

# ENTERPRISE COMMUNITY PARTNERS, INC.

## REQUEST FOR QUALIFICATIONS

Puerto Rico CDBG-DR Technical Assistance and Capacity Building Program

January 2022

### **PURPOSE & OVERVIEW**

Enterprise Community Partners, Inc. (Enterprise) has initiated a Request for Qualifications (RFQ) process to qualify firms and consultants to support the Puerto Rico Community Development Block Grant Disaster Recovery (CDBG-DR) Technical Assistance and Capacity Building program. Applicants may submit qualifications for one or more areas of expertise outlined within the document. Qualifications must be submitted through SlideRoom via this link:

<https://enterprise.slideroom.com/#/login/program/65229>

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## About Enterprise

Enterprise Community Partners, Inc. (Enterprise) is a proven and powerful nonprofit that improves communities and people's lives by making well-designed homes affordable. We bring together nationwide know-how, partners, policy leadership and investment to multiply the impact of local affordable housing development. Since 1982, Enterprise has created or preserved 793,000 affordable and workforce/market rate homes and invested \$61 billion. Our work has touched millions of lives and helped connect people and communities to opportunity nationwide.

## Overview

Through a competitive award from, and in partnership with, the Puerto Rico Department of Housing (PRDOH) through a subrecipient agreement, Enterprise Community Partners will provide and implement various technical assistance (TA) and capacity building activities related to the Community Development and Block Grant Disaster Recovery (CDBG-DR) Program in Puerto Rico. The primary activities to be carried out include but are not limited to the following:

- Needs assessment: Determine needs and capacity gaps of program subrecipients based on their respective program or programs.
- Planning: Set long-term goals and short-term objectives for TA plans based on PRDOH priorities.
- TA delivery: Work with PRDOH to address the capacity gaps across multiple CDBG-DR programs.
- Tools and products: Devise products and activities to meet these goals and objectives, including in-person and virtual TA and capacity building services, web-based courses or trainings, videos, interactives tools, toolkits, desk guides, and more.
- Evaluation: Evaluate and report the progress of such capacity building related activities.

## Description of Services

Enterprise is looking to complement the experience of staff and draw from key local and national expertise in the implementation of CDBG-DR programs in Puerto Rico. Experience in one or more focus areas is required: Planning, Housing, Economic Development, Infrastructure and Cross-Sector Programs. Specific experience with CDBG-DR compliance requirements is also required.

Additionally, Enterprise is looking for individuals with specific topical experience with CDBG-DR, inclusive of cross-cutting requirements:

- Financial Management
- Record Keeping
- Grants Management
- Fair Housing and Equal Opportunity
- Environmental Review
- Section 3
- WMBE
- Davis Bacon

- Procurement
- Uniform Relocation Act
- Anti-Fraud, Waste, and Abuse

These cross-cutting requirements are the main areas of expertise needed, but experience in the broader spectrum of CDBG-DR program activities and disaster recovery programs will also be considered. Specific experience facilitating direct technical assistance (TA) engagements and/or trainings related to CDBG-DR and cross cutting requirements is required. Strong facilitation skills, CDBG-DR content development and presentation experience are preferred. Specific experience can also include CDBG-DR program implementation and/or experience with policy and compliance related to CDBG-DR and cross cutting requirements. Related experience in housing, community development, economic development, infrastructure, planning, and cross-sector programs will be reviewed in addition to experience with nonprofit/non-governmental organizations, units of local government. Experience working in Puerto Rico is a plus. Organizations or individuals that are based in Puerto Rico is a plus. Spanish-speaking applicants also a plus.

Travel to and within Puerto Rico is required in addition to being able to work remotely with the Enterprise Team, other subcontractors, and technical assistance beneficiaries. Travel expenses will be reimbursed based on GSA approved rates. All deliverables and work will require monthly reports and invoicing. Travelers should be aware of Puerto Rico travel guidelines and will be expected to follow all CDC guidelines and other local ordinances in effect related to COVID-19 at the time of travel. Please visit <https://www.travelsafe.pr.gov/> for the latest travel requirements.

