penalty of nullity that no public servant of the Puerto Rico Public-Private Partnerships Authority will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be




received in exchange for the delivery of goods or for services provided is the agreed-upon price that has been negotiated with an authorized representative of the Puerto Rico Public-Private Partnerships Authority. The total amount shown on this invoice is true and correct. The services have been rendered, and no payment has been received in respect thereof.”

All invoices shall be in portable document format (PDF), signed and transmitted by electronic mail transmission to the following electronic mail address: InvoiceP3@p3.pr.gov.

The Consultant agrees to submit checking account transfer data to the Authority in order to facilitate future payments by means of electronic transfers.

The Consultant further acknowledges and agrees that the Authority has the right to recover any erroneous payment, including but not limited to, any overpayment, duplicate payment and/or any other payment not authorized by law, regulation, and/or this Agreement. The Consultant agrees to promptly return any erroneous payment to the Authority upon receipt of a written notice. In addition, if the Consultant becomes aware of an erroneous payment made by the Authority, the Consultant shall immediately notify the Authority’s management and request instructions to proceed accordingly. The Consultant acknowledges and agrees that the Authority reserves the right to make the necessary adjustments in any remaining payments to the Consultant until any erroneous amount paid is recovered.

The Authority certifies that the funds for the payment of Services rendered under this Agreement come from budgetary allocations. All disbursements for such payments shall be made from account 0105030420.

Section 3.2 Travel and Out of Pocket Expenses

(a) The Authority will reimburse the Consultant on a monthly basis for out-of-pocket expenses directly related to the services rendered under this Agreement, including, but not limited to, travel and lodging, filing fees, taxi fares, delivery expenses, and services such as overnight mail, courier, and messenger charges.

(b) Any expense for which a reimbursement is requested shall be reasonable and necessary, and any expenses exceeding FIVE THOUSAND DOLLARS (\$5,000.00) individually shall be authorized in writing and in advance by the Authority. The Authority will not reimburse expenses which do not comply with this provision. Under no circumstances will expenses for alcoholic beverages be reimbursed.

(c) Any petition for reimbursement of expenses must be accompanied by the corresponding invoice or receipt and shall specify the relation of the expense to the services rendered. All reimbursements shall be for actual expenses incurred and shall be billed at cost.



**ARTICLE IV
INFORMATION; CONFIDENTIALITY**

Section 4.1. Information Provided by the Consultant. No information or advice provided or materials prepared by the Consultant as a result of its activities hereunder may be disclosed, in whole or in part, or summarized, excerpted from or otherwise referred to a third party outside of the Executive Branch (other than, on a confidential, non-reliance, need to know basis, to the Authority's employees, advisors, counsel and other representatives) without the Consultant's prior written consent, which shall be conditioned on the execution of a release letter in the form provided by Consultant unless compelled by law or court order. In addition, the Authority agrees that any reference to the Consultant in any press release or communication is subject to the Consultant's prior written approval, which may be given or withheld in its reasonable discretion, for each such reference. The Authority shall retain the right to use, refer, share, or provide to any third party, as the Authority may determine, the results of any: analyses, investigation summaries; and, written reports resulting from the Services performed by the Consultant that were specifically designated as a final deliverable that were provided to the Authority under this Agreement.

Section 4.2. Confidential Information.

(a) The Consultant acknowledges the proprietary and confidential nature of all internal, non-public, information systems, financial, and business information relating to the Authority, as well as to the Government of Puerto Rico, its agencies, corporations or municipalities, now or hereafter provided to the Consultant (the "Confidential Information").

(b) The Consultant and its Representatives (as defined below) shall keep in confidence in accordance with the terms of this Agreement all such Confidential Information and shall not, except as otherwise set forth herein, make public or disclose any of said information without the previous written consent of the Authority. The Consultant and its Representatives may use the Confidential Information in connection with providing the services contemplated by this Agreement. The term Confidential Information shall not include information which (i) is previously known to the Consultant and/or its Representatives, (ii) is available to the public prior to the time of disclosure hereunder, (iii) subsequent to the time of disclosure hereunder, becomes available to the public other than as a result of a breach of this Agreement by the Consultant, (iv) subsequent to the time of disclosure hereunder becomes available to the Consultant or its Representatives by a third party who, to the knowledge of the Consultant, is under no obligation to keep the information confidential, (v) is independently developed by the Consultant without reference to the Confidential Information or (vi) is approved for disclosure or release by the Authority.

(c) Notwithstanding the above, the Consultant and/or its Representatives, as applicable, may disclose Confidential Information to (a) its affiliates and approved subcontractors and their respective directors, officers, employees, agents, consultants, advisors and/or representatives (such individuals receiving Confidential Information hereunder, collectively, the "Representatives") who need to know such Confidential Information to fulfill the purposes of this Agreement, provided that such persons shall have been advised of the confidential nature of such materials and information and the Consultant shall direct them to treat as confidential such



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information and to return all materials to the Consultant upon request; provided, that the Consultant shall be responsible for any breach of this Agreement by its Representatives and (b) pursuant to a request or requirement by law, regulation or governmental, regulatory or self-regulatory authority or legal process (including by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to provide such Confidential Information.

(d) The Consultant will promptly, upon the written request of the Authority, deliver to the Authority, or at the Authority's election, destroy all Confidential Information; provided, however, that the Consultant and its Representatives may retain copies of Confidential Information, subject to the confidentiality terms of this Agreement, in accordance with their respective internal record retention policies for legal, compliance or regulatory purposes or to establish the rights of the Consultant and its Representatives under this Agreement.

(e) This provision shall survive the termination or expiration of this Agreement for a period of two (2) years.

ARTICLE V BREACH; TERMINATION

Section 5.1 Breach of Contract Terms. Any violation or breach of terms of this Agreement on the part of the Consultant or the Consultant's subcontractors, if any, may result in the suspension or termination of this Agreement or such other action, including the recovery of damages (such damages to be limited as per Section 6.1(a) herein) that may be necessary to enforce the rights of the Authority. The duties and obligations imposed by the Agreement 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.

Section 5.2 Termination with or Without Cause. Notwithstanding any provision to the contrary in this Agreement, the Authority shall have the right to terminate this Agreement without cause by providing the Consultant thirty (30) days' notice by registered mail, return receipt requested, or overnight express mail. Any provisions of this Agreement which expressly or by implication are intended to survive its termination or expiration will survive and continue to bind the Parties. The Authority shall also have the right to terminate this Agreement immediately, without prior notice, if the Consultant incurs in negligence, abandonment of its obligations and/or breach of the terms of the Agreement. The Consultant may terminate this Agreement if it determines any part of the services rendered hereunder would be in conflict with law or professional standards.

Section 5.3 Termination by the Office of the Governor's Chief of Staff. The Office of the Governor of Puerto Rico's Chief of Staff has the authority to terminate this Agreement at any time on behalf of the Authority.

Section 5.4 Upon any termination or expiration of this Agreement, the Authority shall promptly pay the Consultant any accrued but unpaid fees hereunder, and shall reimburse the Consultant for any unreimbursed expenses that are reimbursable hereunder.



Section 5.5 Upon any termination or expiration of this Agreement, the rights and obligations of the Parties shall terminate, except for the rights and obligations that shall survive the termination or expiration of this Agreement.

**ARTICLE VI
INDEMNIFICATION; INSURANCE**

Section 6.1. Indemnification and Liability.

(a) The Consultant shall defend, indemnify and hold the Authority, its officers, officials, and employees, harmless from any and all claims, injuries, damages, losses or suits including attorney fees ("Claims"), to the extent arising out of or resulting from the gross negligence or willful misconduct of the Consultant in the performance of its obligations under this Agreement (as determined by a final, non-appealable judgment by a court of competent jurisdiction). The Consultant, its subsidiaries and subcontractors, and their respective personnel shall not be liable to the Authority for any Claims relating to this engagement for an aggregate amount in excess of the fees paid by the Authority to the Consultant pursuant to this engagement, except to the extent resulting from the bad faith or intentional misconduct of the Consultant or its subcontractors. In no event shall the Consultant, its subsidiaries or subcontractors, or their respective personnel be liable to the Authority for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense relating to this engagement. The foregoing limitation of liability and disclaimer shall not apply to Claims for which a party is obligated to indemnify under this Agreement.

(b) Each Party shall indemnify, defend and hold harmless the other from and against any and all amounts payable under any judgment, verdict, court order or settlement for death or bodily injury or the damage to or loss or destruction of any real or tangible personal property, but only to the extent the foregoing arise out of the indemnitor's negligence or intentional misconduct in the performance of this Agreement. The Consultant shall indemnify, defend and hold harmless the Authority from all Claims arising from claims brought by any subcontractor of the Consultant hereunder against the Authority for payment or for other damages arising under the applicable subcontract agreement between the Consultant and such subcontractor except for those claims caused by the Authority. The Authority shall indemnify, defend and hold harmless the Consultant from all claims, injuries, damages, losses or suits including attorney fees arising out of the Authority's use and/or disclosure of any work product provided by Consultant hereunder. The Consultant hereby agrees to use reasonable efforts to mitigate any and all damages and other losses to the Authority and any entity of the Executive Branch. To the extent permitted by law, all claims and Losses relating to, directly or indirectly, or arising from this Agreement (including the Services), however caused, regardless of the form of action and on any theory of liability, including contract, strict liability, negligence or other tort, shall be brought under and shall be subject to the terms of this Agreement.

Section 6.2. Insurance.

(a) The Consultant represents that as of the date of execution of this Agreement, it

maintains professional liability insurance to provide for errors, omissions and negligent acts that may arise from the services rendered under this Agreement in the minimum amount of FIVE MILLION DOLLARS (\$5,000,000.00).

(b) The Consultant also represents that it maintains Commercial General Liability insurance in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00). It shall be the Consultant's obligation to submit to the Authority the corresponding certifications from its insurance company evidencing such coverages. The certifications provided must identify the Authority as Additional Insured.

(c) With respect to the Commercial General Liability insurance policy, the certification to be provided by the Consultant must identify the Authority as Additional Insured and include the following cancellation notice:

"CANCELLATION CLAUSE: It is understood and agreed that in the event of cancellation of this policy at the request of the insurance company, thirty (30) days written notice shall be given to the above-mentioned additional insured, PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY. However, it is agreed that if cancellation is due to non-payment of premium, ten (10) days written notice will be given".

It shall be the Consultant's obligation to submit to the Authority the corresponding certifications from its insurance company evidencing the abovementioned insurance coverage. The insurance policies required herein must remain in effect during the term of this Agreement, including any amendments to extend said term.

ARTICLE VII APPLICABLE LAWS OF PUERTO RICO

Section 7.1. Interagency Service Clause. Both Parties acknowledge and agree that the contracted services may be provided to any entity of the Executive Branch with which the Authority subscribes an interagency agreement or by direct disposition of the Office of the Chief of Staff of the Governor of Puerto Rico. These services will be provided under the same terms and conditions regarding work hours and/or compensation as set forth in this Agreement. For purposes of this section, the term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as its instrumentalities, public corporations and the Governor's Office.

Section 7.2. Source of Funds. The Authority certifies that the funds for the payment related to the services rendered under this Agreement come from budgetary allocations. All disbursements for such payments shall be made from the Puerto Rico Public Partnerships Authority's account.

Section 7.3. Professional Ethics Rules. The Consultant acknowledges and accepts that, to the extent applicable, it is knowledgeable regarding the rules of ethics of its profession and assume responsibility for its own actions. The Consultant also acknowledges that in executing its


professional services pursuant to this Agreement it has the obligation to exhibit complete loyalty towards the Authority, including having no adverse interest to this government entity. Adverse interest includes representing clients relative to interests that are contrary to the Authority's. This duty includes the continued obligation to disclose to the Authority, when permitted under the applicable rules of professional conduct, all circumstances of its relationships with clients and third persons or any interests adverse to the Authority, which could influence the Consultant when executing the Agreement or while it is in effect. The Authority acknowledges that the Consultant is a large global consulting firm with numerous offices around the world. The Consultant is regularly engaged by new clients including financial institutions and investors and any such client may from time to time acquire, hold or trade interests adverse to The Authority or its affiliates. None of the Consultant's professionals involved in this matter will participate in providing any services which directly conflicts with its duties hereunder without the express written consent of the Authority. It is understood that the Consultant's representation of these clients in unrelated matters shall not be deemed conflicts or influences on the Consultant hereunder. If any one of the Consultant's professionals violate the above clause, such violation shall constitute a violation of this prohibition. The Consultant commits to take all reasonable precautions to attempt to avoid even the appearance of having a conflict of interest to the Authority that has not otherwise been waived.

Section 7.4. Anti-Corruption Provisions.

(a) The Consultant certifies that it has received a copy of and agrees to comply with Act No. 2-2018, known as the Anti-Corruption Code for the New Puerto Rico ("Act No. 2-2018"), and with the Puerto Rico Government Ethics Law of 2011, Act No. 1-2012, as amended ("Act No. 1-2012").

(b) The Consultant shall furnish a sworn statement to the effect that neither the Consultant nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for the Consultant has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act No. 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico ("Act No. 8-2017"), or any of the crimes included in Act No. 2-2018.

(c) The Consultant hereby certifies that it has not been convicted in Puerto Rico or United States Federal Court under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, for any of the crimes listed in Articles 250 through 266 of Act No. 146-2012, as amended, known as the Puerto Rico Penal Code ("Act No. 146-2012"), any of the crimes typified in Act No. 2-2018, 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 No. 8-2017.


(d) The Authority shall have the right to terminate this Agreement in the event the Consultant is convicted in Puerto Rico or United States Federal Court under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, any of the crimes listed in Articles 250 through 266 of Act No. 146-2012, any of the crimes typified in Act No. 2-2018, 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 No. 8-2017.

(e) It is expressly acknowledged that this certification is an essential condition of this Agreement. If the certification is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for the Authority to terminate this Agreement immediately, without prior notice, and the Consultant will have to reimburse the Authority any amount of money received under this Agreement.

(f) If the status of the Consultant or any of its shareholders, partners, associates, officers, directors, employees or agents with regards to the charges previously mentioned should change at any time during the term of the Agreement, the Consultant shall notify in writing to the Authority immediately. The failure to comply with this responsibility constitutes a violation of this Clause, and shall result in the remedies mentioned previously.

Section 7.5. Conflicts of Interests.

(a) Both Parties hereby declare that, to the best of their knowledge, as of the date hereof, no public officer or employee of the Government of Puerto Rico, or any of its agencies, instrumentalities, public corporations or municipalities or employee of the Legislative or Judicial branches of the Government has any direct or indirect interest in the present Agreement. The Consultant certifies that neither it, nor any of its directors, executives, officers or employees, offered or paid, directly or indirectly, any commissions, referrals, contracts, or any other consideration having an economic value, to a third party as a condition for obtaining this Agreement or to influence in any way its execution. In addition, the Consultant certifies that it shall not pay any commissions, make any referrals, execute any contracts, or provide any other consideration having an economic value, to a third party for the services to be rendered under this Agreement, except for any subcontracts authorized by the Authority in accordance with the provisions established herein.

(b) The Consultant certifies that none of its partners, directors, executives, officers and employees receives salary or any kind of compensation for the delivery of regular services by appointment (or otherwise) in any agency, instrumentality, public corporation, or municipality of the Government of Puerto Rico.

(c) The Consultant certifies that, at the time of the execution of this Agreement, it does not have nor, to its knowledge, does it represent anyone relative to interests that are in conflict with the Consultant's duties to the Authority under this Agreement. If such conflicting interests arise after the execution of this Agreement, the Consultant shall notify the Authority during a period of five (5) business day from the day the Consultant learned of such conflict of interest, to determine the actions needed to resolve such potential conflict, subject to obligations of privilege and confidentiality.

(d) The Consultant certifies that at the time of execution of this Agreement it has entered the following contracts with agencies, public corporation, municipalities and/or instrumentalities of the Government of Puerto Rico, as listed below, and the performance of the services rendered thereunder does not conflict with the terms and conditions set forth in this



Agreement. The Consultant acknowledges and accepts that the failure to list any current contractual relationship with any governmental entity may result in the termination of this Agreement if required by the Authority.”

Section 7.6. Required Certifications.

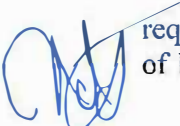
The Consultant will comply with all applicable laws, regulations and executive orders that regulate the contracting process and requirements of the Government of Puerto Rico, including Act No. 73-2019, as amended, known as the “2019 General Services Administration Act for the Centralization of Purchases of the Government of Puerto Rico” (“Act 73-2019”).

In compliance with the provisions of Act 73-2019, the Consultant has provided the Authority the Certification of Eligibility of the Unique Registry of Professional Services Providers (known in Spanish as “Certificado de Elegibilidad del Registro Único de Proveedores de Servicios Profesionales”, and hereinafter referred to as the “RUP Certification”), issued by the General Services Administration. It is hereby acknowledged that pursuant to the provisions of Article 42 of Act 73-2019, a valid RUP Certification serves as evidence of compliance with the documentation requirements necessary for contracting professional services with the Government of Puerto Rico, particularly those applicable under Act No. 237-2004, as amended, which establishes uniform contracting requirements for professional and consultant services for the agencies and governmental entities of the Commonwealth of Puerto Rico (3 L.P.R.A. § 8611 et seq.), the Puerto Rico Department of Treasury Circular Letter Number 1300-16-16 issued on January 22, 2016, as amended, which is available at: <http://www.hacienda.pr.gov/publicaciones/carta-circular-num-1300-16-16>, and the sworn statement before notary public required pursuant to Article 3.3 of Act No. 2-2018. In addition, the RUP Certification substitutes the Single Debt Certification (“Certificación Única de Deuda”), issued pursuant to Act 85-2009, as amended, known in Spanish as “Ley de Certificados y Comprobantes Electrónicos”, which serves as evidence of compliance with certifications issued by the Department of Treasury of Puerto Rico, the Department of Labor and Human Resources of Puerto Rico, the Municipal Revenue Collection Center, and ASUME (as defined below).

Further, the Consultant hereby certifies, guarantees, acknowledges and agrees to the following:

(a) The Consultant represents that at the execution of this Agreement, it has submitted income tax returns in Puerto Rico (if required by applicable law) during the past five (5) years. The Consultant also represents that it does not have outstanding debts with the Government of Puerto Rico for income taxes, real or chattel property taxes, unemployment insurance premiums, workers’ compensation payments or Social Security for chauffeurs in Puerto Rico and the Administration for the Sustenance of Minors (known by its Spanish acronym as “ASUME”).

(b) The Consultant has provided the Authority with a certificate of incorporation, if required by the Authority, and a Good Standing Certificate issued from the Department of State of Puerto Rico as proof that it has complied with the applicable annual corporation report filing



obligations.

(c) It is expressly acknowledged that the certifications provided by the Consultant, pursuant to this Section, are essential conditions of this Agreement, and if these certifications are incorrect, the Authority shall have sufficient cause to terminate this Agreement immediately, without prior notice to the Consultant.

(d) For purposes of this Agreement, tax debt shall mean any debt that the Consultant, or other parties which the Authority authorizes the Consultant to subcontract, may have with the Government of Puerto Rico for income taxes, real or chattel property taxes, including any special taxes levied, license rights, tax withholdings for payment of salaries and professional services, taxes for payment of interest, dividends and income to individuals, corporations and non-resident accounting firms, for payment of interests, dividends and other earnings shares to residents, unemployment insurance premiums, workers' compensation payments, Social Security for chauffeurs and ASUME.

(e) The Consultant shall also be responsible for providing the Authority with the certifications required under this clause from any professional or technical consultant subcontracted by the Consultant and authorized by the Authority that dedicates twenty-five percent (25%) or more of his or her or its time to provide advisory services related to the Agreement. Such subcontractors shall be considered subcontractors for the purposes of this Clause. Notwithstanding anything herein to the contrary, the Consultant shall have the right to rely conclusively on the aforementioned certifications from government agencies in making the representations in this Clause.

(f) Investment Act for the Puerto Rican Industry, Act No. 14-2004, as amended: In compliance with the dispositions of Act No. 14-2004, known as the Investment Act for the Puerto Rican Industry, the Consultant shall use articles extracted, produced, assembled, packaged or distributed by companies with operations in Puerto Rico or distributed by agents established in Puerto Rico while rendering the Services, provided such articles are available.

(g) Improvement of Family Assistance and Support for the Elderly. The Consultant also certifies and warrants that it is in compliance with Act No. 168 2000, as amended, known as the "Act for the Improvement of Family Assistance and for the Support of the Elderly." In the event the Consultant is under a court or administrative order directing it to provide financial support or to fulfill any obligation under the mentioned Act, the Consultant further certifies and warrants that it is in compliance with said obligations. It is expressly acknowledged that this certification is an essential condition of this Agreement. If the certification is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for the Authority to terminate the Agreement immediately, without prior notice to the Consultant.

(h) Financial Oversight and Management Board for Puerto Rico's ("FOMB") Policy for Review of Contracts: The Parties acknowledge that the Consultant has presented to the Authority the certification entitled "Contractor Certification Requirement" required pursuant to FOMB's Policy for Review of Contracts effective as of November 6, 2017, as modified on October 30, 2020, signed by the Chief Executive Officer of the Consultant (or other officer with equivalent



position or authority to issue such certifications). A copy of the signed "Contractor Certification Requirement" is included herein as an **Appendix C** to this Agreement.

(i) The Consultant acknowledges and certifies that all documents, certifications, circumstances, representations, warranties and information submitted to the Authority prior to the formalization of the original Agreement as a requirement for government contracting, including those required by Act No. 237-2004, as amended, and the Puerto Rico Department of Treasury Circular Letter 1300-16-16, remain unchanged. The Consultant recognizes that the obligation to inform the Authority about any changes regarding said documents, certifications, circumstances, representations, warranties and information is an obligation that remains throughout the term of the Agreement including its amendments. The Consultant acknowledges that if requested by the Authority, the Consultant must provide the certifications that validate the above. The Consultant's failure to comply with this obligation shall be sufficient cause for the Authority to render this Agreement null and void and to require that the Consultant reimburse to the Authority all moneys received under this Agreement.

(j) The Authority certifies that the Consultant was selected as a provider of the professional services described in this Agreement in accordance with the provisions of Executive Order 2021-029. The Parties certify their knowledge of said Executive Order and the Puerto Rico Office of Management and Budget Circular Letter CC-013-2021, and that any contract that has not followed the processes and requirements established therein will be terminated.

(k) As requested by the Office of Management and Budget Circular Letter 013-2021, at the time of executing this agreement the CONSULTANT certifies that it is a public corporation duly registered and authorized to issue stock shares. The CONSULTANT certifies that the stock shares it issues, as well as the stock shares in circulation, are exchanged in a regulated stock exchange.

Section 7.7. Withholdings. The Consultant is an independent contractor and, as such, shall be responsible for the payment of all of its income taxes, its subcontractors, and its individual and employers' withholdings under the applicable tax laws of Puerto Rico or the U.S. Internal Revenue Code. No withholdings or deductions shall be made from payments to the Consultant for services rendered by Consultant, except for those applicable by law and those applicable under the Puerto Rico Internal Revenue Code of 2011 and its regulations, as amended if any. In particular, when invoicing, the Consultant will allocate fees between those relating to activities undertaken by the Consultant outside Puerto Rico and constituting gross income from sources without Puerto Rico, and those relating to activities undertaken within Puerto Rico and constituting gross income from sources within Puerto Rico. If the entity is not registered in Puerto Rico, therefore a Puerto Rico non-resident the Authority shall deduct and withhold twenty-nine percent (29%) of the gross amounts paid on those invoiced amounts which constitute gross income from sources within Puerto Rico, in accordance with Section 1062.11 of the Puerto Rico Internal Revenue Code. 13 L.P.R.A. Sec. 30281. No withholdings or deductions shall be made from payments for services constituting gross income from services without Puerto Rico. The Authority shall forward to the Secretary of the Treasury of Puerto Rico any applicable withholdings or deductions made to a Consultant.

Withholdings requirements will be adjusted pursuant to any amendments to the Puerto Rico Internal Revenue Code and its regulations.

Consultant represents and warrants that it has and shall continue to pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

Section 7.8. Registration at the Office of the Comptroller. The Consultant will not receive any payment for the services rendered under the terms of this Agreement until the Agreement has been registered at the Office of the Comptroller of Puerto Rico, as required by Act No. 18 of October 30, 1975, as amended.

Section 7.9. Dispensation. The Consultant certifies it is not required to obtain a dispensation or waiver in compliance with the applicable laws and regulations of the Government of Puerto Rico prior to or in connection with the execution of this Agreement. The Parties agree that the proven illegality of any of the provisions of this Agreement shall not invalidate it as a whole.

ARTICLE VIII GOVERNING LAW; DISPUTE RESOLUTION

Section 8.1. Governing Law. This Agreement and any dispute relating to the services hereunder shall be governed, construed, interpreted and enforced in accordance with the laws of the Government of Puerto Rico.

Section 8.2. Dispute Resolution. The Parties agree that any dispute, claim or controversy directly or indirectly relating to or arising out of this Agreement, the termination or validity of this Agreement, any alleged breach of this Agreement, the engagement contemplated by this Agreement or the determination of the scope of applicability of this Agreement shall be brought only in the Courts of First Instance of the Commonwealth of Puerto Rico or in the United States District Court for the District of Puerto Rico. The Authority and the Consultant also agree that service of process may be affected through next-day delivery using a nationally-recognized overnight courier or personally delivered to the addresses set forth or referred to in this Agreement., or for service of process to the Authority, to PO Box 42001, San Juan PR 00940-2001. In any claim, all of the costs and the reasonable attorneys' fees of the prevailing party (as determined by the court in such claim) shall be borne by the party who did not prevail. The Authority and the Consultant further agree after all appeals that a final, non-appealable judgment in respect of any claim brought in any such court shall be binding and may be enforced in any other court having jurisdiction over the party against whom the judgment is sought to be enforced.



**ARTICLE IX
MISCELLANEOUS**

Section 9.1. Independent Contractor. The Authority and the Consultant agree that the Consultant's status hereunder, and the status of any agents, employees and subcontractors engaged by the Consultant, shall be that of an independent contractor only and not that of an employee or agent of the Authority. The Consultant shall not have any power or right to enter into agreements on behalf of the Authority.

Section 9.2. Assignment. This Agreement may not be assigned by either party hereto without the prior written consent of the other, to be given in the sole discretion of the party from whom such consent is being requested. Any attempted assignment of this Agreement made without such consent shall be void and of no effect, at the option of the non-assigning party.

Section 9.3. Notice. Notice required to be given in writing pursuant to any of the provisions of this Agreement shall be mailed by next-day delivery using a nationally-recognized overnight courier or hand-delivered, if to the Consultant, at 1001 17th Street, suite 1001, Denver, Colorado, USA 80202, and if to the Authority:

POSTAL ADDRESS

PO Box 42001
San Juan, PR 00940-2001


PHYSICAL ADDRESS

De Diego Avenue No. 100
Roberto Sánchez Vilella Government Center
Central Building Floor 3
Santurce, PR 00907-2345

Section 9.4. Patriot Act. The Consultant hereby notifies the Authority that pursuant to the requirements of the USA PATRIOT Improvement and Reauthorization Act, Pub. L. N 109-177 (Mar. 9, 2006) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Authority in a manner that satisfies the requirements of the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act.

Section 9.5. No Third Party Rights. It is understood that this Agreement is the sole agreement between the parties with regard to the services covered hereby and supersedes any prior agreements, written or verbal. The Agreement may not be changed orally, but may be amended in writing by mutual agreement of the parties. This Agreement is solely for the benefit of the Authority, the Consultant and, to the extent expressly set forth herein, the Indemnified Persons and no other party shall be a third-party beneficiary to, or otherwise acquire or have any rights under or by virtue of, this Agreement.

Section 9.6. Drafting Responsibility. This Agreement has been reviewed by each of the signatories hereto and counsel. There shall be no construction of any provision against either Party because this Agreement was drafted by either Party, and the Parties waive any statute or rule of law to such effect.


Section 9.7. Severability. If any provision hereof shall be held by a court of competent

jurisdiction to be invalid, void or unenforceable in any respect, or against public policy, such determination shall not affect such provision in any other respect nor any other provision hereof.

Section 9.8. Counterparts. This Agreement may be executed in facsimile or other electronic counterparts, each of which will be deemed to be an original and all of which together will be deemed to be one and the same document.

These terms constitute the entire agreement between the Parties with respect to this engagement; supersede all other oral and written representations, understandings, or agreements relating to this engagement; and may not be amended except by a written agreement signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the aforementioned date.

**PUERTO RICO PUBLIC PRIVATE
PARTNERSHIPS AUTHORITY**



Nelson Pérez Méndez
Deputy Executive Director

FTI CONSULTING, INC.



Ellen Smith
Senior Managing Director
Tax Id. No.



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APPENDIX A PROPOSAL

With respect to the period from July 1, 2021 – June 30, 2022, FTI proposes a not-to-exceed amount of \$2,500,000 in fees to cover the following scope of work:

Work Stream 1: T&D Operations and Maintenance Agreement (T&D OMA)

- **Task 1: Economic, Financial and Technical Support**
 - Ongoing economic, financial, and technical support to the Authority pre and post the Interim Service Commencement Date and any additional support post the Service Commencement Date with implementation of the T&D OMA as well as all ancillary agreements and areas related to the T&D OMA.