## Submission Requirements

### GENERAL INFORMATION

1. Organization/Consultant Name
2. Address
3. City
4. State
5. Zip Code
6. Website
7. Contact Person Name and Title
8. Contact Phone Number
9. Contact Email Address
10. DUNS Number
11. Active System for Award Management (SAM) Registration
12. Federal EIN
13. Sales and Use Tax (SUT) Certificate (Certificate from “Departamento de Hacienda” indicating

that consultant is an eligible collector or “Agente Retenedor”)

14. Eligibility for 10% Puerto Rico withholding waiver
  - a. (If eligible the certificate can be obtained by using the Organization's L# ID to access the following link: <https://suri.hacienda.pr.gov/#5>)
15. Proof of insurance as outlined in Exhibit B, *PRDOH Flow Through Provisions (Exhibit B, Attachment C, pg. 37)*
16. Identification of Business Orientation:
  - a. Small, Minority, and Women’s Business Enterprises (not required)
    - a. Minority Business Enterprise?
    - b. Native American Business?
    - c. Small Business?
    - d. Women-Owned Business?
    - e. Veteran-owned small business?
    - f. Service-disabled veteran-owned small business
    - g. SBA certified small, disadvantaged business
    - h. SBA certified 8(a) firm
    - i. SBA certified HUBZone firm

## NARRATIVE AND RATES

### Applicants should complete:

1. Narrative (no more than 2 pages) must include:
  - Organization and/or individual expertise in subject matter areas listed within the Description of Services.
  - Identification of key personnel, including names, titles, and areas of expertise specific to those listed within the Description of Services.
2. Rates Sheet form to include including firm rates listing the hourly rates for years 2022 and 2023 for all individuals that will work on the Puerto Rico CDBG-DR Technical Assistance and Capacity Building Program.

*Rates will be reviewed for reasonableness within the industry. Travel expenses will be reimbursed based on current GSA rates.*

## QUALIFICATIONS

1. Resumes and biographies for each individual on the team, including information about experience with similar projects and professional qualifications.
2. Detailed overview and work samples of no more than three (3) projects on which the organization and/or team members have been involved in the last two years, illustrating current experience and capabilities relevant to this program.

## REFERENCES

Based on past projects for the areas of expertise specific to those listed within the Description of Services, provide at least 2 references which include the following: Organization Name, Organization Contact, Title, Email, and Phone Number. If you have worked with Enterprise in the past, please indicate the project or activity and include contact information for Enterprise staff, if applicable.

## Selection Criteria

Applicants will be scored on the below criteria List Selection Criteria (examples provided below)

1. Experience providing Direct Technical Assistance (TA) and/or producing content and facilitating trainings related to CDBG-DR. (25 points)
  - a. Please include examples of Direct TA engagements and products as well as an outlined list of trainings provided, with samples of presentations created.
2. Subject matter expertise in Planning, Housing, Economic Development, Infrastructure and Cross-Sector Programs as well as Cross-Cutting Requirements. CDBG-DR Program expertise preferred, but experience with HUD CPD funding in general to be considered. (20 points)
  - a. Points will be awarded based on firm experience, but experience of individual team members should also be outlined. Points will be awarded as follows:
    - i. 0-3 years of experience, 0-6 points.
    - ii. 4-7 years or experience, 7-12 points.
    - iii. 8 years of experience or more, 13-20 points.
3. Ability to produce quality materials as evidenced by submitted work samples. (15 points)
  - a. Please provide up to 3 work samples that can include toolkits, assessment reports, guidebooks, programmatic templates, or other relevant work samples.
4. Spanish language fluency. (15 points)
  - a. At least one member from the firm working directly on this program should have Spanish Fluency. Please note in biography and/or resume.
5. Experience working in Puerto Rico. (15 points)
  - a. Please identify participation in relevant Puerto Rico based activities, programs, projects or direct employment. Experience within the last 15 years preferred.
6. Based in Puerto Rico. (10 points)
  - a. Firm or consultant's primary office located in any of Puerto Rico's 78 municipalities.
7. BONUS POINTS: An additional five **(5) points** will be awarded to Women or Minority-owned Business Enterprises (W/MBE). This can be indicated in the General Information section of the SlideRoom.

In addition, Enterprise may contact references to confirm quality of work and a history of responsiveness and good communication skills.

Upon qualification, contractors must also satisfy items numbered 10-15 in the general information requirements section. Contractors will be issued a Master Contract and placed on Enterprise's contractor roster. The Master Contract does not obligate Enterprise to retain a contractor for any award. Any such further contracting will be by Task Order. Contractors will periodically receive invitations to provide price quotations on specific scopes of work through verbal/written solicitation. Contractors will be expected to indicate their availability to perform the scope of work and timeline for submission of deliverables. Project deliverables and timelines shall be detailed for each individual scope of work. Contractors will be issued Task Orders for services awarded to them.

### **Submission Instructions**

Qualifications may be submitted at any time through 2/22/22 at 11:59pm AST/10:59pm EST.

Inquiries concerning this RFQ should be directed to Michelle Grainger  
([mgrainger@enterprisecommunity.org](mailto:mgrainger@enterprisecommunity.org))

Qualifications must be submitted in SlideRoom by clicking here:

<https://enterprise.slideroom.com/#/login/program/65229>

All costs incurred in the preparation of a response to this RFQ are the responsibility of the applicant and will not be reimbursed by Enterprise Community Partners, Inc.

By submitting qualifications, applicant commits to the terms and conditions outlined in this RFQ. Requests for exception to any terms or conditions must be submitted with the qualifications. Enterprise reserves the right to deny requests for exception to any terms and conditions. Requested exceptions will be factored into Enterprise's consideration of award. Additional funder provisions may be included in final awarded Task Orders, if necessary.

### **Right to Reject**

Enterprise reserves the right, in its sole discretion, to reject any and all responses received in response to this RFQ. A contract for the accepted response will be based upon the factors described in this RFQ.

### **Small Businesses, Minority-Owned Firms, and Women's Business Enterprises**

Enterprise will make efforts to utilize small businesses, minority -owned firms, and women's business enterprises.

## Confidentiality

If the applicant deems any materials submitted to be proprietary or confidential, the applicant must indicate as such in the relevant section(s) of the response.

## Notification of Selection and Timeline

List notification and selection timeline (example provided below).

1. Notification of Qualification Determination: Bidder will receive notification from Enterprise on the status of their application within 10 business days from date of due date of February 22<sup>nd</sup>.
2. Invitation of Task Orders: As the need for a contractor arises, Enterprise will invite qualified contractors to provide price quotations on specific scopes of work through verbal/written solicitation. Responses to invitations for Task Orders are due within 5 business days of issuance of invitation, or per direction of Enterprise.
3. Anticipated Award of Task Orders: Upon selection of contractor for specific scopes of work, Enterprise will issue a Task Order within 5 business days.

## Conflict of Interest

The applicant must disclose, in an attachment to their qualifications, any possible conflicts of interest that may result from the award of the contract or the services provided under the contract. Except as otherwise disclosed in the submitted qualifications, the applicant affirms that to the best of its knowledge there exists no actual or potential conflict between the applicant, the applicant's employees or their families' business or financial interests ("interests") and the services provided under the contract. In the event of any change in either interests or the services provided under the contract, the applicant will inform Enterprise regarding possible conflicts of interest, which may arise as a result of such change and agrees that all conflicts shall be resolved to Enterprise's satisfaction or the applicant may be disqualified from consideration under this RFQ. "Conflict of interest" shall include, but not be limited to the following:

1. Giving or offering a gratuity, kickback, money, gift, or anything of value to an Enterprise official, officer, or employee with the intent of receiving a contract from Enterprise or favorable treatment under a contract;
2. Having or acquiring at any point during the RFQ process or during the term of the contract, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with applicant's performance of its duties and responsibilities to Enterprise under the contract or otherwise create the appearance of impropriety with respect to the award or performance of the contract; or

3. Currently possessing or accepting during the RFQ process or the term of the contract anything of value based on an understanding that the actions of the applicant or its affiliates or interests on behalf of Enterprise will be influenced.

## **Applicable Requirements**

### **DUNS and SAM Registration**

All contractors receiving federal funds through Enterprise Community Partners, Inc. must have a Dun & Bradstreet (DUNS) number and maintain an active account in the System for Award Management (SAM).

Information on how to register for each is below:

#### **Resources for DUNS Number**

The DUNS number is a nine-digit number, issued by Dun & Bradstreet that is assigned to and used by businesses and the federal government to keep track of more than 70 million businesses worldwide. A DUNS number can be obtained free of charge by applying online at <http://fedgov.dnb.com/webform> or by phone at 1-866-705-5711 from Monday - Friday 7 AM to 8 PM C.S.T.