Work Stream 2: Legacy Generation and Hydro, including Renewable Generation and Battery Storage Procurement Processes

- **Task 1: Site Inspection**
 - Field inspection of PREPA legacy generation and hydro sites, as well as potential sites for new renewable generation and battery storage, will require reviewing operational and historical asset and locational specific data, validating the technical specification at each site relative to the Respondents proposals.
- **Task 2: Technical Project Review**
 - Review data and design alternatives and assist in interpretation of all technical information within RFQ, RFP and associated documents discussed during the negotiation process, including defining objectives scope and desired outcomes, evaluating and analyzing information from field studies, estimating project schedules, assessing O&M innovation and reviewing technical and financial case studies.
- **Task 3: Engineering Support**
 - Provide engineering support services for special technical issues for due diligence process such as: structural, geotechnical, instrumentation, environmental compliance issues, permitting and others.
- **Task 4: Stakeholder Outreach**
 - Preparation of materials and participation in meetings with potential investors, sponsors, stakeholders, government agencies and other consultants to discuss proposals and project-related information and to finalize PPP structure details ahead of the evaluation process.
- **Task 5: Report Development**
 - Preparation and participation in presentations for the decision makers concerning the PPP; preparation of reports, recommendations, letters, memoranda and other documentation as required.
- **Task 6: Proposal Evaluation and Design**
 - Assist and advise the Authority in the procurement process through supporting the RFQ and RFP processes, providing design and input on proposed contracts provided to bidders, evaluating proposals for technical & financial compliance and undertaking technical, operational and commercial due diligence and evaluations, negotiating final contracts with bidders, culminating in the




recommendation for Preferred Partner and additional negotiation and analytical support through to license transfer.

- **Task 7: Transaction Closing**
 - Assist the Authority in reaching financial close for the PPP projects including participating in negotiations, liaising with financial institutions, attorneys and other stakeholders and ensuring appropriate financial risk mitigation measures are executed.
- **Task 8: Economic and Financial Support**
 - Ongoing economic and financial support to the Authority throughout the entire procurement process as needed. This analysis will comprise transaction support, financial and commercial due diligence, cost of capital analysis and restructuring support.

HOURLY RATE RANGE BY ROLE AND TEAM LIST

Role/Employee	Rate (\$/hour)
Senior Managing Director <i>Ellen Smith</i> <i>John Cochrane</i>	\$1,050 - \$1,250
Managing Director <i>Ronald Arsenault</i> <i>Cecily Gooch</i> <i>Pat Dunne</i>	\$800 - \$950
Senior Director <i>Anu Sen</i>	\$700 - \$850
Director <i>Zach Pappas</i> <i>Barclay Nihill</i> <i>Thomas O'Neill</i>	\$600 - \$750
Consultant/Senior Consultant <i>John Tucker</i> <i>Ian MacGinnis</i>	\$450 - \$575



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APPENDIX B

Billing Guidelines for Consultants

The Puerto Rico Public Private Partnerships Authority ("P3 Authority") may engage the services of consulting firms or independent consultants (collectively and hereinafter "Consultant") to provide certain consulting services for managing its affairs (the "Consulting Services").

The Consultant shall be committed to providing Consulting Services with the highest quality standards and in the most reasonable, prompt, efficient and cost-effective manner. Therefore, the P3 Authority expects Consultant to stress integrity and to uphold the highest standards of professionalism and ethical conduct in ensuring timely, responsive, and cost-effective consulting services by complying with these billing guidelines (the "Guidelines").

The Guidelines set forth the P3 Authority's expectations relative to the Consulting Services being provided and the nature of the working relationship with Consultant. Through the Guidelines, the P3 Authority hereby provides Consultant with an understanding of what consulting fees and expenses the P3 Authority will pay and reimburse. Furthermore, these Guidelines shall constitute a written agreement by the parties for any matter to which the Consultant is engaged on behalf of the P3 Authority. These Guidelines shall govern the billing terms of the professional relationship between the P3 Authority and Consultant.

The P3 Authority considers Consultant's invoices for services rendered (the "Invoices") as a certification by Consultant that the billing for services, as reflected on the Invoices, is reasonable for the matters involved, and necessary for the proper rendering of the Consulting Services relative thereto.

The P3 Authority expects Consultant to strictly adhere to the Guidelines and to charge for actual consulting services rendered, at the rates established and agreed in advance by the parties, and to refrain from billing non-billable work or expenses. Compliance with the Guidelines will avoid delays in processing Invoices or the possible nonpayment of the services provided. The P3 Authority expects Consultant to become familiar with the Guidelines and if there are any questions relative thereto then Consultant should contact P3 Authority's Legal Department.

The following rules shall govern Consultant's billing for the Consulting Services and its presentation of the Invoices:

A. Billing Rates and Fee Arrangements

- i. The P3 Authority expects to be charged reasonable fees for the Consulting Services, pursuant to the applicable code of professional conduct. A reasonable fee is considered to be the product of: a) the amount of time reasonably necessary to devote to the matter by appropriately qualified consulting professionals, and b) the customary or previously agreed to billing rates (the "Billing Rates") of those professionals involved in the rendering of the Consulting Services. Furthermore, the P3 Authority expects Consultant to use prudence and reasonableness in



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rendering the Consulting Services, refraining from providing more consulting services than are actually needed to complete the same.

- ii. Under no circumstance will the P3 Authority pay for Consultant's overhead expenses, as they are generally categorized in accordance to applicable accounting principles.
- iii. Consulting Services will be billed in increments of **[6 minutes or 1/10 of an hour]**.
- iv. Unless otherwise agreed upon in advance, all hourly billing rates shall be solely on the basis of the Billing Rates. Absent a specific agreement for an alternative fee arrangement for a specific consulting service, Consultant's fees shall be computed by applying the Billing Rates to the reasonable time actually incurred in rendering the Consulting Services.
- v. The level of expertise of the consultant assigned to a matter referred by the P3 Authority shall be appropriate to the complexity of the issue therein. Therefore, partners, principals or directors of the consulting firm shall not bill for tasks that can be performed by a less senior consultant at a lower cost. Furthermore, the P3 Authority requires Consultant to assign less demanding tasks to less senior consultants in order to minimize consulting expenses. Additionally, for matters of similar nature occasionally referred to Consultant, the P3 Authority expects Consultant to assign a consultant with prior experience with such matter. Consultant shall ensure that the work performed by the assigned consultant(s) is reasonable, useful, and done efficiently.

B. Referrals and Budgets

- i. If applicable, in the event that Consultant anticipates incurring in significant time or expenses in excess of the normal amount within a particular month, Consultant shall contact the P3 Authority to notify of the anticipated excess amount of billable hours or expenses during that month and shall include a reasonably detailed explanation of the reasons for such additional costs.

C. Staffing Matters

- i. The P3 Authority will not pay for or authorize:
 - a) Administrative charges such as:
 - i. Scheduling or review of personnel;
 - ii. Preparation and review of billing statements;




- iii. Preparation of budgets of time plan, staffing of total costs of projected consulting work;
 - iv. Preparation of Audit Letters to our external auditors;
 - v. Preparation of any other status report; or negotiation, review, and/or drafting of retention or engagement agreement between the P3 Authority and the Consultant.
- b) Grazing: The P3 Authority will not pay for billed time for getting up to date with any consulting matter. This includes time spent by newly assigned consultants to familiarize themselves with a matter.
 - c) Block billing: All tasks must be billed separately.
 - d) Vague, confusing or otherwise undetailed time entries.
 - e) Time associated with research on general client or industry trends, and time expended on "canned" research, such as research of a generic nature or for a prior matter or issue.
 - f) Intra-office conferences that deal with substantive issues are reimbursable when a thorough description of the purpose is provided. No more than two consultants shall bill for an intra-office conference.
 - g) Overstaffing: A minimum number of consultants should be assigned to each matter. Overstaffing includes:
 - i. More than one consultant billing for reading or reviewing internal written communication (including email); or
 - ii. Inclusion of more than one consultant at meetings or hearings for the purpose of consultant development.

Consultant should explain why the circumstances warrant an exception from this general rule. The P3 Authority reserves the right of not paying the hours billed by any additional consultant if P3 Authority's prior written approval was not obtained by Consultant.

- h) The review, execution and processing of agreements with the P3 Authority.
- i) Any time spent at seminars or other training, unless otherwise specifically approved in writing.



Handwritten signature in blue ink, possibly reading "M. J. [unclear]".

- j) Summer intern, temporary or contract consultant, or other intern time unless it has previously been identified as part of the approved staffing in the Billing Rates approved by the P3 Authority.
- ii. If a previously drafted or standard form is available, the P3 Authority will pay only for the amount of time necessary to modify the document for use in the specific consulting matter and not the time originally incurred to draft the standard document.
- iii. Subject to the provisions of subsection (i) of this Section C, the P3 Authority will not pay for administrative work performed by consultants, such as managing or supervising other consultants, nor will pay for in-firm meetings, conferences, and consultations.
- iv. The P3 Authority shall not pay for duplication of time caused by:
 - a. Transfer of a consulting matter to a new consultant for internal reasons;
 - b. Double teaming; or
 - c. One consultant redoing the work of another.
- v. It is recommended, but not required, that prior to any meeting or conference call, Consultant shall provide the P3 Authority team members with an agenda for said meeting or conference call detailing the matters to be discussed, as well as a guideline for suggested next steps after any such meeting or conference call.

D. Billing and Invoicing

- i. Each task or activity shall be separately itemized on the Invoices, including a break-down thereof that at a minimum shall include:
 - a. A chronological listing of all services;
 - b. A description of the service being billed. The description shall include (i) the type of work being performed and (ii) the subject matter;
 - c. The name of each consultant or consulting professional whose work is being billed;
 - d. The date of the service;
 - f. The amount of time spent by each person on each item in the interval increments defined herein; and
 - g. The Billing Rate at which the service is being billed.
- ii. Entries for telephone conversations, conferences and meetings must specifically describe all parties involved and the subject matter or purpose of the task.
- iii. The P3 Authority will not pay for billed services whose descriptions lack specificity.
- iv. The Invoices shall include a summary thereof, including:



- a. Name and initials of each time keeper;
 - b. Staff classification including for each category of consulting personnel (Partner, Junior Partner, Manager, Senior Consultant, Consultant, Principal, Director, Associate, Intern, etc.);
 - c. Hourly billing rate of each time keeper; and
 - d. Total time and fees billed for each time keeper by subject matter.
- v. The Invoices shall also include an overall summary by staff classification, including for each category of consulting personnel (Partner, Junior Partner, Manager, Senior Consultant, Consultant, Principal, Director, Associate, Intern, etc.), the number of individuals in each category, the total number of hours by each category, and the total fees by category.
- vi. The Invoices shall be divided individually by project or matter (e.g. Flexible Distributed Generation Units Project; San Juan Bay Cruise Terminals Project; Court cases; etcetera). Invoices shall also include a billing history or summary of all fees and expenses incurred in a particular matter up to the invoicing date along with a comparison to the total budgeted or contracted amounts.
- vii. The P3 Authority reserves the absolute right to make any changes, at its sole discretion, to the fees included in the Invoices if it reasonably believes that the amount of time devoted to the matter by the consulting professional or the timekeeper should be reduced.
- viii. In addition, Consultant shall provide the Certificate of Waiver from Withholding (total or partial) from the Puerto Rico Department of Treasury to the P3 Authority, if applicable.
- ix. Any Invoices without the required information included or attached will not be processed for payment and will be returned to Consultant for the corresponding corrections or modifications.
- x. The Consultant's in charge of the P3 Authority account (the "Account Partner") shall review the Invoices prior to submitting them to the P3 Authority and should be able to explain all of its time charges if so requested.
- xi. Furthermore, the Account Partner shall certify the accuracy and reasonableness of the Invoices and their compliance to the Guidelines and all applicable ethical rules. The P3 Authority reserves the right to withhold or deny approval of the Invoices in the event the Guidelines are not complied with.

E. Expense Reimbursement

- i. The P3 Authority will not pay and will not separately reimburse Consultant for overhead costs. Expenses that are considered Consultant's overhead are part of the professional's hourly rate and are not reimbursable. The term overhead includes, but is not limited to all administrative or general costs incidental to the operation of the Consultant including



without limitation office rent, conference rooms, equipment, computer software, office supplies, transportation, telephone and mobile charges, books, meals, routine postage, the services of librarians, file clerics, data entry clerks, photocopy operators, secretaries, overtime or utilities, word processors, messengers, other support personnel, or any other overhead expense as recognized by applicable accounting standards.

- ii. Non reimbursable tasks include binding, scanning, indexing, collating, coding, filing, transmitting and preparing letters, mailing, faxing, emailing, word processing, proofreading, scheduling, events, deliveries, data entry, conference call charges, invoicing, billing, staffing, or other similar clerical or ministerial functions.
- iii. The Invoices may also include additional consulting expenses to be charged by Consultant as previously authorized by the P3 Authority, with a total for those consulting expenses charged at a reasonable market price. Each such additional expense item shall be:
 - a. Separately itemized;
 - b. Show the date the expense was incurred;
 - c. Include a descriptive explanation of the charge;
 - d. Indicate the amount of the charge; and
 - e. Indicate the timekeeper who incurred the charge.
- iv. Disbursements for pre-approved reimbursable expenses will be compensated at actual cost with the appropriate documentation to substantiate the expenses such as actual vendor receipts, which shall be included in the Invoices as an attachment. Actual cost is defined as the amount paid to a third-party service provider, net of any discounts ("Actual Cost").
- v. All expenses will be reimbursed at Actual Cost and Consultant shall not upcharge any of the expenses incurred in providing services to the P3 Authority. The P3 Authority will not pay for normal transportation costs incurred in travel to and from the office, for overtime transportation, or for valet services. Car services during travel are limited to taxicab or transportation network companies' fares, and Consultant shall provide appropriate documentation to substantiate the expenses such as actual receipts, which shall be included in the Invoices as an attachment.
- vi. The P3 Authority will reimburse Consultant for reasonable and necessary delivery charges and messenger services at Actual Cost. However, charges for time spent preparing mail packages are considered as part of the Consultant's overhead and are not reimbursable. Disbursements for messenger services expenses will be compensated with the appropriate documentation to substantiate the expenses such as actual receipts, which shall be included in the Invoices as an attachment. Third party courier and express delivery services should be used cautiously.
- vii. Photocopying will be reimbursed at the Actual Cost to Consultant and which under no circumstances shall exceed ten (10) cents per page. Documentation for photocopying expenses shall include evidence of the amount of copies executed with the date.




- viii. Reimbursements of expenses made by Consultant during travel to Puerto Rico are limited to:
 - a. Fifty-eight (58) dollars per day for food, for which Consultant need not provide a receipt; and
 - b. One hundred and ninety-five (195) dollars per night, for hotel for which Consultant must provide appropriate documentation subject to agreement by the P3 Authority.
- ix. Reimbursements of expenses made by Consultant during travel outside of Puerto Rico are subject to the regulations published by the U.S. General Service Administration and the Defense Travel Management Office of the Department of Defense.
- x. Expenses for airfare travel will be reimbursed with the appropriate documentation to substantiate the expense, such as receipt of the air fare where the trip detail is presented. The P3 Authority will only reimburse for economy class airfare travel. The P3 Authority will not pay for any costs incurred in for “extra leg room” space. Any reimbursement for cancelled air travel must be pre-approved by the P3 Authority.
- xi. The P3 Authority expects Consultant to immediately provide any back up documentation for a particular disbursement charge if it so requires. The P3 Authority will not pay for unsupported charges.
- xii. The P3 Authority will only reimburse for expenses made within the time frame of the contract between the P3 Authority and Consultant.

F. Third Party Subcontracting

- i. If Consultant deems it necessary to use any other consulting firm, consultant, or other third party providers (the “Third Party”) in providing a service in a matter it is handling for the P3 Authority, then such request shall be made to the P3 Authority A prior to the retention or hiring thereof and shall obtain written consent from the P3 Authority to proceed with the subcontracting.
- ii. Unless a different billing arrangement is authorized by the P3 Authority, Consultant shall directly pay the Third Party for work performed in connection with services rendered on behalf of the P3 Authority.
- iii. Payments to the Third Party should be included as a disbursement on Consultant’s next subsequent invoice to the P3 Authority and said invoice shall be accompanied by the Third Party’s corresponding billing detail which shall also be in full compliance with the Guidelines.
- iv. Consultant shall not upcharge or surcharge any of the Third Party’s billings or expenses incurred in providing services to the P3 Authority. The P3 Authority will only reimburse the Actual Cost of pre-approved Third Party’s services.



- v. All Third Party invoices paid by Consultant shall be included in the Invoices as an attachment and as an itemized expense must, absent specific prior approval to the contrary, also comply with the Guidelines.

CONSULTANT ACKNOWLEDGMENT

The Consultant through its Account Partner, or representative noted herein, acknowledges the receipt and review of the P3 Authority 's Billing Guidelines for Consultants.

Kindly indicate your acceptance and agreement to adhere to the above guidelines by signing a copy thereof and returning the same to the P3 Authority.

By signing this acknowledgment, you further certify that you will only remit invoices to the P3 Authority that fully comply with all terms and conditions contained in the Guidelines.

This document may be signed in counterparts and a copy of the execution signature shall be as effective as an original. Furthermore, all fully executed copies shall be considered duplicate originals.

So acknowledged and accepted by:

Ellen Smith

Senior Managing Director



June 30, 2021


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Appendix C

Contractor Certification Requirement

The following certification shall be provided to the Oversight Board and the Commonwealth's Contracting Government Entity by the Chief Executive Officer (or equivalent highest rank officer) of each proposed contractor under contracts submitted for review:

1. The expected contractor's subcontractor(s) in connection with the proposed contract¹ is (are) the following:

FTI does not anticipate requiring any subcontractors.

2. Neither the contractor nor any of its owners², partners, directors, officials or employees, has agreed to share or give a percentage of the contractor's compensation under the contract to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract, except as follows:

FTI can confirm that no parties have agreed to share or give a percentage of the contractor's compensation to any third parties.

3. To the best knowledge of the signatory (after due investigation), no person has unduly intervened in the procurement, negotiation or execution of the contract, for its own benefit or that of a third person, in contravention of applicable law.
4. To the best knowledge of the signatory (after due investigation), no person has: (i) offered, paid, or promised to pay money to; (ii) offered, given, or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such person in connection with the contract (such as the execution of a subcontract with contractor, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
5. Neither the contractor, nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of applicable law.
6. Any incorrect, incomplete or false statement made by the contractor's representative as part of this certification shall cause the nullity of the proposed contract and the contractor must

¹ As used herein, the term "contract" is inclusive of any amendments, modifications or extensions.

² For purposes of this certification, a contractor's "owner" shall mean any person or entity with more than a ten percent (10%) ownership interest in the contractor.



reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the proposed contract.

The above certifications shall be signed under penalty of perjury by the Chief Executive Officer (or equivalent highest rank officer) in the following form:

"I hereby certify under penalty of perjury that the foregoing is complete, true and correct."

By: Ellen Smith
Date: June 30, 2021

Signature: Ellen S. Smith



Handwritten signature in blue ink, appearing to be "E.S." with a large flourish above it.

PROFESSIONAL SERVICES AGREEMENT

by and between

THE PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY

and

XIMMENA LLC.

Dated as of August 23, 2021.



PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") for professional services related to the administration of the Operation and Maintenance Agreement between LUMA Energy, LLC. and the Puerto Rico Electric Power Authority is made and entered into as of this August 23, 2021, by and between **THE PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY**, a public corporation of the Government of Puerto Rico, established and authorized to enter into this Agreement by Act No. 29-2009, as amended, and represented herein by its Deputy Executive Director Nelson Pérez Méndez, of legal age, attorney, married, and resident of Trujillo Alto, Puerto Rico (the "Authority") and **Ximmena LLC.**, a limited liability company organized under the laws of the Commonwealth of Puerto Rico, with principal offices in San Juan, Puerto Rico, represented herein by its Principal, José Humberto Román, of legal age, married, and resident of San Juan, Puerto Rico (the "Consultant"), authorized to execute this Agreement on behalf of the Consultant pursuant to a Certificate of Resolution dated December 22nd, 2020, and together with the Authority, the "Parties".

RECITALS

WHEREAS, the Authority, by virtue of the powers conferred to it under the Public-Private Partnerships Act, Act No. 29 of June 8, 2009, as amended ("Act 29"), is authorized to engage professional, technical and consulting services that are necessary and convenient to the activities, projects, and operations of the Authority.

WHEREAS, on May 21, 2021, the Consultant submitted to the Authority a proposal for professional services related to the administration of the Operation and Maintenance Agreement between LUMA Energy LLC. and the Puerto Rico Electric Power Authority (the "Proposal"), attached hereto as **Appendix A** and made part of this Agreement. If any part of the Proposal is found to be inconsistent with the terms and conditions set forth herein, the terms and conditions set forth herein shall take precedence over the Proposal and govern the matter in question.

WHEREAS, after considering the Proposal, the Authority wishes to engage the Consultant to act as advisor to the Authority and the Government of Puerto Rico to provide the services described in the Proposal.

WHEREAS, the Consultant is willing to provide such services.

NOW, THEREFORE, the Authority and the Consultant agree to enter into this Agreement under the following:

TERMS AND CONDITIONS

ARTICLE I PURPOSE OF AGREEMENT; TERM

Section 1.1 Purpose of Agreement. The Authority engages the Consultant to provide professional services related to the administration of the Operation and Maintenance Agreement

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between LUMA Energy LLC. and the Puerto Rico Electric Power Authority, as detailed in the Proposal. In the event that the Authority desires to engage the Consultant to advise the Authority in any other matter that is not within the scope of the Proposal, the Parties shall negotiate in good faith a separate agreement or an amendment hereto with respect to such mandate.

Section 1.2. Term. This Agreement shall be in effect from the date of its execution until June 30, 2022 (the "Expiration Date"), provided that the Expiration Date may be extended by amendment executed in writing by both Parties.

ARTICLE II

SCOPE OF SERVICES; ADVICE AND RECOMMENDATIONS; SUBCONTRACTING


Section 2.1 Scope of Services. Subject to the terms and conditions of this Agreement, the Consultant's services shall be consistent with the provision of the deliverables, tasks and services described in the Proposal and such other tasks delegated to it by the Authority and within the capabilities of the Consultant.

Section 2.2. Advice and Recommendations. The services to be provided under this Agreement may include advice and recommendations for the benefit of the Authority and/or the Government of Puerto Rico, but the Consultant will not make any decisions on behalf of the Authority or the Government of Puerto Rico in connection with the implementation of such advice and recommendations.

Section 2.3 Subcontracting. The Consultant shall not subcontract the services under this Agreement, or contract third party experts or other persons to render the services under this Agreement, without prior written authorization from the Authority. A request to hire another service consultant shall specify the matters in which the subcontracted consultant would take part.

ARTICLE III

COMPENSATION; INVOICES; OUT OF POCKET EXPENSES



Section 3.1 Professional Fees. The Authority shall compensate the Consultant for the actual time incurred in delivering the services and completing the tasks, assignments and deliverables set forth in **Appendix A**, at the applicable hourly rates listed in the Budget/Level of Effort Schedule provided in **Appendix A** of this Agreement. Should the Consultant assign an additional team member not included in **Appendix A** to attend the Authority's matters, the Consultant shall promptly send the Authority an amended schedule to include such person's name, position and hourly rate, and request written approval from the Authority for such amended schedule.

The total amount to be paid by the Authority in relation to the services rendered under this Agreement shall not exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), including reimbursable expenses, unless otherwise agreed to by the Parties. The Consultant will submit monthly invoices to the Authority within thirty (30) days of performing the services being provided, which shall include a detailed description of the services rendered by the Consultant, complying with the Authority's billing guidelines attached hereto as an **Appendix B** of this

Agreement. Each invoice shall be itemized with entries for fractions of an hour based on tenths of an hour (.10) and must be duly certified by an authorized representative of the Consultant. The Authority will not honor invoices submitted after one hundred twenty (120) days of services having been rendered. The Consultant accepts and agrees to this requirement, and understands that if it does not comply accordingly, it waives its right to payment for rendered services covered by such invoices. The Authority reserves the right to review the invoices and if they are in compliance with the requirements set forth in this Agreement, it will proceed with payment.

The Consultant agrees to notify the Authority within five (5) working days after having reached 75% of the maximum amount to be paid under this Agreement. The written notification shall include a detailed report of projected services for the duration of the Agreement that entail a possible increase to the limit established and a request addressed to the Executive Director to increase said amount. The Consultant hereby agrees to comply with these responsibilities with respect to the notification requirements and the report to be submitted. Furthermore, the Consultant understands and accepts that it may not exceed the amount established in the Agreement unless and until the Agreement is amended accordingly and the increase is authorized by the Authority. If the Consultant does not comply with these requirements, it waives its rights to payment for services rendered, even after they have been provided. The Authority acknowledges and understands that to the extent services are required of the Consultant beyond the "not-to-exceed" fee cap above, the Consultant cannot provide those additional services until the Authority agrees to pay additional compensation and expenses, and the Agreement is amended in writing accordingly.

The Consultant acknowledges and agrees that retroactive contracting is contrary to government contracting requirements and that the Authority will not issue retroactive payments. The Consultant acknowledges and agrees that Services rendered before the date of execution or before the effective date of the Agreement, as applicable, will not be paid by the Authority.

Each invoice must include a written certification stating that no officer or employee of the Authority will derive or obtain any benefit or profit of any kind from this Agreement, with the acknowledgment that invoices which do not include this certification will not be paid. This certification must read as follows:

“We certify under penalty of nullity that no public servant of the Puerto Rico Public-Private Partnerships Authority will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the delivery of goods or for services provided is the agreed-upon price that has been negotiated with an authorized representative of the Puerto Rico Public-Private Partnerships Authority. The total amount shown on this invoice is true and correct. The services have been rendered, and no payment has been received in respect thereof.”

All invoices shall be in portable document format (PDF), signed and transmitted by

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electronic mail transmission to the following electronic mail address: InvoiceP3@p3.pr.gov.

The Consultant agrees to submit checking account transfer data to the Authority in order to facilitate future payments by means of electronic transfers. In addition to any other remedies available at law, Consultant reserves the right to stop providing Services in event any invoice amounts are not paid within sixty (60) days of the invoice date.

The Consultant further acknowledges and agrees that the Authority has the right to recover any erroneous payment, including but not limited to, any overpayment, duplicate payment and/or any other payment not authorized by law, regulation, and/or this Agreement. The Consultant agrees to promptly return any erroneous payment to the Authority upon receipt of a written notice. In addition, if the Consultant becomes aware of an erroneous payment made by the Authority, the Consultant shall immediately notify the Authority's management and request instructions to proceed accordingly. The Consultant acknowledges and agrees that the Authority reserves the right to make the necessary adjustments in any remaining payments to the Consultant until any erroneous amount paid is recovered.

The Authority certifies that the funds for the payment of Services rendered under this Agreement come from budgetary allocations. All disbursements for such payments shall be made from account 0105030420.

Section 3.2 Travel and Out of Pocket Expenses

(a) The Authority will reimburse the Consultant on a monthly basis for out-of-pocket expenses directly related to the services rendered under this Agreement, including, but not limited to, travel and lodging, filing fees, taxi fares, delivery expenses, and services such as overnight mail, courier and messenger charges.

(b) Any expense for which a reimbursement is requested shall be reasonable and necessary, and any expenses exceeding TWO THOUSAND DOLLARS (\$2,000.00) individually shall be authorized in writing and in advance by the Authority. The Authority will not reimburse expenses which do not comply with this provision. Under no circumstances will expenses for alcoholic beverages be reimbursed.

(c) Any petition for reimbursement of expenses must be accompanied by the corresponding invoice or receipt and shall specify the relation of the expense to the services rendered. All reimbursements shall be for actual expenses incurred and shall be billed at cost.

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**ARTICLE IV
INFORMATION; CONFIDENTIALITY**

Section 4.1. Information Provided by the Consultant. No information or advice provided or materials prepared by the Consultant as a result of its activities hereunder may be disclosed, in whole or in part, or summarized, excerpted from or otherwise referred to a third party outside of the Executive Branch (other than, on a confidential, non-reliance, need to know basis, to the Authority's employees, advisors, counsel and other representatives) without the Consultant's prior written consent, which shall be conditioned on the execution of a release letter in the form provided by Consultant unless compelled by law or court order. In addition, the Authority agrees that any reference to the Consultant in any press release or communication is subject to the Consultant's prior written approval, which may be given or withheld in its reasonable discretion, for each such reference. The Authority shall retain the right to use, refer, share, or provide to any third party, as the Authority may determine, the results of any: analyses, investigation summaries; and, written reports resulting from the Services performed by the Consultant that were specifically designated as a final deliverable that were provided to the Authority under this Agreement.

Section 4.2. Confidential Information.

(a) The Consultant acknowledges the proprietary and confidential nature of all internal, non-public, information systems, financial, and business information relating to the Authority, as well as to the Government of Puerto Rico, its agencies, corporations or municipalities, now or hereafter provided to the Consultant (the "Confidential Information").

(b) The Consultant and its Representatives (as defined below) shall keep in confidence in accordance with the terms of this Agreement all such Confidential Information and shall not, except as otherwise set forth herein, make public or disclose any of said information without the previous written consent of the Authority. The Consultant and its Representatives may use the Confidential Information in connection with providing the services contemplated by this Agreement. The term Confidential Information shall not include information which (i) is previously known to the Consultant and/or its Representatives, (ii) is available to the public prior to the time of disclosure hereunder, (iii) subsequent to the time of disclosure hereunder, becomes available to the public other than as a result of a breach of this Agreement by the Consultant, (iv) subsequent to the time of disclosure hereunder becomes available to the Consultant or its Representatives by a third party who, to the knowledge of the Consultant, is under no obligation to keep the information confidential, (v) is independently developed by the Consultant without reference to the Confidential Information or (vi) is approved for disclosure or release by the Authority.

(c) Notwithstanding the above, the Consultant and/or its Representatives, as applicable, may disclose Confidential Information to (a) its affiliates and approved subcontractors and their respective directors, officers, employees, agents, consultants, advisors and/or representatives (such individuals receiving Confidential Information hereunder, collectively, the "Representatives") who need to know such Confidential Information to fulfill the purposes of this Agreement, provided that such persons shall have been advised of the confidential nature of such materials and information and the Consultant shall direct them to treat as confidential such

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information and to return all materials to the Consultant upon request; provided, that the Consultant shall be responsible for any breach of this Agreement by its Representatives and (b) pursuant to a request or requirement by law, regulation or governmental, regulatory or self-regulatory authority or legal process (including by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to provide such Confidential Information.

(d) The Consultant will promptly, upon the written request of the Authority, deliver to the Authority, or at the Authority's election, destroy all Confidential Information; provided, however, that the Consultant and its Representatives may retain copies of Confidential Information, subject to the confidentiality terms of this Agreement, in accordance with their respective internal record retention policies for legal, compliance or regulatory purposes or to establish the rights of the Consultant and its Representatives under this Agreement.

(e) This provision shall survive the termination or expiration of this Agreement for a period of two (2) years.

ARTICLE V BREACH; TERMINATION

Section 5.1 Breach of Contract Terms. Any violation or breach of terms of this Agreement on the part of the Consultant or the Consultant's subcontractors, if any, may result in the suspension or termination of this Agreement or such other action, including the recovery of damages (such damages to be limited as per Section 6.1(a) herein) that may be necessary to enforce the rights of the Authority. The duties and obligations imposed by the Agreement 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.

Section 5.2 Termination with or Without Cause. Notwithstanding any provision to the contrary in this Agreement, the Authority shall have the right to terminate this Agreement without cause by providing the Consultant thirty (30) days' notice by registered mail, return receipt requested, or overnight express mail. Any provisions of this Agreement which expressly or by implication are intended to survive its termination or expiration will survive and continue to bind the Parties. The Authority shall also have the right to terminate this Agreement immediately, without prior notice, if the Consultant incurs in negligence, abandonment of its obligations and/or breach of the terms of the Agreement. The Consultant may terminate this Agreement if it determines any part of the services rendered hereunder would be in conflict with law or professional standards.

Section 5.3 Termination by the Office of the Governor's Chief of Staff. The Office of the Governor of Puerto Rico's Chief of Staff has the authority to terminate this Agreement at any time on behalf of the Authority.

Section 5.4 Upon any termination or expiration of this Agreement, the Authority shall promptly pay the Consultant any accrued but unpaid fees hereunder, and shall reimburse the Consultant for any unreimbursed expenses that are reimbursable hereunder.

Section 5.5 Upon any termination or expiration of this Agreement, the rights and obligations of the Parties shall terminate, except for the rights and obligations that shall survive the termination or expiration of this Agreement.

ARTICLE VI INDEMNIFICATION; INSURANCE

Section 6.1. Indemnification and Liability.

(a) The Consultant shall defend, indemnify and hold the Authority, its officers, officials, and employees, harmless from any and all claims, injuries, damages, losses or suits including attorney fees ("Claims"), to the extent arising out of or resulting from the gross negligence or willful misconduct of the Consultant in the performance of its obligations under this Agreement (as determined by a final, non-appealable judgment by a court of competent jurisdiction). The Consultant, its subsidiaries and subcontractors, and their respective personnel shall not be liable to the Authority for any Claims relating to this engagement for an aggregate amount in excess of the fees paid by the Authority to the Consultant pursuant to this engagement, except to the extent resulting from the bad faith or intentional misconduct of the Consultant or its subcontractors. In no event shall the Consultant, its subsidiaries or subcontractors, or their respective personnel be liable to the Authority for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense relating to this engagement. The foregoing limitation of liability and disclaimer shall not apply to Claims for which a party is obligated to indemnify under this Agreement.

(b) Each Party shall indemnify, defend and hold harmless the other from and against any and all amounts payable under any judgment, verdict, court order or settlement for death or bodily injury or the damage to or loss or destruction of any real or tangible personal property, but only to the extent the foregoing arise out of the indemnitor's negligence or intentional misconduct in the performance of this Agreement. The Consultant shall indemnify, defend and hold harmless the Authority from all Claims arising from claims brought by any subcontractor of the Consultant hereunder against the Authority for payment or for other damages arising under the applicable subcontract agreement between the Consultant and such subcontractor except for those claims caused by the Authority.

(c) The Authority agrees that any indemnity provided hereunder shall be strictly excess of any available and collected insurance, including, but not limited to, the Consultant's lawyers' professional liability insurance.

Section 6.2. Insurance.

(a) The Consultant represents that as of the date of execution of this Agreement, it maintains professional liability insurance to provide for errors, omissions and negligent acts that may arise from the services rendered under this Agreement in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00).

(b) The Consultant also represents that it maintains Commercial General Liability insurance in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00). It shall be the Consultant's obligation to submit to the Authority the corresponding certifications from its insurance company evidencing such coverages. The certifications provided must identify the Authority as Additional Insured.

(c) With respect to the Commercial General Liability insurance policy, the certification to be provided by the Consultant must identify the Authority as Additional Insured and include the following cancellation notice:

"CANCELLATION CLAUSE: It is understood and agreed that in the event of cancellation of this policy at the request of the insurance company, thirty (30) days written notice shall be given to the above mentioned additional insured, PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY. However, it is agreed that if cancellation is due to non-payment of premium, ten (10) days written notice will be given".

It shall be the Consultant's obligation to submit to the Authority the corresponding certifications from its insurance company evidencing the abovementioned insurance coverage. The insurance policies required herein must remain in effect during the term of this Agreement, including any amendments to extend said term.

ARTICLE VII APPLICABLE LAWS OF PUERTO RICO

Section 7.1. Interagency Service Clause. Both Parties acknowledge and agree that the contracted services may be provided to any entity of the Executive Branch with which the Authority subscribes an interagency agreement or by direct disposition of the Office of the Chief of Staff of the Governor of Puerto Rico. These services will be provided under the same terms and conditions regarding work hours and/or compensation as set forth in this Agreement. For purposes of this section, the term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as its instrumentalities, public corporations and the Governor's Office.

Section 7.2. Source of Funds. The Authority certifies that the funds for the payment related to the services rendered under this Agreement come from budgetary allocations. All disbursements for such payments shall be made from the Puerto Rico Public Partnerships Authority's account.

Section 7.3. Professional Ethics Rules. The Consultant acknowledges and accepts that, to the extent applicable, it is knowledgeable regarding the rules of ethics of its profession and assume responsibility for its own actions. The Consultant also acknowledges that in executing its professional services pursuant to this Agreement it has the obligation to exhibit complete loyalty towards the Authority, including having no adverse interest to this government entity. Adverse interest includes representing clients relative to interests that are contrary to the Authority's. This duty includes the continued obligation to disclose to the Authority, when permitted under the


applicable rules of professional conduct, all circumstances of its relationships with clients and third persons or any interests adverse to the Authority, which could influence the Consultant when executing the Agreement or while it is in effect. The Consultant represents conflicting interests when, on behalf of one client it must support that which it is duly to oppose or comply with its obligations with another previous, present or potential client. Also, it represents conflicting interests when its conduct is described as such in the standards of ethics applicable to its profession or industry, or in Puerto Rico's laws and regulations. The conduct herein described by one of its directors, partners or employees shall constitute a violation of this prohibition. The Consultant shall avoid even the appearance of the existence of conflict interests.

Section 7.4. Anti-Corruption Provisions.

(a) The Consultant certifies that it has received a copy of and agrees to comply with Act No. 2-2018, known as the Anti-Corruption Code for the New Puerto Rico ("Act No. 2-2018"), and with the Puerto Rico Government Ethics Law of 2011, Act No. 1-2012, as amended ("Act No. 1-2012").

(b) The Consultant shall furnish a sworn statement to the effect that neither the Consultant nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for the Consultant has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act No. 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico ("Act No. 8-2017"), or any of the crimes included in Act No. 2-2018.

(c) The Consultant hereby certifies that it has not been convicted in Puerto Rico or United States Federal Court under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, for any of the crimes listed in Articles 250 through 266 of Act No. 146-2012, as amended, known as the Puerto Rico Penal Code ("Act No. 146-2012"), any of the crimes typified in Act No. 2-2018, 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 No. 8-2017.

 (d) The Authority shall have the right to terminate this Agreement in the event the Consultant is convicted in Puerto Rico or United States Federal Court under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, any of the crimes listed in Articles 250 through 266 of Act No. 146-2012, any of the crimes typified in Act No. 2-2018, 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 No. 8-2017.

(e) It is expressly acknowledged that this certification is an essential condition of this Agreement. If the certification is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for the Authority to terminate this Agreement immediately, without prior notice, and the Consultant will have to reimburse the Authority any amount of money received under this Agreement.

(f) If the status of the Consultant or any of its shareholders, partners, associates,

officers, directors, employees or agents with regards to the charges previously mentioned should change at any time during the term of the Agreement, the Consultant shall notify in writing to the Authority immediately. The failure to comply with this responsibility constitutes a violation of this Clause, and shall result in the remedies mentioned previously.

Section 7.5. Conflicts of Interests.

(a) Both Parties hereby declare that, to the best of their knowledge, as of the date hereof, no public officer or employee of the Government of Puerto Rico, or any of its agencies, instrumentalities, public corporations or municipalities or employee of the Legislative or Judicial branches of the Government has any direct or indirect interest in the present Agreement. The Consultant certifies that neither it, nor any of its directors, executives, officers or employees, offered or paid, directly or indirectly, any commissions, referrals, contracts, or any other consideration having an economic value, to a third party as a condition for obtaining this Agreement or to influence in any way its execution. In addition, the Consultant certifies that it shall not pay any commissions, make any referrals, execute any contracts, or provide any other consideration having an economic value, to a third party for the services to be rendered under this Agreement, except for any subcontracts authorized by the Authority in accordance with the provisions established herein.

(b) The Consultant certifies that none of its partners, directors, executives, officers and employees receives salary or any kind of compensation for the delivery of regular services by appointment (or otherwise) in any agency, instrumentality, public corporation, or municipality of the Government of Puerto Rico.

(c) The Consultant certifies that, at the time of the execution of this Agreement, it does not have nor, to its knowledge, does it represent anyone relative to interests that are in conflict with the Consultant's duties to the Authority under this Agreement. If such conflicting interests arise after the execution of this Agreement, the Consultant shall notify the Authority during a period of five (5) business day from the day the Consultant learned of such conflict of interest, to determine the actions needed to resolve such potential conflict, subject to obligations of privilege and confidentiality.

(d) The Consultant certifies that at the time of execution of this Agreement it has no other contracts with other agencies, public corporation, municipalities and/or instrumentalities of the Government of Puerto Rico. The Consultant acknowledges and accepts that the failure to list any current contractual relationship with any governmental entity may result in the termination of this Agreement if required by the Authority:

Government Agency	Contract Number	Term
N/A		

Section 7.6. Required Certifications.

The Consultant will comply with all applicable laws, regulations and executive orders that regulate the contracting process and requirements of the Government of Puerto Rico, including

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Act No. 73-2019, as amended, known as the “2019 General Services Administration Act for the Centralization of Purchases of the Government of Puerto Rico” (“Act 73-2019”).

In compliance with the provisions of Act 73-2019, the Consultant has provided the Authority the Certification of Eligibility of the Unique Registry of Professional Services Providers (known in Spanish as “Certificado de Elegibilidad del Registro Único de Proveedores de Servicios Profesionales”, and hereinafter referred to as the “RUP Certification”), issued by the General Services Administration. It is hereby acknowledged that pursuant to the provisions of Article 42 of Act 73-2019, a valid RUP Certification serves as evidence of compliance with the documentation requirements necessary for contracting professional services with the Government of Puerto Rico, particularly those applicable under Act No. 237-2004, as amended, which establishes uniform contracting requirements for professional and consultant services for the agencies and governmental entities of the Commonwealth of Puerto Rico (3 L.P.R.A. § 8611 et seq.), the Puerto Rico Department of Treasury Circular Letter Number 1300-16-16 issued on January 22, 2016, as amended, which is available at: <http://www.hacienda.pr.gov/publicaciones/carta-circular-num-1300-16-16>, and the sworn statement before notary public required pursuant to Article 3.3 of Act No. 2-2018. In addition, the RUP Certification substitutes the Single Debt Certification (“Certificación Única de Deuda”), issued pursuant to Act 85-2009, as amended, known in Spanish as “Ley de Certificados y Comprobantes Electrónicos”, which serves as evidence of compliance with certifications issued by the Department of Treasury of Puerto Rico, the Department of Labor and Human Resources of Puerto Rico, the Municipal Revenue Collection Center, and ASUME (as defined below).

Further, the Consultant hereby certifies, guarantees, acknowledges and agrees to the following:

(a) The Consultant represents that at the execution of this Agreement, it has submitted income tax returns in Puerto Rico (if required by applicable law) during the past five (5) years. The Consultant also represents that it does not have outstanding debts with the Government of Puerto Rico for income taxes, real or chattel property taxes, unemployment insurance premiums, workers’ compensation payments or Social Security for chauffeurs in Puerto Rico and the Administration for the Sustenance of Minors (known by its Spanish acronym as “ASUME”).

 (b) The Consultant has provided the Authority with a certificate of incorporation, if required by the Authority, and a Good Standing Certificate issued from the Department of State of Puerto Rico as proof that it has complied with the applicable annual corporation report filing obligations.

(c) It is expressly acknowledged that the certifications provided by the Consultant, pursuant to this Section, are essential conditions of this Agreement, and if these certifications are incorrect, the Authority shall have sufficient cause to terminate this Agreement immediately, without prior notice to the Consultant.


(d) For purposes of this Agreement, tax debt shall mean any debt that the Consultant, or other parties which the Authority authorizes the Consultant to subcontract, may have with the Government of Puerto Rico for income taxes, real or chattel property taxes, including any special

taxes levied, license rights, tax withholdings for payment of salaries and professional services, taxes for payment of interest, dividends and income to individuals, corporations and non-resident accounting firms, for payment of interests, dividends and other earnings shares to residents, unemployment insurance premiums, workers' compensation payments, Social Security for chauffeurs and ASUME.

(e) The Consultant shall also be responsible for providing the Authority with the certifications required under this clause from any professional or technical consultant subcontracted by the Consultant and authorized by the Authority that dedicates twenty-five percent (25%) or more of his or her or its time to provide advisory services related to the Agreement. Such subcontractors shall be considered subcontractors for the purposes of this Clause. Notwithstanding anything herein to the contrary, the Consultant shall have the right to rely conclusively on the aforementioned certifications from government agencies in making the representations in this Clause.

(f) Investment Act for the Puerto Rican Industry, Act No. 14-2004, as amended: In compliance with the dispositions of Act No. 14-2004, known as the Investment Act for the Puerto Rican Industry, the Consultant shall use articles extracted, produced, assembled, packaged or distributed by companies with operations in Puerto Rico or distributed by agents established in Puerto Rico while rendering the Services, provided such articles are available.


(g) Improvement of Family Assistance and Support for the Elderly. The Consultant also certifies and warrants that it is in compliance with Act No. 168 2000, as amended, known as the "Act for the Improvement of Family Assistance and for the Support of the Elderly." In the event the Consultant is under a court or administrative order directing it to provide financial support or to fulfill any obligation under the mentioned Act, the Consultant further certifies and warrants that it is in compliance with said obligations. It is expressly acknowledged that this certification is an essential condition of this Agreement. If the certification is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for the Authority to terminate the Agreement immediately, without prior notice to the Consultant.

 (h) Financial Oversight and Management Board for Puerto Rico's ("FOMB") Policy for Review of Contracts: The Parties acknowledge that the Consultant has presented to the Authority the certification entitled "Contractor Certification Requirement" required pursuant to FOMB's Policy for Review of Contracts effective as of November 6, 2017, as modified on October 30, 2020, signed by the Chief Executive Officer of the Consultant (or other officer with equivalent position or authority to issue such certifications). A copy of the signed "Contractor Certification Requirement" is included herein as an **Appendix C** to this Agreement.

(i) The Consultant acknowledges and certifies that all documents, certifications, circumstances, representations, warranties and information submitted to the Authority prior to the formalization of the original Agreement as a requirement for government contracting, including those required by Act No. 237-2004, as amended, and the Puerto Rico Department of Treasury Circular Letter 1300-16-16, remain unchanged. The Consultant recognizes that the obligation to inform the Authority about any changes regarding said documents, certifications, circumstances, representations, warranties and information is an obligation that remains throughout the term of

the Agreement including its amendments. The Consultant acknowledges that if requested by the Authority, the Consultant must provide the certifications that validate the above. The Consultant's failure to comply with this obligation shall be sufficient cause for the Authority to render this Agreement null and void and to require that the Consultant reimburse to the Authority all moneys received under this Agreement.

Section 7.7. Withholdings. The Consultant is an independent contractor and, as such, shall be responsible for the payment of all of its income taxes, its subcontractors, and its individual and employers' withholdings under the applicable tax laws of Puerto Rico or the U.S. Internal Revenue Code. No withholdings or deductions shall be made from payments to the Consultant for services rendered by Consultant, except for those applicable by law and those applicable under the Puerto Rico Internal Revenue Code of 2011 and its regulations, as amended if any. In particular, when invoicing, the Consultant will allocate fees between those relating to activities undertaken by the Consultant outside Puerto Rico and constituting gross income from sources without Puerto Rico, and those relating to activities undertaken within Puerto Rico and constituting gross income from sources within Puerto Rico. If the entity is not registered in Puerto Rico, therefore a Puerto Rico non-resident the Authority shall deduct and withhold twenty-nine percent (29%) of the gross amounts paid on those invoiced amounts which constitute gross income from sources within Puerto Rico, in accordance with Section 1062.11 of the Puerto Rico Internal Revenue Code. 13 L.P.R.A. Sec. 30281. No withholdings or deductions shall be made from payments for services constituting gross income from services without Puerto Rico. The Authority shall forward to the Secretary of the Treasury of Puerto Rico any applicable withholdings or deductions made to a Consultant. Withholdings requirements will be adjusted pursuant to any amendments to the Puerto Rico Internal Revenue Code and its regulations.

 Consultant represents and warrants that it has and shall continue to pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

Section 7.8. Registration at the Office of the Comptroller. The Consultant will not receive any payment for the services rendered under the terms of this Agreement until the Agreement has been registered at the Office of the Comptroller of Puerto Rico, as required by Act No. 18 of October 30, 1975, as amended.


Section 7.9. Dispensation. The Consultant certifies it is not required to obtain a dispensation or waiver in compliance with the applicable laws and regulations of the Government of Puerto Rico prior to or in connection with the execution of this Agreement. The Parties agree that the proven illegality of any of the provisions of this Agreement shall not invalidate it as a whole.

**ARTICLE VIII
GOVERNING LAW; DISPUTE RESOLUTION**

Section 8.1. Governing Law. This Agreement and any dispute relating to the services hereunder shall be governed, construed, interpreted and enforced in accordance with the laws of the Government of Puerto Rico.

Section 8.2. Dispute Resolution. The Parties agree that any dispute, claim or controversy directly or indirectly relating to or arising out of this Agreement, the termination or validity of this Agreement, any alleged breach of this Agreement, the engagement contemplated by this Agreement or the determination of the scope of applicability of this Agreement shall be brought only in the Courts of First Instance of the Commonwealth of Puerto Rico or in the United States District Court for the District of Puerto Rico. The Authority and the Consultant also agree that service of process may be affected through next-day delivery using a nationally recognized overnight courier or personally delivered to the addresses set forth or referred to in this Agreement., or for service of process to the Authority, to PO Box 42001, San Juan PR 00940-2001. In any claim, all of the costs and the reasonable attorneys' fees of the prevailing party (as determined by the court in such claim) shall be borne by the party who did not prevail. The Authority and the Consultant further agree after all appeals that a final, non-appealable judgment in respect of any claim brought in any such court shall be binding and may be enforced in any other court having jurisdiction over the party against whom the judgment is sought to be enforced.

**ARTICLE IX
MISCELLANEOUS**



Section 9.1. Independent Contractor. The Authority and the Consultant agree that the Consultant's status hereunder, and the status of any agents, employees and subcontractors engaged by the Consultant, shall be that of an independent contractor only and not that of an employee or agent of the Authority. The Consultant shall not have any power or right to enter into agreements on behalf of the Authority.

Section 9.2. Assignment. This Agreement may not be assigned by either party hereto without the prior written consent of the other, to be given in the sole discretion of the party from whom such consent is being requested. Any attempted assignment of this Agreement made without such consent shall be void and of no effect, at the option of the non-assigning party.

Section 9.3. Notice. Notice required to be given in writing pursuant to any of the provisions of this Agreement shall be mailed by next-day delivery using a nationally recognized overnight courier or hand-delivered, if to the Consultant, at 100 Calle Alcalá 2102, San Juan PR, and if to the Authority, to the following address:

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POSTAL ADDRESS

PO Box 42001
San Juan, PR 00940-2001

PHYSICAL ADDRESS


De Diego Avenue No. 100
Roberto Sánchez Vilella Government Center
Central Building Floor 3
Santurce, PR 00907-2345

Section 9.4. Patriot Act. The Consultant hereby notifies the Authority that pursuant to the requirements of the USA PATRIOT Improvement and Reauthorization Act. Pub. L. N 109-177 (Mar. 9, 2006) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Authority in a manner that satisfies the requirements of the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act.

Section 9.5. No Third Party Rights. It is understood that this Agreement is the sole agreement between the parties with regard to the services covered hereby and supersedes any prior agreements, written or verbal. The Agreement may not be changed orally, but may be amended in writing by mutual agreement of the parties. This Agreement is solely for the benefit of the Authority, the Consultant and, to the extent expressly set forth herein, the Indemnified Persons and no other party shall be a third party beneficiary to, or otherwise acquire or have any rights under or by virtue of, this Agreement.

Section 9.6. Drafting Responsibility. This Agreement has been reviewed by each of the signatories hereto and counsel. There shall be no construction of any provision against either Party because this Agreement was drafted by either Party, and the Parties waive any statute or rule of law to such effect.

Section 9.7. Severability. If any provision hereof shall be held by a court of competent jurisdiction to be invalid, void or unenforceable in any respect, or against public policy, such determination shall not affect such provision in any other respect nor any other provision hereof.

 **Section 9.8. Counterparts.** This Agreement may be executed in facsimile or other electronic counterparts, each of which will be deemed to be an original and all of which together will be deemed to be one and the same document.

These terms constitute the entire agreement between the Parties with respect to this engagement; supersede all other oral and written representations, understandings, or agreements relating to this engagement; and may not be amended except by a written agreement signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the aforementioned date.

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**PUERTO RICO PUBLIC PRIVATE
PARTNERSHIPS AUTHORITY**



Nelson Pérez Méndez
Deputy Executive Director

XIMENA LLC.



José Humberto Román
Principal

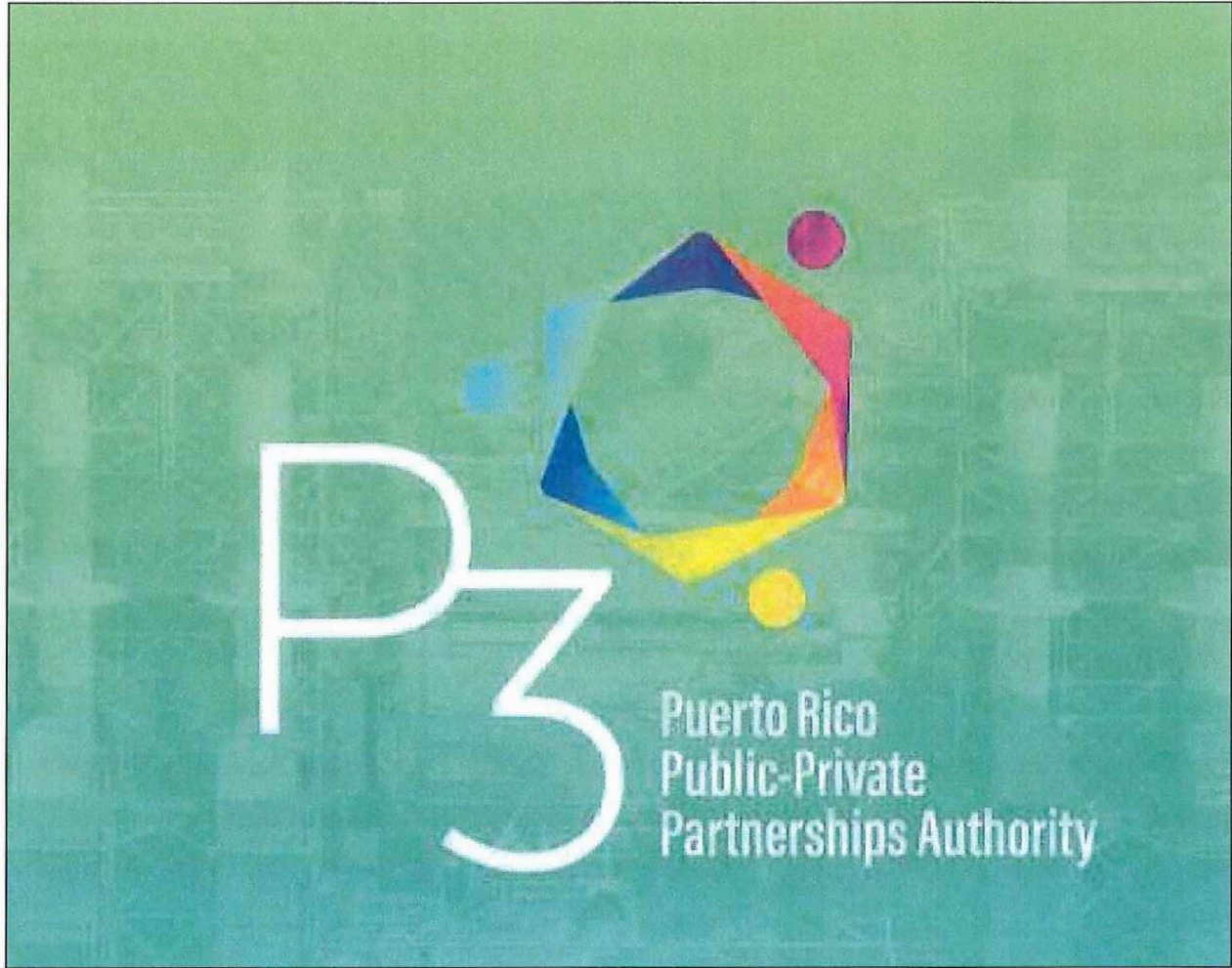
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APPENDIX A

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XIMENA LLC



JHRM Project Proposal

Prepared for: Fermín Fontanés, Executive Director, The Puerto Rico Public-Private Partnership Authority

Prepared by: José Humberto Román, Principal

May 21st, 2021

Proposal number: 20210504

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XIMENA LLC

May 21st 2021


Fermín Fontanés
Executive Director
The Puerto Rico Public-Private Partnership Authority
Roberto Sanchez Vilella Government Center
De Diego Ave, Stop 22
San Juan, Puerto Rico 00907
fermin.fontanes@p3.pr.gov

Dear Mr. Fontanés,

We are pleased to present to the Puerto Rico Public-Private Partnership Authority ("P3A") a proposal from Ximena LLC for services related to the Administration of the O&M Agreement between LUMA Energy ("LUMA") and the Puerto Rico Electric Power Authority ("PREPA").

Ximena LLC will assist P3A in carrying out its responsibilities as Administrator of the O&M Agreement. A preliminary, but not comprehensive, list of responsibilities has been identified on the Scope of Services section below.


SCOPE OF SERVICES:

- 
1. Assist P3A to oversee and audit performance of the O&M services:
 - a. Audit compliance with budgets.
 - b. Review and approve with or without modifications budgets to comply with rate order.

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XIMENA LLC

- c. Audit compliance with Federal Funding Requirements.
 - d. Review invoices and supporting documentation for the payment of the fixed fee.
 - e. Review fee incentive report, supporting performance data, and information regarding achievement of the performance metrics.
 - f. Review request of funds not included in the operational budget.
 - g. Review request of funds to reimburse costs from the capital accounts.
 - h. Review and recommend actions regarding systems contracts, either new or replacement.
 - i. Review and recommend action on proposed budgets.
 - j. Review and Advise on LUMA's rate changes.
 - k. Review amendments to performance metrics.
 - l. Review notifications and reports prepared by LUMA.
 - m. Review and recommend actions on performance of operator of GenCo Shared Services.
2. Assist the P3A as needed with Contract Management:
- a. Review and Advise on termination of agreement.
 - b. Review and recommend actions to be carried out by P3A as Administrator in case of a Force Majeure.
4. Additional requirements as directed by the P3A Executive Director or his designee.

 Ximena LLC will evaluate the resources available to P3A and recommend internal/external resource organizations to carry out the responsibilities of the Administrator. Ximena LLC will subcontract as required.

TEAM Members:

José Humberto Román Morales - Principal
Javier Antonio Quintana - Senior Engineer

COMPENSATION


Ximena LLC proposes to execute the assigned tasks under a cost plus arrangement. We will work closely with P3A to achieve the optimal workflow possible through the implementation of lean strategies.

Labor rates:

Title	Rate/hr
Principal	\$200.00
Sr. Compliance/Regulatory Specialist	\$150.00
Sr. Engineer	\$150.00
Engineer	\$100.00
Compliance Specialist	\$100.00
Administrative Assistance	\$50.00

Services rendered will be invoiced monthly. The invoice will reflect the hours of effort times the hourly rate.

We estimate a preliminary budget of \$200,000. As the tasks get better defined, and the tasks hourly efforts get to 75% of the allocated budget, Ximena LLC will communicate promptly to P3A.

 Please contact me with additional questions and the scope of work. I thank you for the opportunity to serve the people of Puerto Rico.

JHRM

Sincerely,



José Humberto Román
Principal
Ximena LLC



Appendix B Billing Guidelines for Consultants

The Puerto Rico Public Private Partnerships Authority ("P3 Authority") may engage the services of consulting firms or independent consultants (collectively and hereinafter "Consultant") to provide certain consulting services for managing its affairs (the "Consulting Services").

The Consultant shall be committed to providing Consulting Services with the highest quality standards and in the most reasonable, prompt, efficient and cost-effective manner. Therefore, the P3 Authority expects Consultant to stress integrity and to uphold the highest standards of professionalism and ethical conduct in ensuring timely, responsive, and cost-effective consulting services by complying with these billing guidelines (the "Guidelines").