For Hearing-Impaired Customers Only call 877-807-1679 (TTY Line). It normally takes about 1- 2 business days to receive a number if applied for online and immediately if applied for by phone. The DUNS number is normally available for use 24-48 hours after it has been received. Once entered, and the registration process is completed, the DUNS number will need to be verified by the system.

#### **Resources for System for Award Management (SAM)**

The System for Award Management (SAM) is a free web site hosted by the federal government that consolidates the government-wide award reporting systems into one system. SAM streamlines processes, eliminating the need to enter the same data multiple times, and consolidates hosting to make the process of doing business with the government more efficient. The website and information on how to create a user account is found at <https://www.sam.gov/SAM/>.

To receive an award, contractors must not have active exclusions or delinquent federal debt and may not be currently debarred, suspended, proposed for debarment or declared ineligible for awards by any federal agency.

Additionally, make sure that any sub-contractors that receive federal funds are aware that they must have a DUNS number and be registered in SAM in order to be in compliance with federal reporting requirements.

## **Federal Funding Accountability and Transparency Act (FFATA)**

Contractors must comply (as applicable) with FFATA and provide necessary information to enable Enterprise to comply with FFATA reporting requirements. Please visit <http://www.fsrc.gov> for more information.

## **High-Rate Limitation**

Enterprise may not provide reimbursement for payment of the salary of a contractor at more than the daily equivalent of the rate paid for the level IV of the Executive Schedule. For more information on the Executive Schedule, please see the Office of Personnel Management (OPM) website at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/executive-senior-level>. In order to verify this requirement is being met, Enterprise may require additional information regarding a breakout of direct and indirect expenses within budgets and rates.

**Standard Terms and Conditions (Attachment 1 and Attachment 2) and all other federal provisions are not negotiable.**

## **Attachments**

Attachment 1: Enterprise Standard Terms & Conditions

Attachment 2: Puerto Rico Department of Housing Flow Through Provisions

**ADDITIONAL PROVISIONS**  
**PUERTO RICO DEPARTMENT OF HOUSING**  
**COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY (CDBG-DR)**

*NOTE: Many of these Additional Provisions are copied directly from the SRA as defined below with some adjustments to fit context. As such, the term "Subrecipient" is used throughout and is referring to the **Contractor** who is the party to the Contract. Similarly, the term "Agreement" is referring to the **Contract between Enterprise and the Contractor**. In some instances, Enterprise's obligations are also included even though there is no direct obligation to the Contractor. Those provisions are included because, in general, the Contractor must perform in a way that enables Enterprise to comply with its obligations. As such, those provisions are to provide a full picture of Enterprise's obligations. All provisions should be read "as applicable" in the context of the work that the Contractor is performing and the Contractor's relationship to Enterprise.*

These Additional Provisions are required by the Subrecipient Agreement by and between the PUERTO RICO DEPARTMENT OF HOUSING (the "PRDOH") and ENTERPRISE COMMUNITY PARTNERS, INC. ("Enterprise"), dated as of September 3, 2021 (the "SRA") and are incorporated into the Contract by and between Contractor and Enterprise (or the subcontract by and between the Contractor and its subcontractor) to which these Additional Provisions are attached.

- I. **BACKGROUND.** These Additional Provisions are required by the SRA and the related federal laws and regulations governing the SRA, including (1) the Grant Agreement, Grant Number B-17-DM-72-0001 executed by the U.S. Department of Housing and Urban Development ("HUD") and PRDOH, (2) the Grant Agreement, Grant Number B-18-DP-72-0001 executed by HUD and PRDOH (collectively, Grant Number B-17-DM-72-0001 and Grant Number B-18-DP-72-0001, the "PRDOH's Federal Award", also known as the "CDBG-DR Grant"), and (3) the Notice of Funding Availability (NOFA), CDBG-DR-NOFA-2020-04 published by PRDOH on May 4, 2020. The funds made available for use by Enterprise under the Agreement constitute a subaward of the PRDOH's Federal Award, the use of which must be in accordance with requirements imposed by Federal statutes, regulations, and the terms and conditions of the PRDOH's Federal Award.
  