The Guidelines set forth the P3 Authority's expectations relative to the Consulting Services being provided and the nature of the working relationship with Consultant. Through the Guidelines, the P3 Authority hereby provides Consultant with an understanding of what consulting fees and expenses the P3 Authority will pay and reimburse. Furthermore, these Guidelines shall constitute a written agreement by the parties for any matter to which the Consultant is engaged on behalf of the P3 Authority. These Guidelines shall govern the billing terms of the professional relationship between the P3 Authority and Consultant.

The P3 Authority considers Consultant's invoices for services rendered (the "Invoices") as a certification by Consultant that the billing for services, as reflected on the Invoices, is reasonable for the matters involved, and necessary for the proper rendering of the Consulting Services relative thereto.

The P3 Authority expects Consultant to strictly adhere to the Guidelines and to charge for actual consulting services rendered, at the rates established and agreed in advance by the parties, and to refrain from billing non-billable work or expenses. Compliance with the Guidelines will avoid delays in processing Invoices or the possible nonpayment of the services provided. The P3 Authority expects Consultant to become familiar with the Guidelines and if there are any questions relative thereto then Consultant should contact P3 Authority's Legal Department.

The following rules shall govern Consultant's billing for the Consulting Services and its presentation of the Invoices:

A. Billing Rates and Fee Arrangements

- i. The P3 Authority expects to be charged reasonable fees for the Consulting Services, pursuant to the applicable code of professional conduct. A reasonable fee is considered to be the product of: a) the amount of time reasonably necessary to devote to the matter by appropriately qualified consulting professionals, and b) the customary or previously agreed to billing rates (the "Billing Rates") of those professionals involved in the rendering of the Consulting Services. Furthermore, the P3 Authority expects Consultant to use prudence and reasonableness in rendering the Consulting Services, refraining from providing more consulting services than are actually needed to complete the same.

- ii. Under no circumstance will the P3 Authority pay for Consultant's overhead expenses, as they are generally categorized in accordance to applicable accounting principles.
- iii. Consulting Services will be billed in increments of **[6 minutes or 1/10 of an hour]**.
- iv. Unless otherwise agreed upon in advance, all hourly billing rates shall be solely on the basis of the Billing Rates. Absent a specific agreement for an alternative fee arrangement for a specific consulting service, Consultant's fees shall be computed by applying the Billing Rates to the reasonable time actually incurred in rendering the Consulting Services.
- v. The level of expertise of the consultant assigned to a matter referred by the P3 Authority shall be appropriate to the complexity of the issue therein. Therefore, partners, principals or directors of the consulting firm shall not bill for tasks that can be performed by a less senior consultant at a lower cost. Furthermore, the P3 Authority requires Consultant to assign less demanding tasks to less senior consultants in order to minimize consulting expenses. Additionally, for matters of similar nature occasionally referred to Consultant, the P3 Authority expects Consultant to assign a consultant with prior experience with such matter. Consultant shall ensure that the work performed by the assigned consultant(s) is reasonable, useful, and done efficiently.

B. Referrals and Budgets

- i. If applicable, in the event that Consultant anticipates incurring in significant time or expenses in excess of the normal amount within a particular month, Consultant shall contact the P3 Authority to notify of the anticipated excess amount of billable hours or expenses during that month and shall include a reasonably detailed explanation of the reasons for such additional costs.

C. Staffing Matters

- i. The P3 Authority will not pay for or authorize:
 - a) Administrative charges such as:
 - i. Scheduling or review of personnel;
 - ii. Preparation and review of billing statements;
 - iii. Preparation of budgets of time plan, staffing of total costs of projected consulting work;



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- iv. Preparation of Audit Letters to our external auditors;
 - v. Preparation of any other status report; or negotiation, review, and/or drafting of retention or engagement agreement between the P3 Authority and the Consultant.
- b) Grazing: The P3 Authority will not pay for billed time for getting up to date with any consulting matter. This includes time spent by newly assigned consultants to familiarize themselves with a matter.
 - c) Block billing: All tasks must be billed separately.
 - d) Vague, confusing or otherwise undetailed time entries.
 - e) Time associated with research on general client or industry trends, and time expended on "canned" research, such as research of a generic nature or for a prior matter or issue.
 - f) Intra-office conferences that deal with substantive issues are reimbursable when a thorough description of the purpose is provided. No more than two consultants shall bill for an intra-office conference.
 - g) Overstaffing: A minimum number of consultants should be assigned to each matter. Overstaffing includes:
 - i. More than one consultant billing for reading or reviewing internal written communication (including email); or
 - ii. Inclusion of more than one consultant at meetings or hearings for the purpose of consultant development.

Consultant should explain why the circumstances warrant an exception from this general rule. The P3 Authority reserves the right of not paying the hours billed by any additional consultant if P3 Authority's prior written approval was not obtained by Consultant.

- h) The review, execution and processing of agreements with the P3 Authority.
- i) Any time spent at seminars or other training, unless otherwise specifically approved in writing.
- j) Summer intern, temporary or contract consultant, or other intern time unless it has previously been identified as part of the approved staffing in the Billing Rates approved by the P3 Authority.

- ii. If a previously drafted or standard form is available, the P3 Authority will pay only for the amount of time necessary to modify the document for use in the specific consulting matter and not the time originally incurred to draft the standard document.
- iii. Subject to the provisions of subsection (i) of this Section C, the P3 Authority will not pay for administrative work performed by consultants, such as managing or supervising other consultants, nor will pay for in-firm meetings, conferences, and consultations.
- iv. The P3 Authority shall not pay for duplication of time caused by:
 - a. Transfer of a consulting matter to a new consultant for internal reasons;
 - b. Double teaming; or
 - c. One consultant redoing the work of another.
- v. It is recommended, but not required, that prior to any meeting or conference call, Consultant shall provide the P3 Authority team members with an agenda for said meeting or conference call detailing the matters to be discussed, as well as a guideline for suggested next steps after any such meeting or conference call.

D. Billing and Invoicing

- i. Each task or activity shall be separately itemized on the Invoices, including a break-down thereof that at a minimum shall include:
 - a. A chronological listing of all services;
 - b. A description of the service being billed. The description shall include (i) the type of work being performed and (ii) the subject matter;
 - c. The name of each consultant or consulting professional whose work is being billed;
 - d. The date of the service;
 - f. The amount of time spent by each person on each item in the interval increments defined herein; and
 - g. The Billing Rate at which the service is being billed.
- ii. Entries for telephone conversations, conferences and meetings must specifically describe all parties involved and the subject matter or purpose of the task.
- iii. The P3 Authority will not pay for billed services whose descriptions lack specificity.
- iv. The Invoices shall include a summary thereof, including:
 - a. Name and initials of each time keeper;



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- b. Staff classification including for each category of consulting personnel (Partner, Junior Partner, Manager, Senior Consultant, Consultant, Principal, Director, Associate, Intern, etc.);
 - c. Hourly billing rate of each time keeper; and
 - d. Total time and fees billed for each time keeper by subject matter.
- v. The Invoices shall also include an overall summary by staff classification, including for each category of consulting personnel (Partner, Junior Partner, Manager, Senior Consultant, Consultant, Principal, Director, Associate, Intern, etc.), the number of individuals in each category, the total number of hours by each category, and the total fees by category.
 - vi. The Invoices shall be divided individually by project or matter (e.g. Flexible Distributed Generation Units Project; San Juan Bay Cruise Terminals Project; Court cases; etcetera). Invoices shall also include a billing history or summary of all fees and expenses incurred in a particular matter up to the invoicing date along with a comparison to the total budgeted or contracted amounts.
 - vii. The P3 Authority reserves the absolute right to make any changes, at its sole discretion, to the fees included in the Invoices if it reasonably believes that the amount of time devoted to the matter by the consulting professional or the timekeeper should be reduced.
 - viii. In addition, Consultant shall provide the Certificate of Waiver from Withholding (total or partial) from the Puerto Rico Department of Treasury to the P3 Authority, if applicable.
 - ix. Any Invoices without the required information included or attached will not be processed for payment and will be returned to Consultant for the corresponding corrections or modifications.
 - x. The Consultant's in charge of the P3 Authority account (the "Account Partner") shall review the Invoices prior to submitting them to the P3 Authority and should be able to explain all of its time charges if so requested.
 - xi. Furthermore, the Account Partner shall certify the accuracy and reasonableness of the Invoices and their compliance to the Guidelines and all applicable ethical rules. The P3 Authority reserves the right to withhold or deny approval of the Invoices in the event the Guidelines are not complied with.

E. Expense Reimbursement

- i. The P3 Authority will not pay and will not separately reimburse Consultant for overhead costs. Expenses that are considered Consultant's overhead are part of the professional's hourly rate and are not reimbursable. The term overhead includes, but is not limited to all administrative or general costs incidental to the operation of the Consultant including without limitation office rent, conference rooms, equipment, computer software, office supplies, transportation, telephone and mobile charges, books, meals, routine postage, the



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services of librarians, file clerks, data entry clerks, photocopy operators, secretaries, overtime or utilities, word processors, messengers, other support personnel, or any other overhead expense as recognized by applicable accounting standards.

- ii. Non reimbursable tasks include binding, scanning, indexing, collating, coding, filing, transmitting and preparing letters, mailing, faxing, emailing, word processing, proofreading, scheduling, events, deliveries, data entry, conference call charges, invoicing, billing, staffing, or other similar clerical or ministerial functions.
- iii. The Invoices may also include additional consulting expenses to be charged by Consultant as previously authorized by the P3 Authority, with a total for those consulting expenses charged at a reasonable market price. Each such additional expense item shall be:
 - a. Separately itemized;
 - b. Show the date the expense was incurred;
 - c. Include a descriptive explanation of the charge;
 - d. Indicate the amount of the charge; and
 - e. Indicate the timekeeper who incurred the charge.
- iv. Disbursements for pre-approved reimbursable expenses will be compensated at actual cost with the appropriate documentation to substantiate the expenses such as actual vendor receipts, which shall be included in the Invoices as an attachment. Actual cost is defined as the amount paid to a third-party service provider, net of any discounts ("Actual Cost").
- v. All expenses will be reimbursed at Actual Cost and Consultant shall not upcharge any of the expenses incurred in providing services to the P3 Authority. The P3 Authority will not pay for normal transportation costs incurred in travel to and from the office, for overtime transportation, or for valet services. Car services during travel are limited to taxicab or transportation network companies' fares, and Consultant shall provide appropriate documentation to substantiate the expenses such as actual receipts, which shall be included in the Invoices as an attachment.
- vi. The P3 Authority will reimburse Consultant for reasonable and necessary delivery charges and messenger services at Actual Cost. However, charges for time spent preparing mail packages are considered as part of the Consultant's overhead and are not reimbursable. Disbursements for messenger services expenses will be compensated with the appropriate documentation to substantiate the expenses such as actual receipts, which shall be included in the Invoices as an attachment. Third party courier and express delivery services should be used cautiously.
- vii. Photocopying will be reimbursed at the Actual Cost to Consultant and which under no circumstances shall exceed ten (10) cents per page. Documentation for photocopying expenses shall include evidence of the amount of copies executed with the date.
- viii. Reimbursements of expenses made by Consultant during travel to Puerto Rico are limited to:


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- a. Fifty-eight (58) dollars per day for food, for which Consultant need not provide a receipt; and
 - b. One hundred and ninety-five (195) dollars per night, for hotel for which Consultant must provide appropriate documentation subject to agreement by the P3 Authority.
- ix. Reimbursements of expenses made by Consultant during travel outside of Puerto Rico are subject to the regulations published by the U.S. General Service Administration and the Defense Travel Management Office of the Department of Defense.
 - x. Expenses for airfare travel will be reimbursed with the appropriate documentation to substantiate the expense, such as receipt of the air fare where the trip detail is presented. The P3 Authority will only reimburse for economy class airfare travel. The P3 Authority will not pay for any costs incurred in for “extra leg room” space. Any reimbursement for cancelled air travel must be pre-approved by the P3 Authority.
 - xi. The P3 Authority expects Consultant to immediately provide any back up documentation for a particular disbursement charge if it so requires. The P3 Authority will not pay for unsupported charges.
 - xii. The P3 Authority will only reimburse for expenses made within the time frame of the contract between the P3 Authority and Consultant.

F. Third Party Subcontracting

- i. If Consultant deems it necessary to use any other consulting firm, consultant, or other third party providers (the “Third Party”) in providing a service in a matter it is handling for the P3 Authority, then such request shall be made to the P3 Authority A prior to the retention or hiring thereof and shall obtain written consent from the P3 Authority to proceed with the subcontracting.
- ii. Unless a different billing arrangement is authorized by the P3 Authority, Consultant shall directly pay the Third Party for work performed in connection with services rendered on behalf of the P3 Authority.
- iii. Payments to the Third Party should be included as a disbursement on Consultant’s next subsequent invoice to the P3 Authority and said invoice shall be accompanied by the Third Party’s corresponding billing detail which shall also be in full compliance with the Guidelines.
- iv. Consultant shall not upcharge or surcharge any of the Third Party’s billings or expenses incurred in providing services to the P3 Authority. The P3 Authority will only reimburse the Actual Cost of pre-approved Third Party’s services.



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- v. All Third Party invoices paid by Consultant shall be included in the Invoices as an attachment and as an itemized expense must, absent specific prior approval to the contrary, also comply with the Guidelines.

CONSULTANT ACKNOWLEDGMENT

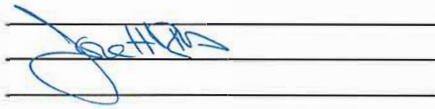
The Consultant through its Account Partner, or representative noted herein, acknowledges the receipt and review of the P3 Authority 's Billing Guidelines for Consultants.

Kindly indicate your acceptance and agreement to adhere to the above guidelines by signing a copy thereof and returning the same to the P3 Authority.

By signing this acknowledgment, you further certify that you will only remit invoices to the P3 Authority that fully comply with all terms and conditions contained in the Guidelines.

This document may be signed in counterparts and a copy of the execution signature shall be as effective as an original. Furthermore, all fully executed copies shall be considered duplicate originals.

So acknowledged and accepted by:



August 23, 2021



APPENDIX C
Contractor Certification Requirement

The following certification shall be provided to the Oversight Board and the Commonwealth's Contracting Government Entity by the Chief Executive Officer (or equivalent highest rank officer) of each proposed contractor under contracts submitted for review:

1. The expected contractor's subcontractor(s) in connection with the proposed contract¹ is (are) the following:

None at this time.

2. Neither the contractor nor any of its owners², partners, directors, officials or employees, has agreed to share or give a percentage of the contractor's compensation under the contract to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract, except as follows:

N/A

3. To the best knowledge of the signatory (after due investigation), no person has unduly intervened in the procurement, negotiation or execution of the contract, for its own benefit or that of a third person, in contravention of applicable law.
4. To the best knowledge of the signatory (after due investigation), no person has: (i) offered, paid, or promised to pay money to; (ii) offered, given, or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such person in connection with the contract (such as the execution of a subcontract with contractor, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
5. Neither the contractor, nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of applicable law.
6. Any incorrect, incomplete or false statement made by the contractor's representative as part of this certification shall cause the nullity of the proposed contract and the contractor must reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the proposed contract.

¹ As used herein, the term "contract" is inclusive of any amendments, modifications or extensions.

² For purposes of this certification, a contractor's "owner" shall mean any person or entity with more than a ten percent (10%) ownership interest in the contractor.


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The above certifications shall be signed under penalty of perjury by the Chief Executive Officer (or equivalent highest rank officer) in the following form:

"I hereby certify under penalty of perjury that the foregoing is complete, true and correct."

By: August 23, 2021

Date:

Signature:

A handwritten signature in blue ink, appearing to be "J. H. H.", written over a horizontal line.A handwritten signature in blue ink, appearing to be "M. J.", located in the bottom left corner of the page.

PROFESSIONAL SERVICES AGREEMENT

by and between

THE PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY

and

ECLIPSE MANAGEMENT, LLC.

Dated as of June 29, 2021.



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PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") for support in the P3 Contract Monitoring Office is made and entered into as of this ___ day of June, 2021 by and between **THE PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY**, a public corporation of the Government of Puerto Rico, established and authorized to enter into this Agreement by Act No. 29-2009, as amended, and represented herein by its Deputy Executive Director, Nelson Pérez Méndez, of legal age, attorney, married and resident of Trujillo Alto, Puerto Rico (the "Authority") and **Eclipse Management LLC.**, a corporation incorporated under the laws of the state of Puerto Rico with its executive headquarters in Guaynabo, PR., represented herein by its President, Cristian Llacer of legal age, married, engineer, and resident of Dorado, PR,(the "Consultant"), and together with the Authority, the "Parties".

RECITALS

WHEREAS, the Authority, by virtue of the powers conferred to it under the Public-Private Partnerships Act, Act No. 29 of June 8, 2009, as amended ("Act 29"), is authorized to engage professional, technical and consulting services that are necessary and convenient to the activities, projects, and operations of the Authority.

WHEREAS, on May 19, 2021, Consultant submitted to the Authority a proposal for professional advisory services related to providing support to the P3 Contract Monitoring Office (the "Proposal"), attached hereto as **Appendix A** and made a part of this Agreement. If any part of the Proposal is found to be inconsistent with the terms and conditions set forth herein, the terms and conditions set forth herein shall take precedence over the Proposal and govern the matter in question.

WHEREAS, after considering the Proposal, the Authority wishes to engage the Consultant to act as advisor to the Authority and the Government of Puerto Rico and provide support in the P3 Contract Monitoring Office.

WHEREAS, the Consultant is willing to provide such services.

NOW, THEREFORE, the Authority and the Consultant agree to enter into this Agreement under the following:



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TERMS AND CONDITIONS

ARTICLE I

PURPOSE OF AGREEMENT; TERM

Section 1.1 Purpose of Agreement. The Authority engages the Consultant to provide support in the P3 Contract Monitoring Office, as detailed in the Proposal. In the event that the Authority desires to engage the Consultant to advise the Authority in any other matter that is not within the scope of the Proposal, the Parties shall negotiate in good faith a separate agreement or an amendment hereto with respect to such mandate.

Section 1.2. Term. This Agreement shall be in effect from July 1, 2021, until June 30, 2022 (the "Expiration Date"), provided that the Expiration Date may be extended by amendment executed in writing by both Parties.

ARTICLE II

SCOPE OF SERVICES; ADVICE AND RECOMMENDATIONS; SUBCONTRACTING

Section 2.1 Scope of Services. Subject to the terms and conditions of this Agreement, the Consultant's services shall be consistent with the provision of the deliverables, tasks and services described in the Proposal and such other tasks delegated to it by the Authority and within the capabilities of the Consultant.

Section 2.2. Advice and Recommendations. The services to be provided under this Agreement may include advice and recommendations for the benefit of the Authority and/or the Government of Puerto Rico, but the Consultant will not make any decisions on behalf of the Authority or the Government of Puerto Rico in connection with the implementation of such advice and recommendations.

Section 2.3. Subcontracting. Except, as otherwise set forth herein, the Consultant shall not subcontract the services under this Agreement, or contract third-party experts or other persons to render the services under this Agreement, without prior written authorization from the Authority. A request to hire another service Consultant shall specify the matters in which the sub-contracted Consultant would take part.

ARTICLE III

COMPENSATION; INVOICES; OUT OF POCKET EXPENSES

Section 3.1 Professional Fees. The Authority shall compensate the Consultant for the actual time incurred in delivering the services and completing the tasks, assignments and deliverables set forth in **Appendix A**, at the applicable hourly rates listed in the Fee Schedule provided in **Appendix A** of this Agreement. Should the Consultant assign an additional team

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member not included in **Appendix A** to attend the Authority's matters, the Consultant shall promptly send the Authority an amended schedule to include such person's name, position and hourly rate, and request written approval from the Authority for such amended schedule.

The total amount to be paid by the Authority in relation to the services rendered under this Agreement shall not exceed TWO HUNDRED FORTYSIX THOUSAND DOLLARS (\$246,000.00), including reimbursable expenses, unless otherwise agreed to by the Parties. The Consultant will submit monthly invoices to the Authority within thirty (30) days of performing the services being provided, which shall include a detailed description of the services rendered by the Consultant, complying with the Authority's billing guidelines attached hereto as **Appendix B** of this Agreement. Each invoice shall be itemized with entries for fractions of an hour based on tenths of an hour (.10) and must be duly certified by an authorized representative of the Consultant. The Authority will not honor invoices submitted after one hundred twenty (120) days of services having been rendered. The Consultant accepts and agrees to this requirement, and understands that if it does not comply accordingly, it waives its right to payment for rendered services covered by such invoices. The Authority reserves the right to review the invoices and if they are in compliance with the requirements set forth in this Agreement, it will proceed with payment.

The Consultant agrees to notify the Authority within five (5) working days after having reached 75% of the maximum amount to be paid under this Agreement. The written notification shall include a detailed report of projected services for the duration of the Agreement that entail a possible increase to the limit established and a request addressed to the Executive Director to increase said amount. The Consultant hereby agrees to comply with these responsibilities with respect to the notification requirements and the report to be submitted. Furthermore, the Consultant understands and accepts that it may not exceed the amount established in the Agreement unless and until the Agreement is amended accordingly and the increase is authorized by the Authority. If the Consultant does not comply with these requirements, it waives its rights to payment for services rendered, even after they have been provided. The Authority acknowledges and understands that to the extent services are required of the Consultant beyond the "not-to-exceed" fee cap above, the Consultant cannot provide those additional services until the Authority agrees to pay additional compensation and expenses, and the Agreement is amended in writing accordingly.

The Consultant acknowledges and agrees that retroactive contracting is contrary to government contracting requirements and that the Authority will not issue retroactive payments. The Consultant acknowledges and agrees that Services rendered before the date of execution or before the effective date of the Agreement, as applicable, will not be paid by the Authority

Each invoice must include a written certification stating that no officer or employee of the Authority will derive or obtain any benefit or profit of any kind from this Agreement, with the acknowledgment that invoices which do not include this certification will not be paid. This certification must read as follows:

"We certify under penalty of nullity that no public servant of the Puerto Rico Public-Private Partnerships Authority will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such


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benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the delivery of goods or for services provided is the agreed-upon price that has been negotiated with an authorized representative of the Puerto Rico Public-Private Partnerships Authority. The total amount shown on this invoice is true and correct. The services have been rendered, and no payment has been received in respect thereof.”

All invoices shall be in portable document format (PDF), signed and transmitted by electronic mail transmission to the following electronic mail address: InvoiceP3@p3.pr.gov.

The Consultant agrees to submit checking account transfer data to the Authority in order to facilitate future payments by means of electronic transfers.

The Consultant further acknowledges and agrees that the Authority has the right to recover any erroneous payment, including but not limited to, any overpayment, duplicate payment and/or any other payment not authorized by law, regulation, and/or this Agreement. The Consultant agrees to promptly return any erroneous payment to the Authority upon receipt of a written notice. In addition, if the Consultant becomes aware of an erroneous payment made by the Authority, the Consultant shall immediately notify the Authority’s management and request instructions to proceed accordingly. The Consultant acknowledges and agrees that the Authority reserves the right to make the necessary adjustments in any remaining payments to the Consultant until any erroneous amount paid is recovered.

The Authority certifies that the funds for the payment of Services rendered under this Agreement come from budgetary allocations. All disbursements for such payments shall be made from account 0105030420.

Section 3.2 Travel and Out of Pocket Expenses.

(a) The Authority will reimburse the Consultant on a monthly basis for out of pocket expenses directly related to the services rendered under this Agreement, including, but not limited to, travel and lodging, filing fees, taxi fares, delivery expenses, and services such as overnight mail, courier and messenger charges.

(b) Any expense for which a reimbursement is requested shall be reasonable and necessary, and any expenses exceeding TWO THOUSAND DOLLARS (\$2,000.00) individually shall be authorized in writing and in advance by the Authority. The Authority will not reimburse expenses which do not comply with this provision. Under no circumstances will expenses for alcoholic beverages be reimbursed.

(c) Any petition for reimbursement of expenses must be accompanied by the corresponding invoice or receipt and shall specify the relation of the expense to the services rendered. All reimbursements shall be for actual expenses incurred and shall be billed at cost.



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ARTICLE IV
INFORMATION; CONFIDENTIALITY

Section 4.1. Information Provided by the Consultant. No information or advice provided or materials prepared by the Consultant as a result of its activities hereunder may be disclosed, in whole or in part, or summarized, excerpted from or otherwise referred to a third party outside of the Executive Branch (other than, on a confidential, non-reliance, need to know basis, to the Authority's employees, advisors, counsel and other representatives) without the Consultant's prior written consent, unless compelled by law or court order. In addition, the Authority agrees that any reference to the Consultant in any press release or communication is subject to the Consultant's prior written approval, which may be given or withheld in its reasonable discretion, for each such reference. Notwithstanding the foregoing, the Consultant agrees that the restrictions set forth by this Section 4.1 shall be effective solely during the Term of this Agreement, and once the Term has ended, either due to successful completion, expiration or termination or cancellation by the Authority, such information or materials may be disclosed at the Authority's discretion.

Section 4.2. Confidential Information.

(a) The Consultant acknowledges the proprietary and confidential nature of all internal, non-public, information systems, financial, and business information relating to the Authority, as well as to the Government of Puerto Rico, its agencies, corporations or municipalities, now or hereafter provided to the Consultant (the "Confidential Information").

(b) The Consultant and its Representatives (as defined below) shall keep in confidence in accordance with the terms of this Agreement all such Confidential Information and shall not, except as otherwise set forth herein, make public or disclose any of said information without the previous written consent of the Authority. The Consultant and its Representatives may use the Confidential Information in connection with providing the services contemplated by this Agreement. The term Confidential Information shall not include information which (i) is previously known to the Consultant and/or its Representatives, (ii) is available to the public prior to the time of disclosure hereunder, (iii) subsequent to the time of disclosure hereunder, becomes available to the public other than as a result of a breach of this Agreement by the Consultant, (iv) subsequent to the time of disclosure hereunder becomes available to the Consultant or its Representatives by a third party who, to the knowledge of the Consultant, is under no obligation to keep the information confidential, (v) is independently developed by the Consultant without reference to the Confidential Information or (iv) is approved for disclosure or release by the Authority.

(c) Notwithstanding the above, the Consultant and/or its Representatives, as applicable, may divulge Confidential Information to (a) its affiliates and approved subcontractors


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and their respective directors, officers, employees, agents, consultants, advisors and/or representatives (such individuals receiving Confidential Information hereunder, collectively, the “Representatives”) who need to know such Confidential Information to fulfill the purposes of this Agreement, provided that such persons shall have been advised of the confidential nature of such materials and information and the Consultant shall direct them to treat as confidential such information and to return all materials to the Consultant upon request; provided, that the Consultant shall be responsible for any breach of this Agreement by its Representatives and (b) pursuant to a request or requirement by law, regulation or governmental, regulatory or self-regulatory authority or legal process (including by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to provide such Confidential Information.

(d) The Consultant will promptly, upon the written request of the Authority, deliver to the Authority, or at the Authority’s election, destroy all Confidential Information; provided, however, that the Consultant and its Representatives may retain copies of Confidential Information, subject to the confidentiality terms of this Agreement, in accordance with their respective internal record retention policies for legal, compliance or regulatory purposes or to establish the rights of the Consultant and its Representatives under this Agreement.

(e) This provision shall survive the termination or expiration of this Agreement for a period of two (2) years.

ARTICLE V BREACH; TERMINATION

Section 5.1 Breach of Contract Terms. Any violation or breach of terms of this Agreement on the part of the Consultant or the Consultant’s subcontractors, if any, may result in the suspension or termination of this Agreement or such other action, including the recovery of damages that may be necessary to enforce the rights of the Authority. The duties and obligations imposed by the Agreement 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.

Section 5.2 Termination with or Without Cause. Notwithstanding any provision to the contrary in this Agreement, the Authority shall have the right to terminate this Agreement without cause by providing the Consultant thirty (30) days’ notice by registered mail, return receipt requested, or overnight express mail. Any provisions of this Agreement which expressly or by implication are intended to survive its termination or expiration will survive and continue to bind the parties. The Authority shall also have the right to terminate this Agreement immediately upon receipt of notice in the event of the Consultant’s negligence, dereliction of duties or


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noncompliance. The Consultant may terminate this Agreement if the Consultant determines any part of the services would be in conflict with law or professional standards.

Section 5.3 Termination by the Office of the Governor's Chief of Staff. The Office of the Governor of Puerto Rico's Chief of Staff has the authority to terminate this Agreement at any time on behalf of the Authority.

Section 5.4 Upon any termination or expiration of this Agreement, the Authority shall promptly pay the Consultant any accrued but unpaid fees hereunder, and shall reimburse it for any unreimbursed expenses that are reimbursable hereunder.

Section 5.5 Upon any termination or expiration of this Agreement, the rights and obligations of the Parties shall terminate, except for the rights and obligations that shall survive the termination or expiration of this Agreement.

ARTICLE VI INDEMNIFICATION; INSURANCE

Section 6.1. Indemnification and Liability.

(a) The Consultant shall defend, indemnify and hold the Authority, its officers, officials, and employees harmless from any and all claims, injuries, damages, losses or suits including attorney fees, to the extent arising out of or resulting from the gross negligence or willful misconduct of the Consultant in the performance of its obligations under this Agreement (as determined by a final, non-appealable judgment by a court of competent jurisdiction) ("Claims"). Consultant, its subsidiaries and subcontractors, and their respective personnel shall not be liable to the Authority for any Claims relating to this engagement for an aggregate amount in excess of the fees paid by the Authority to Consultant pursuant to this engagement, except to the extent resulting from the bad faith or intentional misconduct of Consultant or its subcontractors. In no event shall Consultant, its subsidiaries or subcontractors, or their respective personnel be liable to the Authority for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense relating to this engagement. The foregoing limitation of liability and disclaimer shall not apply to Claims for which a party is obligated to indemnify under this Agreement.

(b) Each Party shall indemnify, defend and hold harmless the other from and against any and all amounts payable under any judgment, verdict, court order or settlement for death or bodily injury or the damage to or loss or destruction of any real or tangible personal property, but only to the extent the foregoing arise out of the indemnitor's negligence or intentional misconduct in the performance of this Agreement. Consultant shall indemnify, defend and hold harmless the Authority from all Claims arising from claims brought by any subcontractor of the Consultant


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hereunder against the Authority for payment or for other damages arising under the applicable subcontract agreement between the Consultant and such subcontractor.

(c) The Authority agrees that any indemnity provided hereunder shall be strictly excess of any available and collected insurance, including, but not limited to, the Consultant's lawyers professional liability insurance.

Section 6.2. Insurance.


(a) The Consultant represents that as of the date of execution of this Agreement, it maintains professional liability insurance to provide for errors, omissions and negligent acts that may arise from the services rendered under this Agreement in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00).

(b) The Consultant also represents that it maintains Commercial General Liability insurance in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00). It shall be the Consultant's obligation to submit to the Authority the corresponding certifications from its insurance company evidencing such coverages. The certifications provided must identify the Authority as Additional Insured.

(c) With respect to the Commercial General Liability insurance policy, the certification to be provided by the Consultant must identify the Authority as Additional Insured and include the following cancellation notice:

"CANCELLATION CLAUSE: It is understood and agreed that in the event of cancellation of this policy at the request of the insurance company, thirty (30) days written notice shall be given to the above mentioned additional insured, PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY. However, it is agreed that if cancellation is due to non-payment of premium, ten (10) days written notice will be given".

It shall be the Consultant's obligation to submit to the Authority the corresponding certifications from its insurance company evidencing the abovementioned insurance coverage. The insurance policies required herein must remain in effect during the term of this Agreement, including any amendments to extend said term.


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ARTICLE VII
APPLICABLE LAWS OF PUERTO RICO

Section 7.1. Interagency Service Clause. Both Parties acknowledge and agree that the contracted services may be provided to any entity of the Executive Branch with which the Authority subscribes an interagency agreement or by direct disposition of the Office of the Chief of Staff of the Governor of Puerto Rico. These services will be provided under the same terms and conditions regarding work hours and/or compensation as set forth in this Agreement. For the purposes of this Clause, the term “entity of the Executive Branch” includes all agencies of the Government of Puerto Rico, as well as its instrumentalities, public corporations and the Governor’s Office.

Section 7.2. Source of Funds. The Authority certifies that the funds for the payment related to the services rendered under this Agreement come from budgetary allocations. All disbursements for such payments shall be made from the Puerto Rico Public Partnerships Authority’s account.

Section 7.3. Professional Ethics Rules. The Consultant acknowledges and accepts that, to the extent applicable, it is aware of the rules of ethics of its profession and assumes responsibility for its own actions. The Consultant also acknowledges that in executing its professional services pursuant to this Agreement it has the obligation to exhibit complete loyalty towards the Authority, including having no adverse interest to this government entity. Adverse interest includes representing clients who have or may have interests contrary to the Authority’s. This duty includes the continued obligation to disclose to the Authority all circumstances of its relationships with clients and third persons, and any interest which could influence the Authority, when executing the Agreement or while it is in effect. The Consultant represents conflicting interests when, on behalf of one client it must support that which it is its duty to oppose to comply with its obligations with another previous, present or potential client. Also, it represents conflicting interests when its conduct is described as such in the standards of ethics applicable to its profession or industry, or in Puerto Rico’s laws and regulations. The conduct herein described by one of its directors, partners or employees shall constitute a violation of this prohibition. The Consultant shall avoid even the appearance of the existence of conflicting interests.

Section 7.4. Anti-Corruption Provisions.

(a) The Consultant certifies that it has received a copy of and agrees to comply with Act No. 2-2018, known as the Anti-Corruption Code for the New Puerto Rico, and with the Puerto Rico Government Ethics Law of 2011, Act No. 1-2012, as amended.

(b) The Consultant shall furnish a sworn statement to the effect that neither the



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Consultant nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for the Consultant has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act No. 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 No. 2-2018.

(c) The Consultant hereby certifies that the 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 No. 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 No. 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act No. 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 No. 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

(d) The Authority shall have the right to terminate this Agreement in the event the Consultant is convicted in Puerto Rico or United States Federal Court under Articles 4.2, 4.3 or 5.7 of Act No. 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 No. 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act No. 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 No. 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

(e) It is expressly acknowledged that this certification is an essential condition of this Agreement. If the certification is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for the Authority to terminate this Agreement immediately, without prior notice, and the Consultant will have to reimburse the Authority any amount of money received under this Agreement.

(f) If the status of the Consultant or any of its shareholders, partners, associates, officers, directors, employees or agents with regards to the charges previously mentioned should change at any time during the term of the Agreement, the Consultant shall notify in writing to the Authority immediately. The failure to comply with this responsibility constitutes a violation of this Clause, and shall result in the remedies mentioned previously.


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Section 7.5. Conflicts of Interests.

(a) Both Parties hereby declare that, to the best of their knowledge, as of the date hereof, no public officer or employee of the Government of Puerto Rico, or any of its agencies, instrumentalities, public corporations or municipalities or employee of the Legislative or Judicial branches of the Government has any direct or indirect interest in the present Agreement. The Consultant certifies that neither it, nor any of its directors, executives, officers or employees, offered or paid, directly or indirectly, any commissions, referrals, contracts, or any other consideration having an economic value, to a third party as a condition for obtaining this Agreement or to influence in any way its execution. In addition, the Consultant certifies that it shall not pay any commissions, make any referrals, execute any contracts, or provide any other consideration having an economic value, to a third party for the services to be rendered under this Agreement, except for any subcontracts authorized by the Authority in accordance with the provisions established herein.

(b) The Consultant certifies that none of its partners, directors, executives, officers and employees receives salary or any kind of compensation for the delivery of regular services by appointment (or otherwise) in any agency, instrumentality, public corporation, or municipality of the Government of Puerto Rico.

(c) The Consultant certifies that, at the time of the execution of this Agreement, it does not have nor, to its knowledge, does it represent anyone who has interests that are in conflict with the Authority. If such conflicting interests arise after the execution of this Agreement, the Consultant shall notify the Authority during a period of five (5) business day from the day the Consultant learned of such conflict of interest, to determine the actions needed to resolve such potential conflict. Consultant acknowledges and agrees to abide by the provisions of the Authority's guidelines concerning conflicts of interest ("*Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts*" approved December 19, 2009).

(d) The Consultant certifies that at the time of execution of this Agreement it has entered the following contracts with agencies, public corporation, municipalities and/or instrumentalities of the Government of Puerto Rico, as listed below, and the performance of the services rendered thereunder does not conflict with the terms and conditions set forth in this Agreement. The Consultant acknowledges and accepts that the failure to list any current contractual relationship with any governmental entity may result in the termination of this Agreement if required by the Authority.:



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Client	# Contract	Contract Date	Service
Autoridad de Carreteras y transportación	2021-015	July 21, 2020	Toll Revenue Services
	2020-206	February 13, 2020	Technical Tolling Service
Municipio Autónomo de Guaynabo	2021-24	July 10, 2020	Consulting Tolling Service

Section 7.6. Required Certifications.

The Consultant will comply with all applicable laws, regulations and executive orders that regulate the contracting process and requirements of the Government of Puerto Rico, including Act No. 73-2019, as amended, known as the “2019 General Services Administration Act for the Centralization of Purchases of the Government of Puerto Rico” (“Act 73-2019”).

In compliance with the provisions of Act 73-2019, the Consultant has provided the Authority the Certification of Eligibility of the Unique Registry of Professional Services Providers (known in Spanish as “Certificado de Elegibilidad del Registro Único de Proveedores de Servicios Profesionales”, and hereinafter referred to as the “RUP Certification”), issued by the General Services Administration. It is hereby acknowledged that pursuant to the provisions of Article 42 of Act 73-2019, a valid RUP Certification serves as evidence of compliance with the documentation requirements necessary for contracting professional services with the Government of Puerto Rico, particularly those applicable under Act No. 237-2004, as amended, which establishes uniform contracting requirements for professional and consultant services for the agencies and governmental entities of the Commonwealth of Puerto Rico (3 L.P.R.A. § 8611 et seq.), the Puerto Rico Department of Treasury Circular Letter Number 1300-16-16 issued on January 22, 2016, as amended, which is available at: <http://www.hacienda.pr.gov/publicaciones/carta-circular-num-1300-16-16>, and the sworn statement before notary public required pursuant to Article 3.3 of Act No. 2-2018. In addition, the RUP Certification substitutes the Single Debt Certification (“Certificación Única de Deuda”), issued pursuant to Act 85-2009, as amended, known in Spanish as “Ley de Certificados y Comprobantes Electrónicos”, which serves as evidence of compliance with certifications issued by the Department of Treasury of Puerto Rico, the Department of Labor and Human Resources of Puerto Rico, the Municipal Revenue Collection Center, and ASUME (as defined below).

Further, the Consultant hereby certifies, guarantees, acknowledges and agrees to the following:

(a) The Consultant represents that at the execution of this Agreement, it has submitted income tax returns in Puerto Rico (if required by applicable law) during the past five (5) years. The Consultant also represents that it does not have outstanding debts with the Government of Puerto Rico for income taxes, real or chattel property taxes, unemployment insurance premiums, workers’ compensation payments or Social Security for chauffeurs in Puerto Rico and the Administration for the Sustenance of Minors (known by its Spanish acronym as “ASUME”).


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(b) The Consultant has provided the Authority with a certificate of incorporation, if required by the Authority, and a Good Standing Certificate issued from the Department of State of Puerto Rico as proof that it has complied with the applicable annual corporation report filing obligations.

(c) It is expressly acknowledged that the certifications provided by the Consultant, pursuant to this Section, are essential conditions of this Agreement, and if these certifications are incorrect, the Authority shall have sufficient cause to terminate this Agreement immediately, without prior notice to the Consultant.

(d) For purposes of this Agreement, tax debt shall mean any debt that the Consultant, or other parties which the Authority authorizes the Consultant to subcontract, may have with the Government of Puerto Rico for income taxes, real or chattel property taxes, including any special taxes levied, license rights, tax withholdings for payment of salaries and professional services, taxes for payment of interest, dividends and income to individuals, corporations and non-resident accounting firms, for payment of interests, dividends and other earnings shares to residents, unemployment insurance premiums, workers' compensation payments, Social Security for chauffeurs and ASUME.

(e) The Consultant shall also be responsible for providing the Authority with the certifications required under this clause from any professional or technical consultant subcontracted by the Consultant and authorized by the Authority that dedicates twenty-five percent (25%) or more of his or her or its time to provide advisory services related to the Agreement. Such subcontractors shall be considered subcontractors for the purposes of this Clause. Notwithstanding anything herein to the contrary, the Consultant shall have the right to rely conclusively on the aforementioned certifications from government agencies in making the representations in this Clause.

(f) Investment Act for the Puerto Rican Industry, Act No. 14-2004, as amended: In compliance with the dispositions of Act No. 14-2004, known as the Investment Act for the Puerto Rican Industry, the Consultant shall use articles extracted, produced, assembled, packaged or distributed by companies with operations in Puerto Rico or distributed by agents established in Puerto Rico while rendering the Services, provided such articles are available.

(g) Improvement of Family Assistance and Support for the Elderly. The Consultant also certifies and warrants that it is in compliance with Act No. 168 2000, as amended, known as the "Act for the Improvement of Family Assistance and for the Support of the Elderly." In the event the Consultant is under a court or administrative order directing it to provide financial support or to fulfill any obligation under the mentioned Act, the Consultant further certifies and warrants that it is in compliance with said obligations. It is expressly acknowledged that this certification is an essential condition of this Agreement. If the certification is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for the Authority to terminate the Agreement immediately, without prior notice to the Consultant.

(h) Financial Oversight and Management Board for Puerto Rico's ("FOMB") Policy for Review of Contracts: The Parties acknowledge that the Consultant has presented to the



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Authority the certification entitled "Contractor Certification Requirement" required pursuant to FOMB's Policy for Review of Contracts effective as of November 6, 2017, as modified on October 30, 2020, signed by the Chief Executive Officer of the Consultant (or other officer with equivalent position or authority to issue such certifications). A copy of the signed "Contractor Certification Requirement" is included herein as an **Appendix C** to this Agreement.

(i) The Consultant acknowledges and certifies that all documents, certifications, circumstances, representations, warranties and information submitted to the Authority prior to the formalization of the original Agreement as a requirement for government contracting, including those required by Act No. 237-2004, as amended, and the Puerto Rico Department of Treasury Circular Letter 1300-16-16, remain unchanged. The Consultant recognizes that the obligation to inform the Authority about any changes regarding said documents, certifications, circumstances, representations, warranties and information is an obligation that remains throughout the term of the Agreement including its amendments. The Consultant acknowledges that if requested by the Authority, the Consultant must provide the certifications that validate the above. The Consultant's failure to comply with this obligation shall be sufficient cause for the Authority to render this Agreement null and void and to require that the Consultant reimburse to the Authority all moneys received under this Agreement.

Section 7.7. Withholdings. The Consultant is an independent contractor and, as such, shall be responsible for the payment of all of its income taxes, its subcontractors, and its individual and employers' withholdings under the applicable tax laws of Puerto Rico or the U.S. Internal Revenue Code. No withholdings or deductions shall be made from payments to the Consultant for services rendered by Consultant, except for those applicable by law and those applicable under the Puerto Rico Internal Revenue Code of 2011 and its regulations, as amended if any. In particular, when invoicing, the Consultant will allocate fees between those relating to activities undertaken by the Consultant outside Puerto Rico and constituting gross income from sources without Puerto Rico, and those relating to activities undertaken within Puerto Rico and constituting gross income from sources within Puerto Rico. If the entity is not registered in Puerto Rico, therefore a Puerto Rico non-resident the Authority shall deduct and withhold twenty-nine percent (29%) of the gross amounts paid on those invoiced amounts which constitute gross income from sources within Puerto Rico, in accordance with Section 1062.11 of the Puerto Rico Internal Revenue Code. 13 L.P.R.A. Sec. 30281. No withholdings or deductions shall be made from payments for services constituting gross income from services without Puerto Rico. The Authority shall forward to the Secretary of the Treasury of Puerto Rico any applicable withholdings or deductions made to a Consultant. Withholdings requirements will be adjusted pursuant to any amendments to the Puerto Rico Internal Revenue Code and its regulations.

Consultant represents and warrants that it has and shall continue to pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

Section 7.8. Registration at the Office of the Comptroller. The Consultant will not


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receive any payment for the services rendered under the terms of this Agreement until the Agreement has been registered at the Office of the Comptroller of Puerto Rico, as required by Act No. 18 of October 30, 1975, as amended.

Section 7.9. Dispensation. The Consultant certifies it is not required to obtain a dispensation or waiver in compliance with the applicable laws and regulations of the Government of Puerto Rico prior to or in connection with the execution of this Agreement. The Parties agree that the proven illegality of any of the provisions of this Agreement shall not invalidate it as a whole.

ARTICLE VIII GOVERNING LAW; DISPUTE RESOLUTION

Section 8.1. Governing Law. This Agreement and any dispute relating to the services hereunder shall be governed, construed, interpreted and enforced in accordance with the laws of the Government of Puerto Rico.

Section 8.2. Dispute Resolution. The Parties agree that any dispute, claim or controversy directly or indirectly relating to or arising out of this Agreement, the termination or validity of this Agreement, any alleged breach of this Agreement, the engagement contemplated by this Agreement or the determination of the scope of applicability of this Agreement shall be brought only in the Courts of First Instance of the Commonwealth of Puerto Rico or in the United States District Court for the District of Puerto Rico. The Authority and the Consultant also agree that service of process may be effected through next-day delivery using a nationally-recognized overnight courier or personally delivered to the addresses set forth or referred to in this Agreement. In any claim, all of the costs and the reasonable attorneys' fees of the prevailing party (as determined by the court in such claim) shall be borne by the party who did not prevail. The Authority and the Consultant further agree that a final, non-appealable judgment in respect of any claim brought in any such court shall be binding and may be enforced in any other court having jurisdiction over the party against whom the judgment is sought to be enforced.


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**ARTICLE IX
MISCELLANEOUS**

Section 9.1. Independent Contractor. The Authority and the Consultant agree that the Consultant's status hereunder, and the status of any agents, employees and subcontractors engaged by the Consultant, shall be that of an independent contractor only and not that of an employee or agent of the Authority. The Consultant shall not have any power or right to enter into agreements on behalf of the Authority.

Section 9.2. Assignment. This Agreement may not be assigned by either party hereto without the prior written consent of the other, to be given in the sole discretion of the party from whom such consent is being requested. Any attempted assignment of this Agreement made without such consent shall be void and of no effect, at the option of the non-assigning party.

Section 9.3. Notice. Notice required to be given in writing pursuant to any of the provisions of this Agreement shall be mailed by next-day delivery using a nationally-recognized overnight courier or hand-delivered, if to the Consultant, at PO Box 775, Dorado, PR, 00646; and if to the Authority, at the following addresses:

POSTAL ADDRESS

PO Box 42001
San Juan, PR 00940-2001

PHYSICAL ADDRESS

De Diego Avenue No. 100
Roberto Sánchez Vilella Government Center
Central Building Floor 3
Santurce, PR 00907-2345

Section 9.4. Patriot Act. The Consultant hereby notifies the Authority that pursuant to the requirements of the USA PATRIOT Improvement and Reauthorization Act. Pub. L. N 109-177 (Mar. 9, 2006) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Authority in a manner that satisfies the requirements of the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act.

Section 9.5. No Third Party Rights. It is understood that this Agreement is the sole agreement between the parties with regard to the services covered hereby and supersedes any prior agreements, written or verbal. The Agreement may not be changed orally, but may be amended in writing by mutual agreement of the parties. This Agreement is solely for the benefit of the Authority, the Consultant and, to the extent expressly set forth herein, the Indemnified Persons and no other party shall be a third party beneficiary to, or otherwise acquire or have any rights under or by virtue of, this Agreement.



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Section 9.6. Drafting Responsibility. This Agreement has been reviewed by each of the signatories hereto and counsel. There shall be no construction of any provision against either Party because this Agreement was drafted by either Party, and the Parties waive any statute or rule of law to such effect.

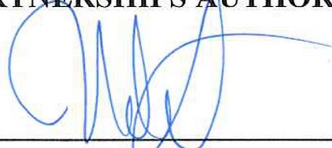
Section 9.7. Severability. If any provision hereof shall be held by a court of competent jurisdiction to be invalid, void or unenforceable in any respect, or against public policy; such determination shall not affect such provision in any other respect nor any other provision hereof.

Section 9.8. Counterparts. This Agreement may be executed in facsimile or other electronic counterparts, each of which will be deemed to be an original and all of which together will be deemed to be one and the same document.

These terms constitute the entire agreement between the Parties with respect to this engagement; supersede all other oral and written representations, understandings, or agreements relating to this engagement; and may not be amended except by a written agreement signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the aforementioned date.

**PUERTO RICO PUBLIC PRIVATE
PARTNERSHIPS AUTHORITY**



Nelson Pérez Méndez
Deputy Executive Director

ECLIPSE MANAGEMENT LLC.



Cristian Llacer
President
SSN: 660.78.1899


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APPENDIX A

[See attached Proposal]



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FECHA: 05.19.21

PROYECTO: P3 Contract Monitoring Office

Monitorización de contratos P3 para el FY 21-22

CLIENTE: Puerto Rico Public-Private Partnership Authority

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Control de Versiones

Date	Autor	Descripción	Revisado
07.19.21	Eclipse	Scope FY21-22	C. Llacer

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1. INTRODUCCION

La "Puerto Rico Public-Private Partnership Authority" (P3 Authority de ahora en adelante) es la entidad a cargo de la monitorización de varios contratos de alianzas público-privadas. Entre ellos, se encuentra el contrato de LUMA, el cual está próximo a entrar en fase de Operación y Mantenimiento.

A lo largo del FY20-21, Eclipse Management ha monitorizado el avance de LUMA durante la etapa de transición, con especial foco en la facturación de servicios y gastos de LUMA.

En las próximas paginas presentamos nuestro enfoque, metodología y equipo propuesto, para darle continuidad a la monitorización de la facturación de LUMA, en esta etapa crucial de entrada en Operación y Mantenimiento.

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	VERSION	Fecha
	1.0	05.19.21

2. ENFOQUE

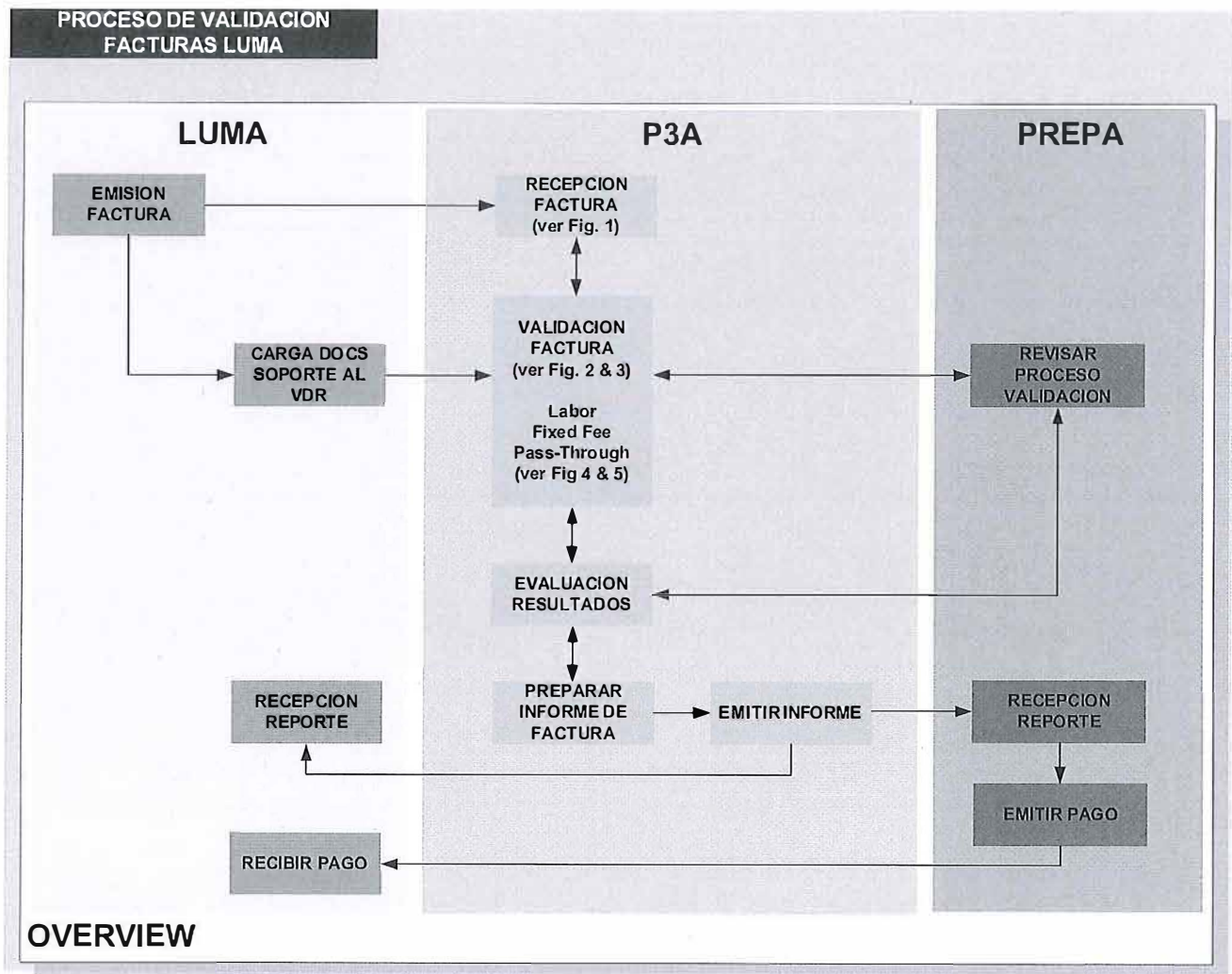
Basándonos en el trabajo llevado a cabo en el FY20-21, proponemos darle continuidad al servicio de monitorización del contrato de LUMA en las siguientes áreas:

- **Virtual Data Room (VDR):** mantener operacional el Virtual Data Room de manera que LUMA continúe compartiendo todos los documentos, facturas, contratos y evidencias asociadas a sus facturas de manera confidencial.
- **Certificados y documentos oficiales:** hacer la revisión de todos los certificados y permisos de LUMA, para garantizar el cumplimiento con las condiciones del OMA, así como los requisitos de PREPA para liberar los pagos de las facturas
- **Fixed Fee:** validar la cantidad mensual facturada por LUMA asociada a este concepto y que este en cumplimiento con el OMA;
- **Labor:** validación de las horas mensuales cargadas por cada uno de los empleados de LUMA, así como los perfiles y la tarifa asociada según descrito en el OMA. Eclipse también monitorizara el "overtime" mensual de cada empleado.
- **Pass-Through Costs & Expenses:** revisión de cada uno de los gastos sometidos para reembolso y validación de las facturas, conceptos, cantidades máximas, en línea con:
 - Federal Guides (máximo permitido diario);
 - Contratos firmados;
 - Conceptos refacturables;
- **Proveedores y Subcontratistas:** revisar los contratos de LUMA con cada uno de sus proveedores, así como la facturación asociada a ellos, de forma tal que todos los gastos estén soportados por los subcontratos, así como el OMA.

Eclipse Management prepara un reporte mensual con todos los detalles asociados a cada una de las tareas descritas anteriormente, con el detalle de todas las partidas aprobadas, así como todas aquellas partidas rechazadas. Es importante destacar que todas aquellas facturas y servicios que no estén soportados y/o documentados, serán rechazados para desembolso por parte de Eclipse.

3. METODOLOGIA

La metodología propuesta para llevar a cabo el proyecto está contenida en el siguiente gráfico:



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	<i>VERSION</i> 1.0	<i>Fecha</i> 05.19.21

4. CALENDARIO

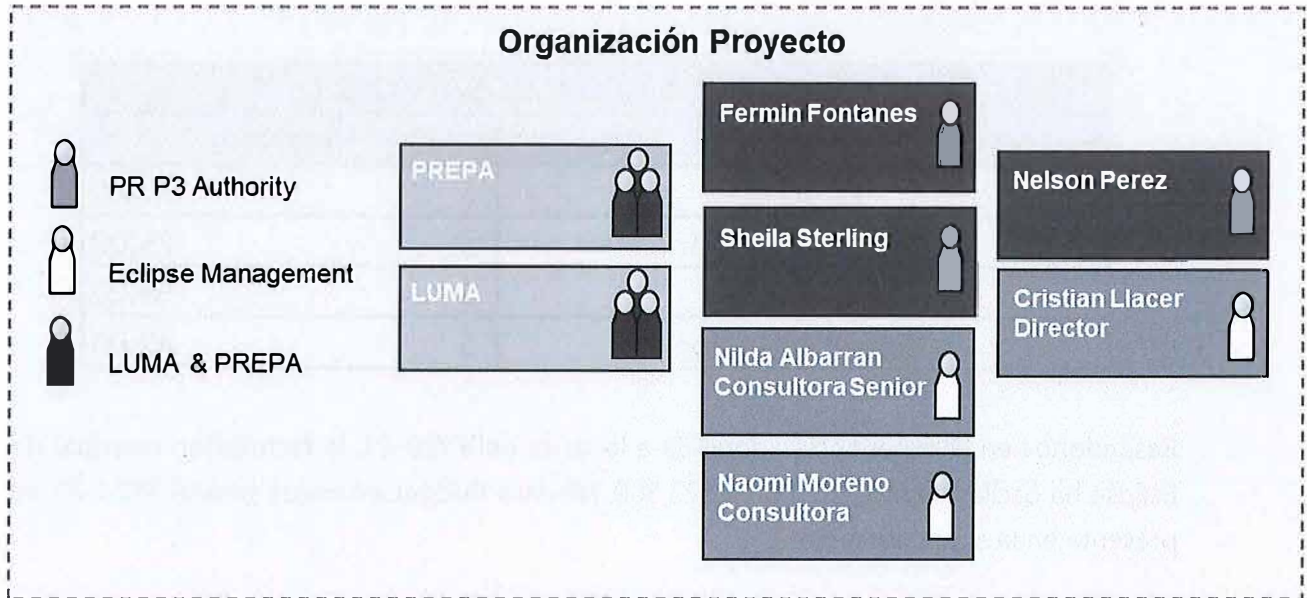
El equipo de Eclipse Management estará disponible efectivo el 1er de Julio del 2021 hasta el 30 de Junio del 2022, para atender cualquiera de las necesidades relacionadas a la facturación del contrato de LUMA.

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Propuesta para la Monitorización de Contratos P3	PROYECTO Monitorización de Contratos P3	Página 8 / 10
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6 EQUIPO DE TRABAJO

El equipo y estructura de trabajo propuesto para este proyecto lo detallamos a continuación. Es importante destacar que el mismo equipo de trabajo actual, continuara asignado al proyecto a lo largo del FY21-22 para garantizar la continuidad del servicio:



Debido a la naturaleza del proyecto, el equipo de Eclipse Management continuara con las reuniones semanales y mensuales con el equipo de LUMA, con el objetivo de mantener el control y poder clarificar dudas relacionadas con la facturación de LUMA.

Propuesta para la Monitorización de Contratos P3	PROYECTO Monitorización de Contratos P3	Página 9 / 10
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7 TARIFAS PROFESIONALES

Las tarifas profesionales de Eclipse Management se calculan en función del perfil, tipo de proyecto, duración, calificaciones y experiencia del equipo asignado al proyecto. En este caso, y debido al interés en establecer una relación con la P3 Authority, Eclipse Management ha decidido mantener el ajuste del 10% en sus tarifas para el año 21-22.