- II. **ATTACHMENTS.** Any Attachments to these Additional Provisions are fully incorporated herewith such that the terms and conditions of the Attachments shall be as binding as any terms and conditions of this Agreement. Should any inconsistency appear between the Attachments and this Agreement, the Agreement shall prevail.
  
- III. **SCOPE OF WORK.**
  - A. Compliance. The Subrecipient shall complete the Scope of Work of this Agreement in a manner consistent with the terms and conditions of applicable Federal and local statutes, laws and regulations, including the HUD General Provisions attached hereto as **Attachment 1**, PRDOH guidelines as identified in these Additional Provisions, and other applicable state and federal laws and regulations.
  
  - B. General Administration. The Subrecipient is prohibited from charging to Enterprise the costs of CDBG and/or CDBG-DR ineligible activities, including those described at 24 C.F.R. § 570.207, unless waived or made eligible by an applicable Federal Register Notice, from using funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying. The Subrecipient may be financially liable for activities undertaken outside of the parameters of the Scope of Work.
  
  - C. Close-Out Requirements. The Subrecipient must cooperate with Enterprise and PRDOH for all Close-Out Requirements. "Close-Out Requirements"

means all requirements to be satisfied in order to close-out the SRA and the CDBG-DR funds provided herein in accordance with applicable Requirements of Law, including the execution and delivery of all close-out agreements or other legal instruments and the taking of any actions in connection with such close-out, in any case as required under applicable Requirements of Law

**IV. PERFORMANCE, MONITORING AND REPORTING.** Enterprise shall monitor the performance of the Subrecipient as necessary to ensure that the funds allocated to the Subrecipient are used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this Agreement, The Subrecipient hereby acknowledges that this Agreement is subject to the PRDOH's Federal Award and the availability of the allocated CDBG-DR funds. The Subrecipient also acknowledges and agrees that any suspension, cancellation, termination or otherwise unavailability of the CDBG-DR allocation(s) shall result in the immediate suspension, cancellation, or termination of this Agreement, upon Enterprise's notice to the Subrecipient.

**V. PAYMENT**

- A. This Agreement is based on the reimbursement of funds to the Subrecipient expended on approved CDBG-DR items. Funding is contingent on PRDOH's Federal Award and PRDOH's receipt of CDBG-DR funds. PRDOH has reserved the right to reduce the funding amount of the SRA if CDBG-DR funding is not provided under the PRDOH's Federal Award at the currently anticipated levels and/or if the actual costs for the approved activities are less than those set forth in the SRA budget.
- B. In order for the Subrecipient to receive payment for any work performed hereunder, the following certification must be included in each Request for Reimbursement submitted to Enterprise. Enterprise will include this certification on the form of invoice to be used by the Subrecipient. If the Subrecipient uses an alternative form (such form to be used only with the approval of Enterprise), the alternative form must include the following:

**“Under penalty of absolute nullity, I hereby certify that no public servant of the government entity is a party to or has an interest of any kind in the profits or benefits to be obtained under the contract which is the basis of this invoice, and should he be a party to, or have an interest in, the profits or benefits to be obtained under the contract, a waiver has been previously issued. The only consideration to provide the contracted goods or services under the contract is the payment agreed upon with the authorized representative of the government entity. The amount that appears in the invoice is fair and correct. The work has been performed, the goods have been delivered, and the services have been rendered, and no payment has been received therefor.”**

**VI. AMENDMENT.** The PRDOH may, in its discretion, amend the SRA to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the Scope of Work, or schedule of the activities to be undertaken as part of this Agreement, such modifications shall be incorporated only by written amendment signed by both Enterprise and the Subrecipient. However, PRDOH reserves the right to notify Enterprise in writing, email or any other electronic method, any applicable policies, procedures, regulations, requirements, guidelines, or change in law, whether existing or to be established, as well as changes and/or amendments thereof, and the notified policies, procedures, regulations, requirements, guidelines and laws shall be deemed incorporated by reference to this Agreement without the need of executing a separate written

and signed amendment.