ECLIPSE MANAGEMENT SERVICES	
PROFILE	New Rate
Director	\$ 97.00
Consultor Senior	\$ 75.00
Consultor	\$ 55.00
Consultor Junior	\$ 42.00

Basándonos en la experiencia adquirida a lo largo del FY20-21, la facturación mensual de Eclipse ha oscilado entre \$18,000 a \$23,500. Nuestro Budget estimado para el FY21-22, se presenta en la siguiente tabla

ECLIPSE MANAGEMENT SERVICES		
PROJECT	AVERAGE MONTHLY FEE	GLOBAL BUDGET
JULIO 2021 - JUNE 2022	\$ 20,500.00	\$ 246,000.00

Eclipse Management facturara el último día de cada mes y el desembolso se establece en 30 días.

Propuesta para la Monitorización de Contratos P3	PROYECTO Monitorización de Contratos P3	Página 10 / 10
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8 REFERENCIAS ECLIPSE MANAGEMENT

A continuación, presentamos algunas de las referencias y clientes más destacados de Eclipse Management, siendo varios de ellos P3:



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Appendix B Billing Guidelines for Consultants

The Puerto Rico Public Private Partnerships Authority ("P3 Authority") may engage the services of consulting firms or independent consultants (collectively and hereinafter "Consultant") to provide certain consulting services for managing its affairs (the "Consulting Services").

The Consultant shall be committed to providing Consulting Services with the highest quality standards and in the most reasonable, prompt, efficient and cost-effective manner. Therefore, the P3 Authority expects Consultant to stress integrity and to uphold the highest standards of professionalism and ethical conduct in ensuring timely, responsive, and cost-effective consulting services by complying with these billing guidelines (the "Guidelines").

The Guidelines set forth the P3 Authority's expectations relative to the Consulting Services being provided and the nature of the working relationship with Consultant. Through the Guidelines, the P3 Authority hereby provides Consultant with an understanding of what consulting fees and expenses the P3 Authority will pay and reimburse. Furthermore, these Guidelines shall constitute a written agreement by the parties for any matter to which the Consultant is engaged on behalf of the P3 Authority. These Guidelines shall govern the billing terms of the professional relationship between the P3 Authority and Consultant.

The P3 Authority considers Consultant's invoices for services rendered (the "Invoices") as a certification by Consultant that the billing for services, as reflected on the Invoices, is reasonable for the matters involved, and necessary for the proper rendering of the Consulting Services relative thereto.

The P3 Authority expects Consultant to strictly adhere to the Guidelines and to charge for actual consulting services rendered, at the rates established and agreed in advance by the parties, and to refrain from billing non-billable work or expenses. Compliance with the Guidelines will avoid delays in processing Invoices or the possible nonpayment of the services provided. The P3 Authority expects Consultant to become familiar with the Guidelines and if there are any questions relative thereto then Consultant should contact P3 Authority's Legal Department.

The following rules shall govern Consultant's billing for the Consulting Services and its presentation of the Invoices:

A. Billing Rates and Fee Arrangements

- i. The P3 Authority expects to be charged reasonable fees for the Consulting Services, pursuant to the applicable code of professional conduct. A reasonable fee is considered to be the product of: a) the amount of time reasonably necessary to devote to the matter by appropriately qualified consulting professionals, and b) the customary or previously agreed to billing rates (the "Billing Rates") of those professionals involved in the rendering of the Consulting Services. Furthermore, the P3 Authority expects Consultant to use prudence and reasonableness in rendering the Consulting Services, refraining from providing more consulting services than are actually needed to complete the same.



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- ii. Under no circumstance will the P3 Authority pay for Consultant's overhead expenses, as they are generally categorized in accordance to applicable accounting principles.
- iii. Consulting Services will be billed in increments of **[6 minutes or 1/10 of an hour]**.
- iv. Unless otherwise agreed upon in advance, all hourly billing rates shall be solely on the basis of the Billing Rates. Absent a specific agreement for an alternative fee arrangement for a specific consulting service, Consultant's fees shall be computed by applying the Billing Rates to the reasonable time actually incurred in rendering the Consulting Services.
- v. The level of expertise of the consultant assigned to a matter referred by the P3 Authority shall be appropriate to the complexity of the issue therein. Therefore, partners, principals or directors of the consulting firm shall not bill for tasks that can be performed by a less senior consultant at a lower cost. Furthermore, the P3 Authority requires Consultant to assign less demanding tasks to less senior consultants in order to minimize consulting expenses. Additionally, for matters of similar nature occasionally referred to Consultant, the P3 Authority expects Consultant to assign a consultant with prior experience with such matter. Consultant shall ensure that the work performed by the assigned consultant(s) is reasonable, useful, and done efficiently.

B. Referrals and Budgets

- i. If applicable, in the event that Consultant anticipates incurring in significant time or expenses in excess of the normal amount within a particular month, Consultant shall contact the P3 Authority to notify of the anticipated excess amount of billable hours or expenses during that month and shall include a reasonably detailed explanation of the reasons for such additional costs.

C. Staffing Matters

- i. The P3 Authority will not pay for or authorize:
 - a) Administrative charges such as:
 - i. Scheduling or review of personnel;
 - ii. Preparation and review of billing statements;
 - iii. Preparation of budgets of time plan, staffing of total costs of projected consulting work;



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- iv. Preparation of Audit Letters to our external auditors;
 - v. Preparation of any other status report; or negotiation, review, and/or drafting of retention or engagement agreement between the P3 Authority and the Consultant.
-
- b) Grazing: The P3 Authority will not pay for billed time for getting up to date with any consulting matter. This includes time spent by newly assigned consultants to familiarize themselves with a matter.
 - c) Block billing: All tasks must be billed separately.
 - d) Vague, confusing or otherwise undetailed time entries.
 - e) Time associated with research on general client or industry trends, and time expended on "canned" research, such as research of a generic nature or for a prior matter or issue.
 - f) Intra-office conferences that deal with substantive issues are reimbursable when a thorough description of the purpose is provided. No more than two consultants shall bill for an intra-office conference.
 - g) Overstaffing: A minimum number of consultants should be assigned to each matter. Overstaffing includes:
 - i. More than one consultant billing for reading or reviewing internal written communication (including email); or
 - ii. Inclusion of more than one consultant at meetings or hearings for the purpose of consultant development.

Consultant should explain why the circumstances warrant an exception from this general rule. The P3 Authority reserves the right of not paying the hours billed by any additional consultant if P3 Authority's prior written approval was not obtained by Consultant.

- h) The review, execution and processing of agreements with the P3 Authority.
- i) Any time spent at seminars or other training, unless otherwise specifically approved in writing.
- j) Summer intern, temporary or contract consultant, or other intern time unless it has previously been identified as part of the approved staffing in the Billing Rates approved by the P3 Authority.



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- ii. If a previously drafted or standard form is available, the P3 Authority will pay only for the amount of time necessary to modify the document for use in the specific consulting matter and not the time originally incurred to draft the standard document.
- iii. Subject to the provisions of subsection (i) of this Section C, the P3 Authority will not pay for administrative work performed by consultants, such as managing or supervising other consultants, nor will pay for in-firm meetings, conferences, and consultations.
- iv. The P3 Authority shall not pay for duplication of time caused by:
 - a. Transfer of a consulting matter to a new consultant for internal reasons;
 - b. Double teaming; or
 - c. One consultant redoing the work of another.
- v. It is recommended, but not required, that prior to any meeting or conference call, Consultant shall provide the P3 Authority team members with an agenda for said meeting or conference call detailing the matters to be discussed, as well as a guideline for suggested next steps after any such meeting or conference call.

D. Billing and Invoicing

- i. Each task or activity shall be separately itemized on the Invoices, including a break-down thereof that at a minimum shall include:
 - a. A chronological listing of all services;
 - b. A description of the service being billed. The description shall include (i) the type of work being performed and (ii) the subject matter;
 - c. The name of each consultant or consulting professional whose work is being billed;
 - d. The date of the service;
 - f. The amount of time spent by each person on each item in the interval increments defined herein; and
 - g. The Billing Rate at which the service is being billed.
- ii. Entries for telephone conversations, conferences and meetings must specifically describe all parties involved and the subject matter or purpose of the task.
- iii. The P3 Authority will not pay for billed services whose descriptions lack specificity.
- iv. The Invoices shall include a summary thereof, including:
 - a. Name and initials of each time keeper;


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- b. Staff classification including for each category of consulting personnel (Partner, Junior Partner, Manager, Senior Consultant, Consultant, Principal, Director, Associate, Intern, etc.);
 - c. Hourly billing rate of each time keeper; and
 - d. Total time and fees billed for each time keeper by subject matter.
- v. The Invoices shall also include an overall summary by staff classification, including for each category of consulting personnel (Partner, Junior Partner, Manager, Senior Consultant, Consultant, Principal, Director, Associate, Intern, etc.), the number of individuals in each category, the total number of hours by each category, and the total fees by category.
 - vi. The Invoices shall be divided individually by project or matter (e.g. Flexible Distributed Generation Units Project; San Juan Bay Cruise Terminals Project; Court cases; etcetera). Invoices shall also include a billing history or summary of all fees and expenses incurred in a particular matter up to the invoicing date along with a comparison to the total budgeted or contracted amounts.
 - vii. The P3 Authority reserves the absolute right to make any changes, at its sole discretion, to the fees included in the Invoices if it reasonably believes that the amount of time devoted to the matter by the consulting professional or the timekeeper should be reduced.
 - viii. In addition, Consultant shall provide the Certificate of Waiver from Withholding (total or partial) from the Puerto Rico Department of Treasury to the P3 Authority, if applicable.
 - ix. Any Invoices without the required information included or attached will not be processed for payment and will be returned to Consultant for the corresponding corrections or modifications.
 - x. The Consultant's in charge of the P3 Authority account (the "Account Partner") shall review the Invoices prior to submitting them to the P3 Authority and should be able to explain all of its time charges if so requested.
 - xi. Furthermore, the Account Partner shall certify the accuracy and reasonableness of the Invoices and their compliance to the Guidelines and all applicable ethical rules. The P3 Authority reserves the right to withhold or deny approval of the Invoices in the event the Guidelines are not complied with.

E. Expense Reimbursement

- i. The P3 Authority will not pay and will not separately reimburse Consultant for overhead costs. Expenses that are considered Consultant's overhead are part of the professional's hourly rate and are not reimbursable. The term overhead includes, but is not limited to all administrative or general costs incidental to the operation of the Consultant including without limitation office rent, conference rooms, equipment, computer software, office supplies, transportation, telephone and mobile charges, books, meals, routine postage, the



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services of librarians, file clerks, data entry clerks, photocopy operators, secretaries, overtime or utilities, word processors, messengers, other support personnel, or any other overhead expense as recognized by applicable accounting standards.

- ii. Non reimbursable tasks include binding, scanning, indexing, collating, coding, filing, transmitting and preparing letters, mailing, faxing, emailing, word processing, proofreading, scheduling, events, deliveries, data entry, conference call charges, invoicing, billing, staffing, or other similar clerical or ministerial functions.
- iii. The Invoices may also include additional consulting expenses to be charged by Consultant as previously authorized by the P3 Authority, with a total for those consulting expenses charged at a reasonable market price. Each such additional expense item shall be:
 - a. Separately itemized;
 - b. Show the date the expense was incurred;
 - c. Include a descriptive explanation of the charge;
 - d. Indicate the amount of the charge; and
 - e. Indicate the timekeeper who incurred the charge.
- iv. Disbursements for pre-approved reimbursable expenses will be compensated at actual cost with the appropriate documentation to substantiate the expenses such as actual vendor receipts, which shall be included in the Invoices as an attachment. Actual cost is defined as the amount paid to a third-party service provider, net of any discounts ("Actual Cost").
- v. All expenses will be reimbursed at Actual Cost and Consultant shall not upcharge any of the expenses incurred in providing services to the P3 Authority. The P3 Authority will not pay for normal transportation costs incurred in travel to and from the office, for overtime transportation, or for valet services. Car services during travel are limited to taxicab or transportation network companies' fares, and Consultant shall provide appropriate documentation to substantiate the expenses such as actual receipts, which shall be included in the Invoices as an attachment.
- vi. The P3 Authority will reimburse Consultant for reasonable and necessary delivery charges and messenger services at Actual Cost. However, charges for time spent preparing mail packages are considered as part of the Consultant's overhead and are not reimbursable. Disbursements for messenger services expenses will be compensated with the appropriate documentation to substantiate the expenses such as actual receipts, which shall be included in the Invoices as an attachment. Third party courier and express delivery services should be used cautiously.
- vii. Photocopying will be reimbursed at the Actual Cost to Consultant and which under no circumstances shall exceed ten (10) cents per page. Documentation for photocopying expenses shall include evidence of the amount of copies executed with the date.
- viii. Reimbursements of expenses made by Consultant during travel to Puerto Rico are limited to:



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- a. Fifty-eight (58) dollars per day for food, for which Consultant need not provide a receipt; and
 - b. One hundred and ninety-five (195) dollars per night, for hotel for which Consultant must provide appropriate documentation subject to agreement by the P3 Authority.
- ix. Reimbursements of expenses made by Consultant during travel outside of Puerto Rico are subject to the regulations published by the U.S. General Service Administration and the Defense Travel Management Office of the Department of Defense.
- x. Expenses for airfare travel will be reimbursed with the appropriate documentation to substantiate the expense, such as receipt of the air fare where the trip detail is presented. The P3 Authority will only reimburse for economy class airfare travel. The P3 Authority will not pay for any costs incurred in for “extra leg room” space. Any reimbursement for cancelled air travel must be pre-approved by the P3 Authority.
- xi. The P3 Authority expects Consultant to immediately provide any back up documentation for a particular disbursement charge if it so requires. The P3 Authority will not pay for unsupported charges.
- xii. The P3 Authority will only reimburse for expenses made within the time frame of the contract between the P3 Authority and Consultant.

F. Third Party Subcontracting

- i. If Consultant deems it necessary to use any other consulting firm, consultant, or other third party providers (the “Third Party”) in providing a service in a matter it is handling for the P3 Authority, then such request shall be made to the P3 Authority A prior to the retention or hiring thereof and shall obtain written consent from the P3 Authority to proceed with the subcontracting.
- ii. Unless a different billing arrangement is authorized by the P3 Authority, Consultant shall directly pay the Third Party for work performed in connection with services rendered on behalf of the P3 Authority.
- iii. Payments to the Third Party should be included as a disbursement on Consultant’s next subsequent invoice to the P3 Authority and said invoice shall be accompanied by the Third Party’s corresponding billing detail which shall also be in full compliance with the Guidelines.
- iv. Consultant shall not upcharge or surcharge any of the Third Party’s billings or expenses incurred in providing services to the P3 Authority. The P3 Authority will only reimburse the Actual Cost of pre-approved Third Party’s services.



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- v. All Third Party invoices paid by Consultant shall be included in the Invoices as an attachment and as an itemized expense must, absent specific prior approval to the contrary, also comply with the Guidelines.

CONSULTANT ACKNOWLEDGMENT

The Consultant through its Account Partner, or representative noted herein, acknowledges the receipt and review of the P3 Authority 's Billing Guidelines for Consultants.

Kindly indicate your acceptance and agreement to adhere to the above guidelines by signing a copy thereof and returning the same to the P3 Authority.


By signing this acknowledgment, you further certify that you will only remit invoices to the P3 Authority that fully comply with all terms and conditions contained in the Guidelines.

This document may be signed in counterparts and a copy of the execution signature shall be as effective as an original. Furthermore, all fully executed copies shall be considered duplicate originals.

So acknowledged and accepted by:

Cristian Llacer

Cristian Llacer Palanca
June 28th, 2021


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APPENDIX C

Contractor Certification Requirement

The following certification shall be provided to the Oversight Board and the Commonwealth's Contracting Government Entity by the Chief Executive Officer (or equivalent highest rank officer) of each proposed contractor under contracts submitted for review:

1. The expected contractor's subcontractor(s) in connection with the proposed contract¹ is (are) the following:

NOT APPLICABLE

2. Neither the contractor nor any of its owners², partners, directors, officials or employees, has agreed to share or give a percentage of the contractor's compensation under the contract to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract, except as follows:

NOT APPLICABLE

3. To the best knowledge of the signatory (after due investigation), no person has unduly intervened in the procurement, negotiation or execution of the contract, for its own benefit or that of a third person, in contravention of applicable law.
4. To the best knowledge of the signatory (after due investigation), no person has: (i) offered, paid, or promised to pay money to; (ii) offered, given, or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such person in connection with the contract (such as the execution of a subcontract with contractor, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
5. Neither the contractor, nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of applicable law.
6. Any incorrect, incomplete or false statement made by the contractor's representative as part of this certification shall cause the nullity of the proposed contract and the contractor must

¹ As used herein, the term "contract" is inclusive of any amendments, modifications or extensions.

² For purposes of this certification, a contractor's "owner" shall mean any person or entity with more than a ten percent (10%) ownership interest in the contractor.



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reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the proposed contract.

The above certifications shall be signed under penalty of perjury by the Chief Executive Officer (or equivalent highest rank officer) in the following form:

“I hereby certify under penalty of perjury that the foregoing is complete, true and correct.”

By: Cristian Llacer Palanca

Date: 06.28.21

Signature: Cristian Llacer



Copy

PROFESSIONAL SERVICES AGREEMENT

by and between

THE PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY

and

SCOTTMADDEN, INC.

Dated as of June 30, 2021


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4/29/21

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") for professional services is made and entered into as of this ____ day of June, 2021, by and between **THE PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY**, a public corporation of the Government of Puerto Rico, established and authorized to enter into this Agreement by Act No. 29-2009, as amended, and represented herein by its Deputy Executive Director, Nelson Pérez Méndez, of legal age, attorney, married, and resident of _____ (the "Authority") and **SCOTTMADDEN, INC.**, a corporation incorporated under the laws of the state of North Carolina with principal offices in North Carolina, United States, represented herein by its Partner, Logan Toms, of legal age, married, Director of Finance, and resident of _____ (the "Consultant"), authorized to execute this Agreement on behalf of the Consultant pursuant to a Certificate of Resolution dated January 1, 2021, and together with the Authority, the "Parties".

RECITALS

WHEREAS, the Authority, by virtue of the powers conferred to it under the Public-Private Partnerships Act, Act No. 29 of June 8, 2009, as amended ("Act 29"), is authorized to engage professional, technical and consulting services that are necessary and convenient to the activities, projects, and operations of the Authority.

WHEREAS, on June 10, 2021, the Consultant submitted to the Authority a proposal for general management advisory services in connection with the establishment of the Management and Control Division structure of the Authority, (the "Proposal") attached hereto as **Appendix A** and made part of this Agreement. If any part of the Proposal is found to be inconsistent with the terms and conditions set forth herein, the terms and conditions set forth herein shall take precedence over the Proposal and govern the matter in question.

WHEREAS, after considering the Proposal, the Authority wishes to engage the Consultant to act as advisor to the Authority and the Government of Puerto Rico to provide general management advisory services in relation to the aforementioned matters.

WHEREAS, the Authority is authorized to enter into this Agreement pursuant to Resolution 2021-36 of the Board of Directors of the Authority.

WHEREAS, the Consultant is willing to provide such services.

NOW, THEREFORE, the Authority and the Consultant agree to enter into this Agreement under the following:



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6/29/21

TERMS AND CONDITIONS

ARTICLE I PURPOSE OF AGREEMENT; TERM

Section 1.1 Purpose of Agreement. The Authority engages the Consultant to provide general management advisory services in relation to the launch and establishment of the Authority's Management and Control Division, and other general advisory matters, as detailed in the Proposal. In the event that the Authority desires to engage the Consultant to advise the Authority in any other matter that is not within the scope of the Proposal, the Parties shall negotiate in good faith a separate agreement or an amendment hereto with respect to such mandate.

Section 1.2. Term. This Agreement shall be in effect from July 1, 2021, until June 30, 2022 (the "Expiration Date"), provided that the Expiration Date may be extended by amendment executed in writing by both Parties.

ARTICLE II SCOPE OF SERVICES; ADVICE AND RECOMMENDATIONS; SUBCONTRACTING


Section 2.1 Scope of Services. Subject to the terms and conditions of this Agreement, the Consultant's services shall be consistent with the provision of the deliverables, tasks and services described in the Proposal and such other tasks delegated to it by the Authority and within the capabilities of the Consultant.

Section 2.2. Advice and Recommendations. The services to be provided under this Agreement may include advice and recommendations for the benefit of the Authority and/or the Government of Puerto Rico, but the Consultant will not make any decisions on behalf of the Authority or the Government of Puerto Rico in connection with the implementation of such advice and recommendations.

Section 2.3 Subcontracting. The Consultant shall not subcontract the services under this Agreement, or contract third party experts or other persons to render the services under this Agreement without prior written authorization from the Authority. A request to hire another service consultant shall specify the matters in which the subcontracted consultant would take part.

ARTICLE III COMPENSATION; INVOICES; OUT OF POCKET EXPENSES

Section 3.1 Professional Fees. The Authority shall compensate the Consultant for the actual time incurred in delivering the services and completing the tasks, assignments and deliverables set forth in **Appendix A**, at the applicable hourly rates listed in the Fee Schedule provided in **Appendix A** of this Agreement. Should the Consultant assign an additional team member not included in Appendix A to attend the Authority's matters, the Consultant shall promptly send the Authority an amended schedule to include such person's name, position and hourly rate, and request written approval from the Authority for such amended schedule.


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The total amount to be paid by the Authority in relation to the services rendered under this Agreement shall not exceed THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00), including reimbursable expenses, unless otherwise agreed to by the Parties. The Consultant will submit monthly invoices to the Authority within thirty (30) days of performing the services being provided, which shall include a detailed description of the services rendered by the Consultant, complying with the Authority's billing guidelines attached hereto as **Appendix B** of this Agreement. Each invoice shall be itemized with entries for fractions of an hour based on tenths of an hour (.10) and must be duly certified by an authorized representative of the Consultant. The Authority will not honor invoices submitted after one hundred twenty (120) days of services having been rendered. The Consultant accepts and agrees to this requirement, and understands that if it does not comply accordingly, it waives its right to payment for rendered services covered by such invoices. The Authority reserves the right to review the invoices and if they are in compliance with the requirements set forth in this Agreement, it will proceed with payment.

The Consultant agrees to notify the Authority within five (5) working days after having reached 75% of the maximum amount to be paid under this Agreement. The written notification shall include a detailed report of projected services for the duration of the Agreement that entail a possible increase to the limit established and a request addressed to the Executive Director to increase said amount. The Consultant hereby agrees to comply with these responsibilities with respect to the notification requirements and the report to be submitted. Furthermore, the Consultant understands and accepts that it may not exceed the amount established in the Agreement unless, and until the Agreement is amended accordingly and the increase is authorized by the Authority. If the Consultant does not comply with these requirements, it waives its rights to payment for services rendered, even after they have been provided. The Authority acknowledges and understands that to the extent services are required of the Consultant beyond the "not-to-exceed" fee cap above, the Consultant cannot provide those additional services until the Authority agrees to pay additional compensation and expenses, and the Agreement is amended in writing accordingly.

The Consultant acknowledges and agrees that retroactive contracting is contrary to government contracting requirements and that the Authority will not issue retroactive payments. The Consultant acknowledges and agrees that Services rendered before the date of execution or before the effective date of the Agreement, as applicable, will not be paid by the Authority.

Each invoice must include a written certification stating that no officer or employee of the Authority will derive or obtain any benefit or profit of any kind from this Agreement, with the acknowledgment that invoices which do not include this certification will not be paid. This certification must read as follows:

"We certify under penalty of nullity that no public servant of the Puerto Rico Public-Private Partnerships Authority will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the delivery of goods or for services


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4/29/21

provided is the agreed-upon price that has been negotiated with an authorized representative of the Puerto Rico Public-Private Partnerships Authority. The total amount shown on this invoice is true and correct. The services have been rendered, and no payment has been received in respect thereof.”

All invoices shall be in portable document format (PDF), signed and transmitted by electronic mail transmission to the following electronic mail address: InvoiceP3@p3.pr.gov.

The Consultant agrees to submit checking account transfer data to the Authority in order to facilitate future payments by means of electronic transfers.

The Consultant further acknowledges and agrees that the Authority has the right to recover any erroneous payment, including but not limited to, any overpayment, duplicate payment and/or any other payment not authorized by law, regulation, and/or this Agreement. The Consultant agrees to promptly return any erroneous payment to the Authority upon receipt of a written notice. In addition, if the Consultant becomes aware of an erroneous payment made by the Authority, the Consultant shall immediately notify the Authority’s management and request instructions to proceed accordingly. The Consultant acknowledges and agrees that the Authority reserves the right to make the necessary adjustments in any remaining payments to the Consultant until any erroneous amount paid is recovered.


The Authority certifies that the funds for the payment of Services rendered under this Agreement come from budgetary allocations. All disbursements for such payments shall be made from account 0105029760.

Section 3.2 Travel and Out of Pocket Expenses

(a) The Authority will reimburse the Consultant on a monthly basis for out-of-pocket expenses directly related to the services rendered under this Agreement, including, but not limited to, travel and lodging, filing fees, taxi fares, delivery expenses, and services such as overnight mail, courier and messenger charges.

(b) Any expense for which a reimbursement is requested shall be reasonable and necessary, and any expenses exceeding TWO THOUSAND DOLLARS (\$2,000) individually shall be authorized in writing and in advance by the Authority. The Authority will not reimburse expenses which do not comply with this provision. Under no circumstances will expenses for alcoholic beverages be reimbursed.

(c) Any petition for reimbursement of expenses must be accompanied by the corresponding invoice or receipt and shall specify the relation of the expense to the services rendered. All reimbursements shall be for actual expenses incurred and shall be billed at cost.


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4/29/21

ARTICLE IV
INFORMATION; CONFIDENTIALITY


Section 4.1. Information Provided by the Consultant. No information or advice provided or materials prepared by the Consultant as a result of its activities hereunder may be disclosed, in whole or in part, or summarized, excerpted from or otherwise referred to a third party outside of the Executive Branch (other than, on a confidential, non-reliance, need to know basis, to the Authority's employees, advisors, counsel and other representatives) without the Consultant's prior written consent, which shall be conditioned on the execution of a release letter in the form provided by Consultant unless compelled by law or court order. In addition, the Authority agrees that any reference to the Consultant in any press release or communication is subject to the Consultant's prior written approval, which may be given or withheld in its reasonable discretion, for each such reference. The Authority shall retain the right to use, refer, share, or provide to any third party, as the Authority may determine, the results of any: analyses, investigation summaries; and, written reports resulting from the Services performed by the Consultant that were specifically designated as a final deliverable that were provided to the Authority under this Agreement.

Section 4.2. Confidential Information.

(a) The Consultant acknowledges the proprietary and confidential nature of all internal, non-public, information systems, financial, and business information relating to the Authority, as well as to the Government of Puerto Rico, its agencies, corporations or municipalities, now or hereafter provided to the Consultant (the "Confidential Information").

(b) The Consultant and its Representatives (as defined below) shall keep in confidence in accordance with the terms of this Agreement all such Confidential Information and shall not, except as otherwise set forth herein, make public or disclose any of said information without the previous written consent of the Authority. The Consultant and its Representatives may use the Confidential Information in connection with providing the services contemplated by this Agreement. The term Confidential Information shall not include information which (i) is previously known to the Consultant and/or its Representatives, (ii) is available to the public prior to the time of disclosure hereunder, (iii) subsequent to the time of disclosure hereunder, becomes available to the public other than as a result of a breach of this Agreement by the Consultant, (iv) subsequent to the time of disclosure hereunder becomes available to the Consultant or its Representatives by a third party who, to the knowledge of the Consultant, is under no obligation to keep the information confidential, (v) is independently developed by the Consultant without reference to the Confidential Information or (vi) is approved for disclosure or release by the Authority.

(c) Notwithstanding the above, the Consultant and/or its Representatives, as applicable, may disclose Confidential Information to (a) its affiliates and approved subcontractors and their respective directors, officers, employees, agents, consultants, advisors and/or representatives (such individuals receiving Confidential Information hereunder, collectively, the "Representatives") who need to know such Confidential Information to fulfill the purposes of this Agreement, provided that such persons shall have been advised of the confidential nature of such materials and information and the Consultant shall direct them to treat as confidential such


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information and to return all materials to the Consultant upon request; provided, that the Consultant shall be responsible for any breach of this Agreement by its Representatives and (b) pursuant to a request or requirement by law, regulation or governmental, regulatory or self-regulatory authority or legal process (including by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to provide such Confidential Information.

(d) The Consultant will promptly, upon the written request of the Authority, deliver to the Authority, or at the Authority's election, destroy all Confidential Information; provided, however, that the Consultant and its Representatives may retain copies of Confidential Information, subject to the confidentiality terms of this Agreement, in accordance with their respective internal record retention policies for legal, compliance or regulatory purposes or to establish the rights of the Consultant and its Representatives under this Agreement.

(e) This provision shall survive the termination or expiration of this Agreement for a period of two (2) years.

ARTICLE V BREACH; TERMINATION

Section 5.1 Breach of Contract Terms. Any violation or breach of terms of this Agreement on the part of the Consultant or the Consultant's subcontractors, if any, may result in the suspension or termination of this Agreement or such other action, including the recovery of damages (such damages to be limited as per Section 6.1(a) herein) that may be necessary to enforce the rights of the Authority. The duties and obligations imposed by the Agreement 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.

Section 5.2 Termination with or Without Cause. Notwithstanding any provision to the contrary in this Agreement, the Authority shall have the right to terminate this Agreement without cause by providing the Consultant thirty (30) days' notice by registered mail, return receipt requested, or overnight express mail. Any provisions of this Agreement which expressly or by implication are intended to survive its termination or expiration will survive and continue to bind the Parties. The Authority shall also have the right to terminate this Agreement immediately, without prior notice, if the Consultant incurs in negligence, abandonment of its obligations and/or breach of the terms of the Agreement. The Consultant may terminate this Agreement if it determines any part of the services rendered hereunder would be in conflict with law or professional standards.

Section 5.3 Termination by the Office of the Governor's Chief of Staff. The Office of the Governor of Puerto Rico's Chief of Staff has the authority to terminate this Agreement at any time on behalf of the Authority.

Section 5.4 Upon any termination or expiration of this Agreement, the Authority shall promptly pay the Consultant any accrued but unpaid fees hereunder, and shall reimburse the Consultant for any unreimbursed expenses that are reimbursable hereunder.



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Section 5.5 Upon any termination or expiration of this Agreement, the rights and obligations of the Parties shall terminate, except for the rights and obligations that shall survive the termination or expiration of this Agreement.

ARTICLE VI INDEMNIFICATION; INSURANCE

Section 6.1. Indemnification and Liability.

(a) The Consultant shall defend, indemnify and hold the Authority, its officers, officials, and employees, harmless from any and all claims, injuries, damages, losses or suits including attorney fees ("Claims"), to the extent arising out of or resulting from the gross negligence or willful misconduct of the Consultant in the performance of its obligations under this Agreement (as determined by a final, non-appealable judgment by a court of competent jurisdiction). The Consultant, its subsidiaries and subcontractors, and their respective personnel shall not be liable to the Authority for any Claims relating to this engagement for an aggregate amount in excess of the fees paid by the Authority to the Consultant pursuant to this engagement, except to the extent resulting from the bad faith or intentional misconduct of the Consultant or its subcontractors. In no event shall the Consultant, its subsidiaries or subcontractors, or their respective personnel be liable to the Authority for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense relating to this engagement. The foregoing limitation of liability and disclaimer shall not apply to Claims for which a party is obligated to indemnify under this Agreement.

(b) Each Party shall indemnify, defend and hold harmless the other from and against any and all amounts payable under any judgment, verdict, court order or settlement for death or bodily injury or the damage to or loss or destruction of any real or tangible personal property, but only to the extent the foregoing arise out of the indemnitor's negligence or intentional misconduct in the performance of this Agreement. The Consultant shall indemnify, defend and hold harmless the Authority from all Claims arising from claims brought by any subcontractor of the Consultant hereunder against the Authority for payment or for other damages arising under the applicable subcontract agreement between the Consultant and such subcontractor except for those claims caused by the Authority.

(c) The Authority agrees that any indemnity provided hereunder shall be strictly excess of any available and collected insurance, including, but not limited to, the Consultant's lawyers' professional liability insurance.

Section 6.2. Insurance.

(a) The Consultant represents that as of the date of execution of this Agreement, it maintains professional liability insurance to provide for errors, omissions and negligent acts that may arise from the services rendered under this Agreement in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00).

(b) The Consultant also represents that it maintains Commercial General Liability

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insurance in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00). It shall be the Consultant's obligation to submit to the Authority the corresponding certifications from its insurance company evidencing such coverages. The certifications provided must identify the Authority as Additional Insured.

(c) With respect to the Commercial General Liability insurance policy, the certification to be provided by the Consultant must identify the Authority as Additional Insured and include the following cancellation notice:

"CANCELLATION CLAUSE: It is understood and agreed that in the event of cancellation of this policy at the request of the insurance company, thirty (30) days written notice shall be given to the above-mentioned additional insured, PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY. However, it is agreed that if cancellation is due to non-payment of premium, ten (10) days written notice will be given".


It shall be the Consultant's obligation to submit to the Authority the corresponding certifications from its insurance company evidencing the abovementioned insurance coverage. The insurance policies required herein must remain in effect during the term of this Agreement, including any amendments to extend said term.

ARTICLE VII APPLICABLE LAWS OF PUERTO RICO

Section 7.1. Interagency Service Clause. Both Parties acknowledge and agree that the contracted services may be provided to any entity of the Executive Branch with which the Authority subscribes an interagency agreement or by direct disposition of the Office of the Chief of Staff of the Governor of Puerto Rico. These services will be provided under the same terms and conditions regarding work hours and/or compensation as set forth in this Agreement. For purposes of this section, the term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as its instrumentalities, public corporations and the Governor's Office.

Section 7.2. Source of Funds. The Authority certifies that the funds for the payment related to the services rendered under this Agreement come from budgetary allocations. All disbursements for such payments shall be made from the Puerto Rico Public Partnerships Authority's account.

Section 7.3. Professional Ethics Rules. The Consultant acknowledges and accepts that, to the extent applicable, it is aware of the rules of ethics of its profession and assumes responsibility for its own actions. The Consultant also acknowledges that in executing its professional services pursuant to this Agreement it has the obligation to exhibit complete loyalty towards the Authority, including having no adverse interest to this government entity. Adverse interest includes representing clients relative to interests that are contrary to the Authority's. This duty includes the continued obligation to disclose to the Authority, when permitted under the applicable rules of professional conduct, all circumstances of its relationships with clients and third persons or any


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interests adverse to the Authority, which could influence the Consultant when executing the Agreement or while it is in effect. The Consultant represents conflicting interests when, on behalf of one client it must support that which it is duly to oppose or comply with its obligations with another previous, present or potential client. Also, it represents conflicting interests when its conduct is described as such in the standards of ethics applicable to its profession or industry, or in Puerto Rico's laws and regulations. The conduct herein described by one of its directors, partners or employees shall constitute a violation of this prohibition. The Consultant shall avoid even the appearance of the existence of conflict interests.

Section 7.4. Anti-Corruption Provisions.

(a) The Consultant certifies that it has received a copy of and agrees to comply with Act No. 2-2018, known as the Anti-Corruption Code for the New Puerto Rico ("Act No. 2-2018"), and with the Puerto Rico Government Ethics Law of 2011, Act No. 1-2012, as amended ("Act No. 1-2012").

(b) The Consultant shall furnish a sworn statement to the effect that neither the Consultant nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for the Consultant has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act No. 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico ("Act No. 8-2017"), or any of the crimes included in Act No. 2-2018.

(c) The Consultant hereby certifies that it has not been convicted in Puerto Rico or United States Federal Court under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, for any of the crimes listed in Articles 250 through 266 of Act No. 146-2012, as amended, known as the Puerto Rico Penal Code ("Act No. 146-2012"), any of the crimes typified in Act No. 2-2018, 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 No. 8-2017.

(d) The Authority shall have the right to terminate this Agreement in the event the Consultant is convicted in Puerto Rico or United States Federal Court under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, any of the crimes listed in Articles 250 through 266 of Act No. 146-2012, any of the crimes typified in Act No. 2-2018, 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 No. 8-2017.

(e) It is expressly acknowledged that this certification is an essential condition to this Agreement. If the certification is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for the Authority to terminate this Agreement immediately, without prior notice, and the Consultant will have to reimburse the Authority any amount of money received under this Agreement.

(f) If the status of the Consultant or any of its shareholders, partners, associates, officers, directors, employees or agents with regards to the charges previously mentioned should



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change at any time during the term of the Agreement, the Consultant shall notify in writing to the Authority immediately. The failure to comply with this responsibility constitutes a violation of this Clause, and shall result in the remedies mentioned previously.

Section 7.5. Conflicts of Interests.


(a) Both Parties hereby declare that, to the best of their knowledge, as of the date hereof, no public officer or employee of the Government of Puerto Rico, or any of its agencies, instrumentalities, public corporations or municipalities or employee of the Legislative or Judicial branches of the Government has any direct or indirect interest in the present Agreement. The Consultant certifies that neither it, nor any of its directors, executives, officers or employees, offered or paid, directly or indirectly, any commissions, referrals, contracts, or any other consideration having an economic value, to a third party as a condition for obtaining this Agreement or to influence in any way its execution. In addition, the Consultant certifies that it shall not pay any commissions, make any referrals, execute any contracts, or provide any other consideration having an economic value, to a third party for the services to be rendered under this Agreement, except for any subcontracts authorized by the Authority in accordance with the provisions established herein.

(b) The Consultant certifies that none of its partners, directors, executives, officers and employees receives salary or any kind of compensation for the delivery of regular services by appointment (or otherwise) in any agency, instrumentality, public corporation, or municipality of the Government of Puerto Rico.

(c) The Consultant certifies that, at the time of the execution of this Agreement, it does not have nor, to its knowledge, does it represent anyone relative to interests that are in conflict with the Consultant's duties to the Authority under this Agreement. If such conflicting interests arise after the execution of this Agreement, the Consultant shall notify the Authority during a period of five (5) business day from the day the Consultant learned of such conflict of interest, to determine the actions needed to resolve such potential conflict, subject to obligations of privilege and confidentiality.

(d) The Consultant certifies that at the time of execution of this Agreement it has entered the following contracts with agencies, public corporation, municipalities and/or instrumentalities of the Government of Puerto Rico, as listed below, and the performance of the services rendered thereunder does not conflict with the terms and conditions set forth in this Agreement. The Consultant acknowledges and accepts that the failure to list any current contractual relationship with any governmental entity may result in the termination of this Agreement if required by the Authority.

Government Agency	Contract Number	Term
Puerto Rico Electric Power Authority	2021-P00007	12/31/21, as amended


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Section 7.6. Required Certifications.

The Consultant will comply with all applicable laws, regulations and executive orders that regulate the contracting process and requirements of the Government of Puerto Rico, including Act No. 73-2019, as amended, known as the “2019 General Services Administration Act for the Centralization of Purchases of the Government of Puerto Rico” (“Act 73-2019”).

In compliance with the provisions of Act 73-2019, the Consultant has provided the Authority the Certification of Eligibility of the Unique Registry of Professional Services Providers (known in Spanish as “Certificado de Elegibilidad del Registro Único de Proveedores de Servicios Profesionales”, and hereinafter referred to as the “RUP Certification”), issued by the General Services Administration. It is hereby acknowledged that pursuant to the provisions of Article 42 of Act 73-2019, a valid RUP Certification serves as evidence of compliance with the documentation requirements necessary for contracting professional services with the Government of Puerto Rico, particularly those applicable under Act No. 237-2004, as amended, which establishes uniform contracting requirements for professional and consultant services for the agencies and governmental entities of the Commonwealth of Puerto Rico (3 L.P.R.A. § 8611 et seq.), the Puerto Rico Department of Treasury Circular Letter Number 1300-16-16 issued on January 22, 2016, as amended, which is available at: <http://www.hacienda.pr.gov/publicaciones/carta-circular-num-1300-16-16>, and the sworn statement before notary public required pursuant to Article 3.3 of Act No. 2-2018. In addition, the RUP Certification substitutes the Single Debt Certification (“Certificación Única de Deuda”), issued pursuant to Act 85-2009, as amended, known in Spanish as “Ley de Certificados y Comprobantes Electrónicos”, which serves as evidence of compliance with certifications issued by the Department of Treasury of Puerto Rico, the Department of Labor and Human Resources of Puerto Rico, the Municipal Revenue Collection Center, and ASUME (as defined below).

Further, the Consultant hereby certifies, guarantees, acknowledges and agrees to the following:

(a) The Consultant represents that at the execution of this Agreement, it has submitted income tax returns in Puerto Rico (if required by applicable law) during the past five (5) years. The Consultant also represents that it does not have outstanding debts with the Government of Puerto Rico for income taxes, real or chattel property taxes, unemployment insurance premiums, workers’ compensation payments or Social Security for chauffeurs in Puerto Rico and the Administration for the Sustenance of Minors (known by its Spanish acronym as “ASUME”).

(b) The Consultant has provided the Authority with a certificate of incorporation, if required by the Authority, and a Good Standing Certificate issued from the Department of State of Puerto Rico as proof that it has complied with the applicable annual corporation report filing obligations.

(c) It is expressly acknowledged that the certifications provided by the Consultant, pursuant to this Section, are essential conditions of this Agreement, and if these certifications are incorrect, the Authority shall have sufficient cause to terminate this Agreement immediately, without prior notice to the Consultant.



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(d) For purposes of this Agreement, tax debt shall mean any debt that the Consultant, or other parties which the Authority authorizes the Consultant to subcontract, may have with the Government of Puerto Rico for income taxes, real or chattel property taxes, including any special taxes levied, license rights, tax withholdings for payment of salaries and professional services, taxes for payment of interest, dividends and income to individuals, corporations and non-resident accounting firms, for payment of interests, dividends and other earnings shares to residents, unemployment insurance premiums, workers' compensation payments, Social Security for chauffeurs and ASUME.

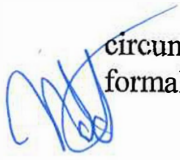
(e) The Consultant shall also be responsible for providing the Authority with the certifications required under this clause from any professional or technical consultant subcontracted by the Consultant and authorized by the Authority that dedicates twenty-five percent (25%) or more of his or her or its time to provide advisory services related to the Agreement. Such subcontractors shall be considered subcontractors for the purposes of this Clause. Notwithstanding anything herein to the contrary, the Consultant shall have the right to rely conclusively on the aforementioned certifications from government agencies in making the representations in this Clause.

(f) Investment Act for the Puerto Rican Industry, Act No. 14-2004, as amended: In compliance with the dispositions of Act No. 14-2004, known as the Investment Act for the Puerto Rican Industry, the Consultant shall use articles extracted, produced, assembled, packaged or distributed by companies with operations in Puerto Rico or distributed by agents established in Puerto Rico while rendering the Services, provided such articles are available.

(g) Improvement of Family Assistance and Support for the Elderly. The Consultant also certifies and warrants that it is in compliance with Act No. 168 2000, as amended, known as the "Act for the Improvement of Family Assistance and for the Support of the Elderly." In the event the Consultant is under a court or administrative order directing it to provide financial support or to fulfill any obligation under the mentioned Act, the Consultant further certifies and warrants that it is in compliance with said obligations. It is expressly acknowledged that this certification is an essential condition of this Agreement. If the certification is not correct in its entirety or in any of its parts, it shall constitute sufficient cause for the Authority to terminate the Agreement immediately, without prior notice to the Consultant.

(h) Financial Oversight and Management Board for Puerto Rico's ("FOMB") Policy for Review of Contracts: The Parties acknowledge that the Consultant has presented to the Authority the certification entitled "Contractor Certification Requirement" required pursuant to FOMB's Policy for Review of Contracts effective as of November 6, 2017, as modified on October 30, 2020, signed by the Chief Executive Officer of the Consultant (or other officer with equivalent position or authority to issue such certifications). A copy of the signed "Contractor Certification Requirement" is included herein as an **Appendix C** to this Agreement.

(i) The Consultant acknowledges and certifies that all documents, certifications, circumstances, representations, warranties and information submitted to the Authority prior to the formalization of the original Agreement as a requirement for government contracting, including


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those required by Act No. 237-2004, as amended, and the Puerto Rico Department of Treasury Circular Letter 1300-16-16, remain unchanged. The Consultant recognizes that the obligation to inform the Authority about any changes regarding said documents, certifications, circumstances, representations, warranties and information is an obligation that remains throughout the term of the Agreement including its amendments. The Consultant acknowledges that if requested by the Authority, the Consultant must provide the certifications that validate the above. The Consultant's failure to comply with this obligation shall be sufficient cause for the Authority to render this Agreement null and void and to require that the Consultant reimburse to the Authority all moneys received under this Agreement.

(j) The Authority certifies that the Consultant was selected as a provider of the professional services described in this Agreement in accordance with the provisions of Executive Order 2021-029. The Parties certify their knowledge of said Executive Order and the Puerto Rico Office of Management and Budget Circular Letter CC-013-2021, and that any contract that has not followed the processes and requirements established therein will be terminated.

(k) The Consultant certifies that at the time of the execution of this Agreement, it is not a public company with shares that are traded on a regulated stock exchange. The Consultant certifies that prior to the execution of this Agreement, it has submitted to the Authority a Certification of Legal Entity (known in Spanish as "Certificación sobre Personas Jurídicas").

Section 7.7. Withholdings. The Consultant is an independent contractor and, as such, shall be responsible for the payment of all of its income taxes, its subcontractors, and its individual and employers' withholdings under the applicable tax laws of Puerto Rico or the U.S. Internal Revenue Code. No withholdings or deductions shall be made from payments to the Consultant for services rendered by Consultant, except for those applicable by law and those applicable under the Puerto Rico Internal Revenue Code of 2011 and its regulations, as amended if any. In particular, when invoicing, the Consultant will allocate fees between those relating to activities undertaken by the Consultant outside Puerto Rico and constituting gross income from sources without Puerto Rico, and those relating to activities undertaken within Puerto Rico and constituting gross income from sources within Puerto Rico. If the entity is not registered in Puerto Rico, therefore a Puerto Rico non-resident the Authority shall deduct and withhold twenty-nine percent (29%) of the gross amounts paid on those invoiced amounts which constitute gross income from sources within Puerto Rico, in accordance with Section 1062.11 of the Puerto Rico Internal Revenue Code. 13 L.P.R.A. Sec. 30281. No withholdings or deductions shall be made from payments for services constituting gross income from services without Puerto Rico. The Authority shall forward to the Secretary of the Treasury of Puerto Rico any applicable withholdings or deductions made to a Consultant. Withholdings requirements will be adjusted pursuant to any amendments to the Puerto Rico Internal Revenue Code and its regulations.

Consultant represents and warrants that it has and shall continue to pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

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Section 7.8. Registration at the Office of the Comptroller. The Consultant will not receive any payment for the services rendered under the terms of this Agreement until the Agreement has been registered at the Office of the Comptroller of Puerto Rico, as required by Act No. 18 of October 30, 1975, as amended.

Section 7.9. Dispensation. The Consultant certifies it is not required to obtain a dispensation or waiver in compliance with the applicable laws and regulations of the Government of Puerto Rico prior to or in connection with the execution of this Agreement. The Parties agree that the proven illegality of any of the provisions of this Agreement shall not invalidate it as a whole.

ARTICLE VIII GOVERNING LAW; DISPUTE RESOLUTION

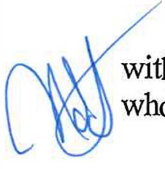
Section 8.1. Governing Law. This Agreement and any dispute relating to the services hereunder shall be governed, construed, interpreted and enforced in accordance with the laws of the Government of Puerto Rico.

Section 8.2. Dispute Resolution. The Parties agree that any dispute, claim or controversy directly or indirectly relating to or arising out of this Agreement, the termination or validity of this Agreement, any alleged breach of this Agreement, the engagement contemplated by this Agreement or the determination of the scope of applicability of this Agreement shall be brought only in the Courts of First Instance of the Commonwealth of Puerto Rico or in the United States District Court for the District of Puerto Rico. The Authority and the Consultant also agree that service of process may be effected through next-day delivery using a nationally-recognized overnight courier or personally delivered to the addresses set forth or referred to in this Agreement., or for service of process to the Authority, to PO Box 42001, San Juan PR 00940-2001. In any claim, all of the costs and the reasonable attorneys' fees of the prevailing party (as determined by the court in such claim) shall be borne by the party who did not prevail. The Authority and the Consultant further agree after all appeals that a final, non-appealable judgment in respect of any claim brought in any such court shall be binding and may be enforced in any other court having jurisdiction over the party against whom the judgment is sought to be enforced.

ARTICLE IX MISCELLANEOUS

Section 9.1. Independent Contractor. The Authority and the Consultant agree that the Consultant's status hereunder, and the status of any agents, employees and subcontractors engaged by the Consultant, shall be that of an independent contractor only and not that of an employee or agent of the Authority. The Consultant shall not have any power or right to enter into agreements on behalf of the Authority.

Section 9.2. Assignment. This Agreement may not be assigned by either party hereto without the prior written consent of the other, to be given in the sole discretion of the party from whom such consent is being requested. Any attempted assignment of this Agreement made without


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such consent shall be void and of no effect, at the option of the non-assigning party.

Section 9.3. Notice. Notice required to be given in writing pursuant to any of the provisions of this Agreement shall be mailed by next-day delivery using a nationally-recognized overnight courier or hand-delivered, if to the Consultant at 2626 Glenwood Avenue, Suite 480, Raleigh, NC 27608 and if to the Authority to PO Box 42001, San Juan PR 00940-2001.

Section 9.4. Patriot Act. The Consultant hereby notifies the Authority that pursuant to the requirements of the USA PATRIOT Improvement and Reauthorization Act, Pub. L. N 109-177 (Mar. 9, 2006) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Authority in a manner that satisfies the requirements of the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act.

Section 9.5. No Third Party Rights. It is understood that this Agreement is the sole agreement between the parties with regard to the services covered hereby and supersedes any prior agreements, written or verbal. The Agreement may not be changed orally, but may be amended in writing by mutual agreement of the parties. This Agreement is solely for the benefit of the Authority, the Consultant and, to the extent expressly set forth herein, the Indemnified Persons and no other party shall be a third-party beneficiary to, or otherwise acquire or have any rights under or by virtue of, this Agreement.

Section 9.6. Drafting Responsibility. This Agreement has been reviewed by each of the signatories hereto and counsel. There shall be no construction of any provision against either Party because this Agreement was drafted by either Party, and the Parties waive any statute or rule of law to such effect.

Section 9.7. Severability. If any provision hereof shall be held by a court of competent jurisdiction to be invalid, void or unenforceable in any respect, or against public policy, such determination shall not affect such provision in any other respect nor any other provision hereof.

Section 9.8. Counterparts. This Agreement may be executed in facsimile or other electronic counterparts, each of which will be deemed to be an original and all of which together will be deemed to be one and the same document.

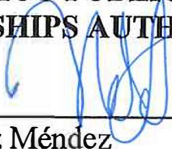
These terms constitute the entire agreement between the Parties with respect to this engagement; supersede all other oral and written representations, understandings, or agreements relating to this engagement; and may not be amended except by a written agreement signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the aforementioned date.

[Handwritten signature]


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6/29/21

**PUERTO RICO PUBLIC PRIVATE
PARTNERSHIPS AUTHORITY**



Nelson Pérez Méndez
Deputy Executive Director
Tax Id No.

SCOTTMADDEN, INC.



Logan Toms
Director of Finance
Scott Madden, Inc.
Tax Id. No.


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APPENDIX A



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June 10, 2021

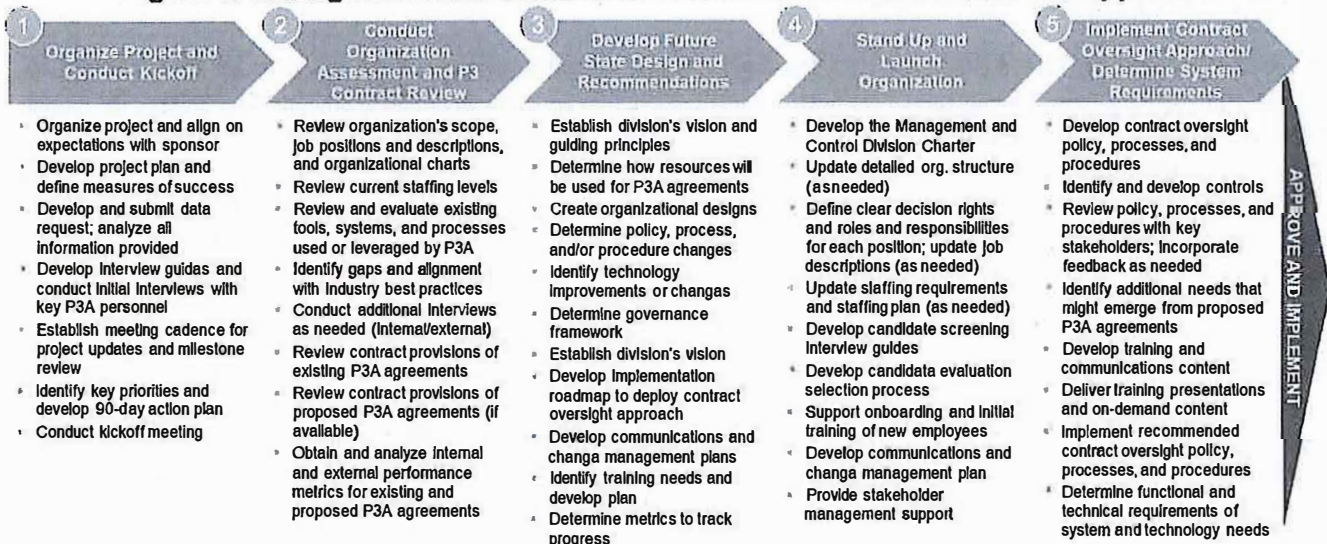
Mr. Nelson Perez
Deputy Executive Director
Puerto Rico Public-Private Partnership Authority
Via email: Nelson.Perez@p3.pr.gov

Dear Nelson:

Thank you for the opportunity to present this proposal to support the Management and Control Division at Puerto Rico Public-Private Partnership Authority (P3A). This proposal letter outlines ScottMadden's proposed support to assist P3A with launching the newly created Management and Control Division; establishing a contract management governance framework; developing a detailed roadmap to implement contract oversight policies, processes, procedures, and templates; and selecting and implementing supporting systems.

To complete this work, ScottMadden recommends a five-step approach. Figure 1 outlines additional details for the support.

Figure 1: Management and Control Division Assessment and Launch Approach



Note: Work associated with the final two steps of this five-step approach may continue into the new fiscal year.

In a future phase of this project, ScottMadden will support the implementation of the detailed roadmap developed during this initial phase. This implementation may include, but is not limited to, contract management and oversight: 1) policy, processes, and procedures; 2) standardized templates, artifacts, metrics model, and key-monitoring reports; 3) technology, tools, and systems (e.g., project management, procurement, partnership evaluations, knowledge management, enterprise collaboration, etc.).

BACKGROUND

P3A has been leading the development of partnerships with private partners and transition activities for those agreements. The largest and most recent transition is the Transmission and Distribution (T&D)

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Operations and Maintenance (O&M) agreement between Puerto Rico Electric Power Authority (PREPA) and LUMA Energy (LUMA). PREPA has been in the front-end transition period since the agreement came into effect in June 2020. As the transition is completed, P3A is in parallel determining and developing the required governance oversight structure and mechanisms called for in the agreement. These two governance elements are critical for the long-term success of the agreement. Establishing a robust contract oversight office is critical not only for the LUMA agreement but also for all other P3A agreements in place or under consideration.

Currently, PREPA has designed and developed an Enterprise Program Management (EPM) program, which includes the governance structure, process, and system to manage both enterprise PREPA-funded and federally funded projects. The Microsoft Project Online and Power BI tools were selected to be the project management and reporting systems of record.

PREPA has been working closely with FEMA to participate in alternative procedures for Public Assistance, pursuant to Section 428 of the Stafford Act, for permanent work following Hurricane Maria in 2017. On September 18, 2020, FEMA announced it will award nearly \$13 billion, including \$11.6 billion in federal funding, for new infrastructure grants to Puerto Rico. These grants are two of the largest grants ever awarded by FEMA, together exceeding the total disaster Public Assistance program funding for any other single disaster declared by a president outside of Hurricane Katrina and Super Storm Sandy. Of the \$13 billion, \$10.7 billion will be granted to PREPA to repair and rebuild the territory's electrical grid system, which is crucial for improved reliability, disaster readiness, economic growth, and the overall wellbeing of the people of Puerto Rico.

The EPM program and the Microsoft Project Online system will improve PREPA's and LUMA's ability to manage the entire project lifecycle of both enterprise PREPA-funded and federally funded projects, meet federal and local requirements and standards, and ensure the clear visibility of roles and responsibilities of each of the stakeholders involved. Recently, LUMA also selected Microsoft Project Online as its project management system of record, which will be housed in the existing PREPA information technology environment. This selection should benefit and assist both PREPA and P3A in their oversight responsibilities of the T&D O&M agreement and understand the progress of federally funded projects.

ScottMadden has been supporting PREPA across multiple workstreams, including, but not limited to, developing and implementing an organizational structure; implementing program and project management processes, standards, and best practices; and developing and implementing the EPM program and systems. Given ScottMadden's unique understanding of PREPA's operations and project management practices and reporting standards, and LUMA's future project management standards and reporting practices, ScottMadden is well-positioned to support P3A in this endeavor.

SCOPE OF SERVICES

This section outlines the scope of the services to be provided under this proposal:

- Conduct an organization assessment and P3A contract review to determine the current state and perform a gap analysis of organization structure, roles and responsibilities, contract provisions, work volume, practices, and system/technology needs
- Establish a best-in-class Management and Control Division that will provide robust oversight of existing and proposed P3A agreements and monitor the execution of internal P3A projects coordinating with P3A's Project Development Division
- Design future state recommendations around:
 - People and governance



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- Policies, processes, and procedures (i.e., how do we execute the work)
 - Metrics model, reports, templates, and artifacts
 - Tools and technology
 - Organization structure alternatives (if needed) and clear roles and responsibilities
- Establish organization's vision statement
 - Determine organization's training needs and develop training and change management plans
 - Develop charter for the Management and Control Division
 - Develop detailed organization structure charts, updated job descriptions, and staffing plan (as needed)
 - Design candidate evaluation methodology and interview guide
 - Support hiring process to staff the Management and Control Division
 - Develop the appropriate metric-reporting model, issue resolution, and contract enforcement policies and procedures for select partnerships
 - Commence development of contract oversight policy, processes, and procedures and standardized controls tools and templates
 - Identify the functional requirements to deploy select contract oversight software solutions that will enable the governance framework

HIGH-LEVEL TIMELINE

The high-level timeline below outlines the implementation approach and estimated timing. We estimate approximately 13 weeks to complete this initial phase.

ESTIMATED COST

Since this engagement started in FY21 and is expected to end in FY22, the estimated costs will be shared across the two fiscal years. The following table outlines the total professional fees for this initial phase of work allocated to the appropriate fiscal year. The estimated cost through June 30, 2021 are \$100,000, but the overall cost and scope have not changed and divided between the fiscal years for budgeting purposes. Please note that the estimated cost for the next phase will depend on P3A's governance structure and system needs identified in this initial phase.

Phase 1			
	FY21 (Jun)	FY22 (Jul-Sep)	Overall Estimate
Professional Fees	\$95,000	\$335,000	\$430,000
Travel Expenses	\$5,000	\$15,000	\$20,000
Total Cost	\$100,000	\$350,000	\$450,000

John Pang, partner, will serve as engagement director and, as such, will be accountable for quality and client satisfaction. ScottMadden will staff the project with seasoned consultants to run the day-to-day activities of the project. Gerardo Morales and Tony Gonzalez will be actively engaged and serve as technical leads, subject matter experts, and provide general oversight of the deliverables. Attachment 2 of this engagement letter outlines ScottMadden's rates by resource.