## VII. TERMINATION

A. Termination for Cause. The PRDOH may terminate the SRA in whole or in part, whenever it determines that Enterprise has failed to comply with any term, condition, requirement, or provision of the SRA. As such, the Subrecipient's failure to comply with any terms of this Agreement, include (but are not limited to) the following:

1. Failure to attend mandatory technical assistance and/or training,
2. Failure to comply with any of the rules, regulations, or provisions referred to herein, or such statutes, regulations, executive orders, HUD guidelines, PRDOH's Program Guidelines, as applicable, and policies or directives as may become applicable at any time;
3. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
4. Ineffective or improper use of funds provided under this Agreement; or
5. Submission of reports by the Subrecipient to Enterprise that are incorrect or incomplete in any material respect.

The Subrecipient shall have up to thirty (30) days to resolve issues listed above to the satisfaction of Enterprise.

B. Termination for Convenience of the PRDOH

The PRDOH may terminate for convenience the SRA. If the SRA is terminated by the PRDOH, the Subrecipient shall be paid the total compensation as the allowable services actually performed up until the date of termination. Any compensation under this paragraph must be for documented costs that are CDBG-DR eligible, and allowable, allocable, and reasonable in accordance with Uniform Administrative Requirements.

The SRA may also be terminated in whole or in part by either the PRDOH or Enterprise, or based upon agreement by both the PRDOH and Enterprise in accordance with the requirements in 2 C.F.R. part 200, subpart D. The Subrecipient shall be paid the total compensation as the allowable services actually performed up until the date of termination. Any compensation under this paragraph must be for documented costs that are CDBG-DR eligible, and allowable, allocable, and reasonable in accordance with Uniform Administrative Requirements.

C. Notification and Recoupment of Costs Incurred Prior to Termination

Enterprise shall promptly notify the Subrecipient, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect and any other notifications required under 2 C.F.R. part 200, subpart D. Upon termination, the PRDOH retains the right to recover any improper expenditures and the Subrecipient shall return to Enterprise any improper expenditures so required no later than thirty (30) days after the date of termination. In the case of a Termination for Convenience only, the Subrecipient may be allowed to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled provided that said costs meet the provisions of the SRA, 2 C.F.R. part 200, subpart E, Cost Principles, and any other applicable

state or Federal statutes, regulations or requirements.

- D. Unilateral Termination. Upon thirty (30) days notice, the PRDOH may terminate the SRA, in whole or in part, at PRDOH's sole discretion, with or without cause, at any time. Upon receipt of such notice, Enterprise may terminate this Agreement with notice to the Subrecipient, and, the Subrecipient shall immediately discontinue all services affected and deliver to Enterprise all information, studies and other materials that are property of the PRDOH. If the Subrecipient does not deliver to Enterprise all information, studies, and other materials that is the property of the PRDOH within the established timeframe, and the PRDOH invests any additional funds to reproduce the information, studies, and other materials not provided by the Subrecipient upon termination, then Enterprise will disallow from payments to the Subrecipient under this Agreement the funds expended for the PRDOH to reproduce such information, studies, and other materials. In the event of a termination by notice, the PRDOH shall be liable only for payment of services rendered up to and including the effective date of termination.
- E. Suspension. The PRDOH may suspend the SRA in whole or in part at any time for the PRDOH's convenience. The PRDOH shall give Enterprise five (5) days' written notice of such suspension. Upon receipt of such notice, Enterprise may suspend this Agreement with notice to the Subrecipient.
- F. Immediate Termination. In the event the Subrecipient is subjected to a criminal or civil action, suit, proceeding, inquiry or court of applicable jurisdiction, or any governmental agency, or the Subrecipient shall be subject to an order, judgment, or opinion, issued by any federal or local authority, a court of applicable jurisdiction, or any governmental agency, in connection with the execution, delivery, and performance by the Subrecipient of this Agreement or the Subrecipient of this Agreement has been noncompliant, breach, inaccuracy of any representation, warranties, covenants, or the certifications provided herein, whether the noncompliance, breach or inaccuracy takes place before or after the execution of this Agreement, Enterprise shall have the right to the immediate termination of this Agreement notwithstanding any provisions to the contrary herein. This section will apply in the event of any judgment that may obligate the PRDOH to terminate the SRA pursuant to Act No. 2 of January 4, 2018, as amended, 3 LPR § 1881 *et seq.*, known as the "Anti-Corruption Code for the New Puerto Rico". The Subrecipient has a continuous obligation to report to Enterprise any proceedings which apply to the Subrecipient under this paragraph.
- G. HUD Termination. In the event that the grant of funds by HUD under any allocations of the CDBG-DR may be suspended, withdrawn or canceled, this Agreement will be immediately terminated.
- H. Period of Transition. Upon termination of this Agreement, and for ninety (90) consecutive calendar days thereafter (the "Transition Period"), Subrecipient agrees to make itself/himself/herself available to assist the PRDOH or Enterprise with the transition of services assigned to Subrecipient. Subrecipient shall provide to the PRDOH or Enterprise the assistance reasonably requested to facilitate the orderly transfer of responsibility for performance of the services to the PRDOH or a third party designated by the PRDOH. PRDOH reserves the right to provide for the execution of a Transition Services Agreement for the Transition Period. In such instance, the Subrecipient will be paid at a reasonable, agreed upon, hourly rate for any work performed for the PRDOH during the Transition Period. Moreover, during that Transition Period, all finished or unfinished records (files, data, work product) connected with this Agreement will be turned over to