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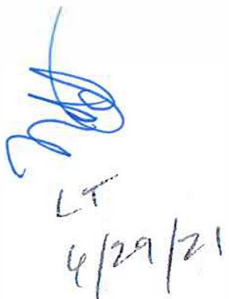
Mr. Nelson Perez
June 10, 2021
Page 4

Nelson, thank you for the opportunity to assist with this important effort, and I look forward to working with you on this engagement.

Sincerely,

A handwritten signature in black ink that reads "John Pang". The signature is stylized with a large, looped initial "J" and "P".

John Pang
Partner

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ATTACHMENT 1 – PROJECT SUPPORTING MATERIAL

ScottMadden’s Background and Services

Founded in 1983, ScottMadden, Inc., is a general management consulting firm that does what it takes to get it done right. We bring a combination of skills and experience in energy, corporate and shared services, and benchmarking that relatively few firms can match. We perform approximately 70% of our consulting work in the energy industry. We have conducted more than 3,000 consulting projects, including projects for the leading electric utilities, public power entities, and cooperatives in North America. We know the industry, we have deep energy expertise, and a firm grasp of how energy companies operate. A representative sample of our energy clients is shown below.

ScottMadden’s Representative Energy Clients

INVESTOR-OWNED UTILITIES							
	Electric	Gas	Water	Public Power	RTO/ISO	Transmission	Non-Utility
							
							
							
							
							
							

Note. Representative sample, not all-inclusive of clients served. Excludes numerous well-known clients due to confidentiality agreements

Getting it done right is about working side-by-side with our clients. It's about solving the right problem in the right way. And it's about doing it all with integrity, tenacity, and a genuine passion throughout the entire process. Our broad and deep energy utility expertise is not theoretical, it is experience-based. Our clients trust us with their most important challenges. They know that, chances are, we have seen and solved a similar problem to theirs. They know we will do what we say we will do with integrity and tenacity, and we will produce real results. The energy industry is our industry. We are personally invested in every project we take on. Our energy practice services include:

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- Capital Project Management
- Customer Engagement
- Cybersecurity Program Development
- Energy Storage
- Environmental
- Expert Witness Testimony
- Financial Advisory
- Market Assessment
- Mergers and Acquisitions
- Operational Excellence/Best Practices
- Operational Transformation
- Organizational Design and Staffing
- Process Improvement
- Program Design and Implementation
- Rate Case Planning
- Regulatory Policy
- Regulatory Strategy and Rate Case Support
- Strategic and Business Planning

In addition to our energy practice, we also have a dedicated corporate and shared services practice that works inside and outside of the energy industry. ScottMadden has been a pioneer in corporate and shared services since the practice began decades ago. Our Corporate & Shared Services practice has completed more than 1,600 projects since the early 90s, including hundreds of large, global, multi-year implementations. In addition to energy, our clients span a variety of industries from healthcare to high tech to professional services. Examples of our projects include business case development, service delivery model design, build, and implementation, leading practice assessments, and benchmarking. We help corporate functions optimize their operations to meet changing business needs. A representative sample of our corporate and shared services clients is shown below.

ScottMadden's Representative Corporate & Shared Services Clients

Retail and Consumer Products	Manufacturing	Technology and Communications	Higher Ed., Public Sector, and Defense	Energy and Utilities	Healthcare and Pharmaceutical	Professional Services

Note: Representative sample not all inclusive of clients served. Excludes numerous well-known clients due to confidentiality agreements

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Energy Is Who We Are

We deliver a broad array of consulting services—from strategic planning through implementation—across the energy utility ecosystem.

Our energy practice covers the following areas:



GENERATION



RATES & REGULATION



TRANSMISSION & DISTRIBUTION



ENERGY MARKETS



GRID EDGE



ENERGY CORPORATE SERVICES

Energy Practice Overview



Our work for you is experience-based, not theoretical.

EXPERIENCE

We have been serving the energy industry since 1983. Our industry-leading clients trust us with their most important challenges. They know that we have seen and solved a similar problem. Our consultants have earned this confidence through decades of experience in the field, and they are on the front lines of this changing landscape.

AREAS OF FOCUS

ScottMadden has worked in every business unit and every department in companies across the energy utility ecosystem. We focus on **Transmission & Distribution**, the **Grid Edge**, **Generation**, **Energy Markets**, **Rates & Regulation**, and **Energy Corporate Services**.

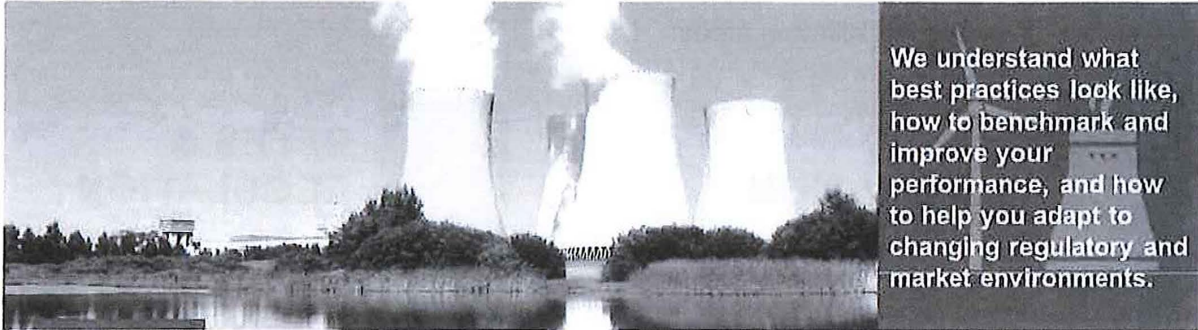
SERVICES

We have helped our clients develop and implement strategies, improve critical operations, reorganize departments and entire companies, and implement myriad initiatives.

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Generation Overview

Generation



We understand what best practices look like, how to benchmark and improve your performance, and how to help you adapt to changing regulatory and market environments.

EXPERIENCE

Our practical expertise in nuclear, fossil, and renewables helps clients implement leading practices for fleets and individual plants to improve and sustain results. We are recognized as industry experts. We have consulted with generation organizations from the largest and most respected fleet operators to single-station, stand-alone plants in the United States and Canada and have helped them achieve best practice operations and superior results. We have helped improve plant and fleet performance across the board, from operations to maintenance, outages, and management controls and planning.

AREAS OF FOCUS

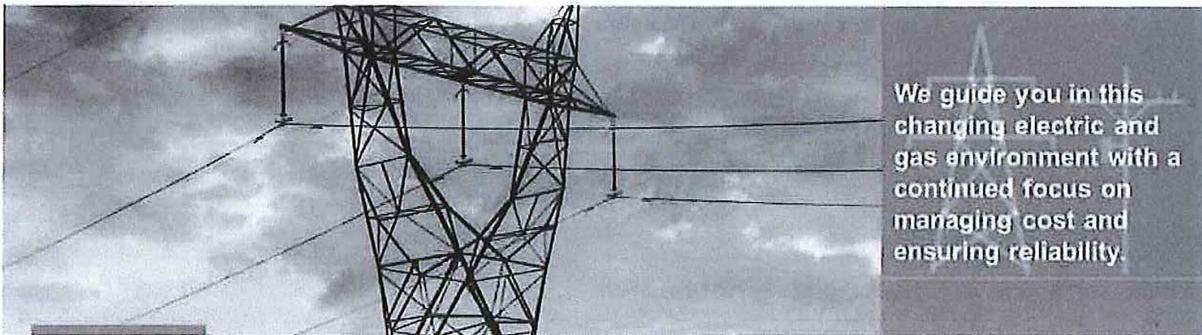
Within generation, we focus on fossil, hydro, natural gas, nuclear, renewables, utility scale solar, and wind.

SERVICES

We help you with every activity from strategic, capital, and business planning to the management of plant retirements. We can help you manage cost, benchmark your performance, organize and staff, and improve or turnaround your plants.

Transmission and Distribution Overview

Transmission & Distribution



We guide you in this changing electric and gas environment with a continued focus on managing cost and ensuring reliability.

EXPERIENCE

We provide broad, deep energy expertise coupled with practical business acumen to help you navigate electric and gas transmission and distribution challenges with solid business advice. We have helped companies—from transmission start-ups through well-established, integrated utilities—to achieve excellence in operations and maintenance and to leverage these strengths in this evolving environment. We have also helped implement grid modernization programs and projects to meet the needs of the evolving distribution grid. As natural gas markets change, we bring experience to help you plan for new infrastructure and manage your retail gas business.

AREAS OF FOCUS

We focus on electric and gas transmission, electric and gas distribution, and customer engagement.

SERVICES

With our electric and gas transmission and distribution services, we can help you with a wide range of offerings from strategic and business planning to benchmarking to operational excellence to program design and implementation, among many others.

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Grid Edge Overview

Grid Edge



The ways you operate, plan, and maintain the grid and interact with customers are changing. We are ready to help you face these challenges with confidence.

EXPERIENCE

For more than 35 years, we have worked in every function of transmission and distribution, from planning to operations to asset management. We understand how distributed energy resources (DERs) impact the wires business, and we help you best respond to this latest evolution of the industry. We also bring extensive expertise in the regulatory arena from being on the front line where changes are taking place—a critical component as you are called upon to respond to the ambitious regulatory agendas related to DERs.

AREAS OF FOCUS

We help you adapt to the changes driven by the increasing penetration of DERs, such as distributed generation, storage, demand response, and microgrids.

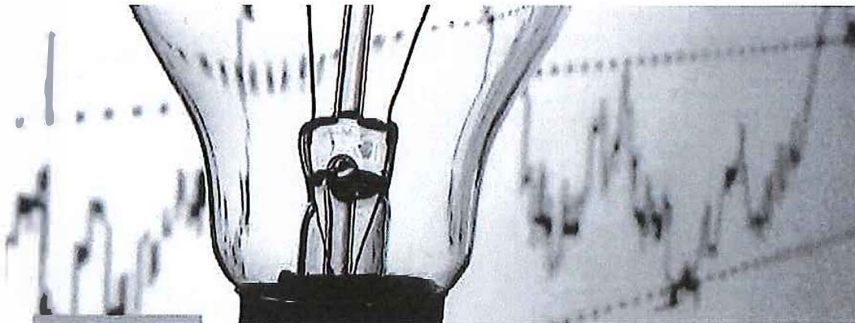
SERVICES

Our grid edge services include business planning, governance and accountability models, procedure development, process redesign, project management, organization redesign, and regulatory filings.

With our deep knowledge and experience in the evolving regulatory arena, we can guide you to proactively engage with regulators and customers through this transformation.

Energy Markets Overview

Energy Markets



We provide you with data-driven analyses of market trends and future scenarios so you can make important decisions with confidence.

EXPERIENCE

At ScottMadden, we bring experience in energy market structures and market participant operations, organization structures, and process constructs. We have hands-on experience with marketing and trading strategic assessments and improvement plans; process design and improvement; and organization design. Our experience supporting regional transmission organizations and energy imbalance markets includes strategy development; integration of new participants; design and implementation of markets; process assessment, development, and improvement; and stakeholder management. We have worked with a broad variety of clients, including regulated and non-regulated utilities, power generators, regional market operators, and load-serving entities.

AREAS OF FOCUS

Our energy markets focus areas include electricity markets and natural gas markets.

SERVICES

Our energy markets experts provide you with market assessments, expert witness testimony, resource acquisition and planning, demand forecasting, and asset valuation and optimization. We also offer you tariff assessments and new business development support, risk analysis, market power analysis, and performance assessments and benchmarking.

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Rates and Regulation Overview

Rates & Regulation



Our experts guide you on regulatory issues, rates, and financial transactions.

EXPERIENCE

Today's energy markets present multiple challenges, including evolving resources, aging infrastructure, limited demand growth, and increasing investment needs. Compounding those challenges is a regulatory environment providing limited security—and frequently, limited incentives—for utility investment. It is an environment in which stakeholders have taken an increasingly active interest, and rate structures and regulatory frameworks are becoming more important, and more complex, than ever.

SERVICES

We can assist you with regulatory strategy and litigation services, ranging from strategy development to rate design to demand forecasting to expert testimony. We offer you economic and financial advisory services and help structure, negotiate, and finalize transactions.

OUR FIRM HAS SERVED AS

EXPERT WITNESSES

BEFORE REGULATORY COMMISSIONS

IN MORE THAN

600 PROCEEDINGS

IN ALMOST ALL U.S. STATES, FERC, AND SEVERAL CANADIAN PROVINCES

Enterprise Sustainability Overview

Enterprise Sustainability



We don't just help you understand the evolving energy landscape—we work with you to achieve business results in this landscape.

EXPERIENCE

ScottMadden has deep industry experience and proven methods, tools, and techniques to assist our clients with integrated sustainable enterprise solutions. We are experts in developing and implementing strategies that provide a competitive advantage, while at the same time, delivering on sustainability objectives. Through the application of practical, hard-edged analytical tools, we work with our clients to successfully ingrain sustainability into the organizational culture and management infrastructure to achieve the very difficult balance between sustainability and the overall enterprise strategy.

AREAS OF FOCUS

We work with our clients to develop sustainable energy strategies that incorporate clean and renewable sources of energy and innovative methodologies around smart energy management and demand response. We also help clients with enterprise sustainability, bringing an understanding of energy-unique concerns.

SERVICES

We specialize in assisting you with sustainable energy strategies and making smart portfolio choices. Services we offer include sustainability strategy and planning, carbon reporting, environmental compliance, and natural resource planning.

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ATTACHMENT 2 – SCOTTMADDEN’S RATES (PROPRIETARY AND CONFIDENTIAL)

Below are ScottMadden’s hourly billing rates:

Title	Hourly Rate	Title	Hourly Rate
Partner	\$470	Benchmarking Manager	\$255
Director	\$365	Survey Manager	\$250
Manager	\$340	Clean Tech Specialist	\$230
Senior Associate	\$300	Senior Analyst	\$170
Director of Research	\$300	Analyst	\$145
Associate	\$255		

Note: ScottMadden, Inc. is a C-corp. incorporated in North Carolina.

January 2021


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Appendix B

Billing Guidelines for Consultants

The Puerto Rico Public Private Partnerships Authority ("P3 Authority") may engage the services of consulting firms or independent consultants (collectively and hereinafter "Consultant") to provide certain consulting services for managing its affairs (the "Consulting Services").

The Consultant shall be committed to providing Consulting Services with the highest quality standards and in the most reasonable, prompt, efficient and cost-effective manner. Therefore, the P3 Authority expects Consultant to stress integrity and to uphold the highest standards of professionalism and ethical conduct in ensuring timely, responsive, and cost-effective consulting services by complying with these billing guidelines (the "Guidelines").

The Guidelines set forth the P3 Authority's expectations relative to the Consulting Services being provided and the nature of the working relationship with Consultant. Through the Guidelines, the P3 Authority hereby provides Consultant with an understanding of what consulting fees and expenses the P3 Authority will pay and reimburse. Furthermore, these Guidelines shall constitute a written agreement by the parties for any matter to which the Consultant is engaged on behalf of the P3 Authority. These Guidelines shall govern the billing terms of the professional relationship between the P3 Authority and Consultant.

The P3 Authority considers Consultant's invoices for services rendered (the "Invoices") as a certification by Consultant that the billing for services, as reflected on the Invoices, is reasonable for the matters involved, and necessary for the proper rendering of the Consulting Services relative thereto.

The P3 Authority expects Consultant to strictly adhere to the Guidelines and to charge for actual consulting services rendered, at the rates established and agreed in advance by the parties, and to refrain from billing non-billable work or expenses. Compliance with the Guidelines will avoid delays in processing Invoices or the possible nonpayment of the services provided. The P3 Authority expects Consultant to become familiar with the Guidelines and if there are any questions relative thereto then Consultant should contact P3 Authority's Legal Department.

The following rules shall govern Consultant's billing for the Consulting Services and its presentation of the Invoices:

A. Billing Rates and Fee Arrangements

- i. The P3 Authority expects to be charged reasonable fees for the Consulting Services, pursuant to the applicable code of professional conduct. A reasonable fee is considered to be the product of: a) the amount of time reasonably necessary to devote to the matter by appropriately qualified consulting professionals, and b) the customary or previously agreed to billing rates (the "Billing Rates") of those professionals involved in the rendering of the Consulting Services. Furthermore, the P3 Authority expects Consultant to use prudence and reasonableness in rendering the Consulting Services, refraining from providing more consulting services than are actually needed to complete the same.



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- ii. Under no circumstance will the P3 Authority pay for Consultant's overhead expenses, as they are generally categorized in accordance to applicable accounting principles.
- iii. Consulting Services will be billed in increments of [6 minutes or 1/10 of an hour].
- iv. Unless otherwise agreed upon in advance, all hourly billing rates shall be solely on the basis of the Billing Rates. Absent a specific agreement for an alternative fee arrangement for a specific consulting service, Consultant's fees shall be computed by applying the Billing Rates to the reasonable time actually incurred in rendering the Consulting Services.
- v. The level of expertise of the consultant assigned to a matter referred by the P3 Authority shall be appropriate to the complexity of the issue therein. Therefore, partners, principals or directors of the consulting firm shall not bill for tasks that can be performed by a less senior consultant at a lower cost. Furthermore, the P3 Authority requires Consultant to assign less demanding tasks to less senior consultants in order to minimize consulting expenses. Additionally, for matters of similar nature occasionally referred to Consultant, the P3 Authority expects Consultant to assign a consultant with prior experience with such matter. Consultant shall ensure that the work performed by the assigned consultant(s) is reasonable, useful, and done efficiently.

B. Referrals and Budgets

- i. If applicable, in the event that Consultant anticipates incurring in significant time or expenses in excess of the normal amount within a particular month, Consultant shall contact the P3 Authority to notify of the anticipated excess amount of billable hours or expenses during that month and shall include a reasonably detailed explanation of the reasons for such additional costs.

C. Staffing Matters

- i. The P3 Authority will not pay for or authorize:
 - a) Administrative charges such as:
 - i. Scheduling or review of personnel;
 - ii. Preparation and review of billing statements;
 - iii. Preparation of budgets of time plan, staffing of total costs of projected consulting work;


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- iv. Preparation of Audit Letters to our external auditors;
 - v. Preparation of any other status report; or negotiation, review, and/or drafting of retention or engagement agreement between the P3 Authority and the Consultant.
- b) Grazing: The P3 Authority will not pay for billed time for getting up to date with any consulting matter. This includes time spent by newly assigned consultants to familiarize themselves with a matter.
 - c) Block billing: All tasks must be billed separately.
 - d) Vague, confusing or otherwise undetailed time entries.
 - e) Time associated with research on general client or industry trends, and time expended on "canned" research, such as research of a generic nature or for a prior matter or issue.
 - f) Intra-office conferences that deal with substantive issues are reimbursable when a thorough description of the purpose is provided. No more than two consultants shall bill for an intra-office conference.
 - g) Overstaffing: A minimum number of consultants should be assigned to each matter. Overstaffing includes:
 - i. More than one consultant billing for reading or reviewing internal written communication (including email); or
 - ii. Inclusion of more than one consultant at meetings or hearings for the purpose of consultant development.

Consultant should explain why the circumstances warrant an exception from this general rule. The P3 Authority reserves the right of not paying the hours billed by any additional consultant if P3 Authority's prior written approval was not obtained by Consultant.

- h) The review, execution and processing of agreements with the P3 Authority.
- i) Any time spent at seminars or other training, unless otherwise specifically approved in writing.
- j) Summer intern, temporary or contract consultant, or other intern time unless it has previously been identified as part of the approved staffing in the Billing Rates approved by the P3 Authority.



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- ii. If a previously drafted or standard form is available, the P3 Authority will pay only for the amount of time necessary to modify the document for use in the specific consulting matter and not the time originally incurred to draft the standard document.
- iii. Subject to the provisions of subsection (i) of this Section C, the P3 Authority will not pay for administrative work performed by consultants, such as managing or supervising other consultants, nor will pay for in-firm meetings, conferences, and consultations.
- iv. The P3 Authority shall not pay for duplication of time caused by:
 - a. Transfer of a consulting matter to a new consultant for internal reasons;
 - b. Double teaming; or
 - c. One consultant redoing the work of another.
- v. It is recommended, but not required, that prior to any meeting or conference call, Consultant shall provide the P3 Authority team members with an agenda for said meeting or conference call detailing the matters to be discussed, as well as a guideline for suggested next steps after any such meeting or conference call.

D. Billing and Invoicing

- i. Each task or activity shall be separately itemized on the Invoices, including a break-down thereof that at a minimum shall include:
 - a. A chronological listing of all services;
 - b. A description of the service being billed. The description shall include (i) the type of work being performed and (ii) the subject matter;
 - c. The name of each consultant or consulting professional whose work is being billed;
 - d. The date of the service;
 - f. The amount of time spent by each person on each item in the interval increments defined herein; and
 - g. The Billing Rate at which the service is being billed.
- ii. Entries for telephone conversations, conferences and meetings must specifically describe all parties involved and the subject matter or purpose of the task.
- iii. The P3 Authority will not pay for billed services whose descriptions lack specificity.
- iv. The Invoices shall include a summary thereof, including:
 - a. Name and initials of each time keeper;


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- b. Staff classification including for each category of consulting personnel (Partner, Junior Partner, Manager, Senior Consultant, Consultant, Principal, Director, Associate, Intern, etc.);
 - c. Hourly billing rate of each time keeper; and
 - d. Total time and fees billed for each time keeper by subject matter.
- v. The Invoices shall also include an overall summary by staff classification, including for each category of consulting personnel (Partner, Junior Partner, Manager, Senior Consultant, Consultant, Principal, Director, Associate, Intern, etc.), the number of individuals in each category, the total number of hours by each category, and the total fees by category.
 - vi. The Invoices shall be divided individually by project or matter (e.g. Flexible Distributed Generation Units Project; San Juan Bay Cruise Terminals Project; Court cases; etcetera). Invoices shall also include a billing history or summary of all fees and expenses incurred in a particular matter up to the invoicing date along with a comparison to the total budgeted or contracted amounts.
 - vii. The P3 Authority reserves the absolute right to make any changes, at its sole discretion, to the fees included in the Invoices if it reasonably believes that the amount of time devoted to the matter by the consulting professional or the timekeeper should be reduced.
 - viii. In addition, Consultant shall provide the Certificate of Waiver from Withholding (total or partial) from the Puerto Rico Department of Treasury to the P3 Authority, if applicable.
 - ix. Any Invoices without the required information included or attached will not be processed for payment and will be returned to Consultant for the corresponding corrections or modifications.
 - x. The Consultant's in charge of the P3 Authority account (the "Account Partner") shall review the Invoices prior to submitting them to the P3 Authority and should be able to explain all of its time charges if so requested.
 - xi. Furthermore, the Account Partner shall certify the accuracy and reasonableness of the Invoices and their compliance to the Guidelines and all applicable ethical rules. The P3 Authority reserves the right to withhold or deny approval of the Invoices in the event the Guidelines are not complied with.

E. Expense Reimbursement


- i. The P3 Authority will not pay and will not separately reimburse Consultant for overhead costs. Expenses that are considered Consultant's overhead are part of the professional's hourly rate and are not reimbursable. The term overhead includes, but is not limited to all administrative or general costs incidental to the operation of the Consultant including without limitation office rent, conference rooms, equipment, computer software, office supplies, transportation, telephone and mobile charges, books, meals, routine postage, the



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services of librarians, file clerks, data entry clerks, photocopy operators, secretaries, overtime or utilities, word processors, messengers, other support personnel, or any other overhead expense as recognized by applicable accounting standards.

- ii. Non reimbursable tasks include binding, scanning, indexing, collating, coding, filing, transmitting and preparing letters, mailing, faxing, emailing, word processing, proofreading, scheduling, events, deliveries, data entry, conference call charges, invoicing, billing, staffing, or other similar clerical or ministerial functions.
- iii. The Invoices may also include additional consulting expenses to be charged by Consultant as previously authorized by the P3 Authority, with a total for those consulting expenses charged at a reasonable market price. Each such additional expense item shall be:
 - a. Separately itemized;
 - b. Show the date the expense was incurred;
 - c. Include a descriptive explanation of the charge;
 - d. Indicate the amount of the charge; and
 - e. Indicate the timekeeper who incurred the charge.
- iv. Disbursements for pre-approved reimbursable expenses will be compensated at actual cost with the appropriate documentation to substantiate the expenses such as actual vendor receipts, which shall be included in the Invoices as an attachment. Actual cost is defined as the amount paid to a third-party service provider, net of any discounts ("Actual Cost").
- v. All expenses will be reimbursed at Actual Cost and Consultant shall not upcharge any of the expenses incurred in providing services to the P3 Authority. The P3 Authority will not pay for normal transportation costs incurred in travel to and from the office, for overtime transportation, or for valet services. Car services during travel are limited to taxicab or transportation network companies' fares, and Consultant shall provide appropriate documentation to substantiate the expenses such as actual receipts, which shall be included in the Invoices as an attachment.
- vi. The P3 Authority will reimburse Consultant for reasonable and necessary delivery charges and messenger services at Actual Cost. However, charges for time spent preparing mail packages are considered as part of the Consultant's overhead and are not reimbursable. Disbursements for messenger services expenses will be compensated with the appropriate documentation to substantiate the expenses such as actual receipts, which shall be included in the Invoices as an attachment. Third party courier and express delivery services should be used cautiously.
- vii. Photocopying will be reimbursed at the Actual Cost to Consultant and which under no circumstances shall exceed ten (10) cents per page. Documentation for photocopying expenses shall include evidence of the amount of copies executed with the date.
- viii. Reimbursements of expenses made by Consultant during travel to Puerto Rico are limited to:


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- a. Fifty-eight (58) dollars per day for food, for which Consultant need not provide a receipt; and
 - b. One hundred and ninety-five (195) dollars per night, for hotel for which Consultant must provide appropriate documentation subject to agreement by the P3 Authority.
- ix. Reimbursements of expenses made by Consultant during travel outside of Puerto Rico are subject to the regulations published by the U.S. General Service Administration and the Defense Travel Management Office of the Department of Defense.
- x. Expenses for airfare travel will be reimbursed with the appropriate documentation to substantiate the expense, such as receipt of the air fare where the trip detail is presented. The P3 Authority will only reimburse for economy class airfare travel. The P3 Authority will not pay for any costs incurred in for "extra leg room" space. Any reimbursement for cancelled air travel must be pre-approved by the P3 Authority.
- xi. The P3 Authority expects Consultant to immediately provide any back up documentation for a particular disbursement charge if it so requires. The P3 Authority will not pay for unsupported charges.
- xii. The P3 Authority will only reimburse for expenses made within the time frame of the contract between the P3 Authority and Consultant.

F. Third Party Subcontracting

- i. If Consultant deems it necessary to use any other consulting firm, consultant, or other third party providers (the "Third Party") in providing a service in a matter it is handling for the P3 Authority, then such request shall be made to the P3 Authority A prior to the retention or hiring thereof and shall obtain written consent from the P3 Authority to proceed with the subcontracting.
- ii. Unless a different billing arrangement is authorized by the P3 Authority, Consultant shall directly pay the Third Party for work performed in connection with services rendered on behalf of the P3 Authority.
- iii. Payments to the Third Party should be included as a disbursement on Consultant's next subsequent invoice to the P3 Authority and said invoice shall be accompanied by the Third Party's corresponding billing detail which shall also be in full compliance with the Guidelines.
- iv. Consultant shall not upcharge or surcharge any of the Third Party's billings or expenses incurred in providing services to the P3 Authority. The P3 Authority will only reimburse the Actual Cost of pre-approved Third Party's services.

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- v. All Third Party invoices paid by Consultant shall be included in the Invoices as an attachment and as an itemized expense must, absent specific prior approval to the contrary, also comply with the Guidelines.

CONSULTANT ACKNOWLEDGMENT

The Consultant through its Account Partner, or representative noted herein, acknowledges the receipt and review of the P3 Authority 's Billing Guidelines for Consultants.

Kindly indicate your acceptance and agreement to adhere to the above guidelines by signing a copy thereof and returning the same to the P3 Authority.

By signing this acknowledgment, you further certify that you will only remit invoices to the P3 Authority that fully comply with all terms and conditions contained in the Guidelines.

This document may be signed in counterparts and a copy of the execution signature shall be as effective as an original. Furthermore, all fully executed copies shall be considered duplicate originals.

So acknowledged and accepted by:

ScottMadden, Inc.



Logan Toms
Director of Finance
June 29, 2021



4/29/21

Appendix C

Contractor Certification Requirement

The following certification shall be provided to the Oversight Board and the Commonwealth's Contracting Government Entity by the Chief Executive Officer (or equivalent highest rank officer) of each proposed contractor under contracts submitted for review:

1. The expected contractor's subcontractor(s) in connection with the proposed contract¹ is (are) the following:

None

2. Neither the contractor nor any of its owners², partners, directors, officials or employees, has agreed to share or give a percentage of the contractor's compensation under the contract to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract, except as follows:

None

3. To the best knowledge of the signatory (after due investigation), no person has unduly intervened in the procurement, negotiation or execution of the contract, for its own benefit or that of a third person, in contravention of applicable law.
4. To the best knowledge of the signatory (after due investigation), no person has: (i) offered, paid, or promised to pay money to; (ii) offered, given, or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such person in connection with the contract (such as the execution of a subcontract with contractor, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
5. Neither the contractor, nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of applicable law.
6. Any incorrect, incomplete or false statement made by the contractor's representative as part of this certification shall cause the nullity of the proposed contract and the contractor must reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the proposed contract.

¹ As used herein, the term "contract" is inclusive of any amendments, modifications or extensions.

² For purposes of this certification, a contractor's "owner" shall mean any person or entity with more than a ten percent (10%) ownership interest in the contractor.



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reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the proposed contract.

The above certifications shall be signed under penalty of perjury by the Chief Executive Officer (or equivalent highest rank officer) in the following form:

“I hereby certify under penalty of perjury that the foregoing is complete, true and correct.”

By: Logan Toms

Date: June 29, 2021

Signature: 