PRDOH.

- I. Availability of Funds. This Agreement is contingent upon the availability of funds from HUD. It is expressly understood and agreed that the obligation to proceed under this Agreement is conditioned upon the receipt of Federal funds. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or insufficient, either through the failure of the Federal government to provide funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to PRDOH, Enterprise has the right upon ten (10) working days written notice to the Subrecipient, to terminate this Agreement without damage, penalty, cost or expenses to Enterprise or PRDOH of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

### **VIII. COMPLIANCE WITH FEDERAL STATUTES, REGULATIONS AND THE TERMS AND CONDITIONS OF THE FEDERAL AWARD AND ADDITIONAL PRDOH REQUIREMENTS**

The "HUD General Provisions", which are attached to, and made an integral part of this Agreement as **Attachment 1**, set forth certain requirements imposed by HUD with respect to the PRDOH's Federal Award or CDBG-DR Grant. The Subrecipient agrees to carry out its obligations under this Agreement in compliance with all the requirements described in **Attachment 1** to the extent that such requirements are applicable to programs such as the program contemplated in this Agreement.

This Agreement also includes terms and conditions of the PRDOH's Federal Award or CDBG-DR Grant that are imposed on the Subrecipient, and the Subrecipient agrees to carry out its obligations in compliance with all the obligations described in this Agreement.

#### A. General Compliance

The Subrecipient shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 C.F.R. § 570, as modified by the Federal Register notices that govern the use of CDBG-DR funds available under this Agreement. See Federal Register Notice 83 FR 5844 (February 9, 2018). Notwithstanding the foregoing, (1) the Subrecipient does not assume any of the PRDOH's responsibilities for environmental review, decision-making, and action, described in 24 C.F.R. part 58; and (2) the Subrecipient does not assume any of the PRDOH's responsibilities for initiating the review process under the provisions of 24 C.F.R. part 52. The Subrecipient shall also comply with all other applicable Federal, state and local laws, regulations, and policies that govern the use of the CDBG-DR funds in complying with its obligations under this Agreement, regardless of whether CDBG-DR funds are made available to the Subrecipient on an advance or reimbursement basis. This includes without limitation, applicable Federal Registers; 2 C.F.R. part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Community Development Act of 1974; 24 C.F.R. part 570 Community Development Block Grant; applicable waivers; Fair Housing Act, 24 C.F.R. part 35, 24 C.F.R. part 58, 24 C.F.R. part 135; National Historic Preservation Act, and any other applicable state laws or regulations, including the requirements related to nondiscrimination, labor standards and the environment; and Action Plan amendments and HUD's guidance on the funds.

Where waivers or alternative requirements are provided for in the applicable Federal Register Notice dated February 9, 2018, at 83 FR 5844 or any future Federal Register Notice published by HUD ("HUD Notices"), such requirements, including any regulations referenced therein, shall apply.

The Subrecipient also agrees to comply with all other applicable Federal, state, and local laws, regulations, HUD Notices, policies, and guidelines, whether existing or to be established, provided the same are applied to activities occurring after the date the policy or guideline was established, governing the funds provided under this Agreement. In the event a conflict arises between the provisions of this Agreement and any of the foregoing, the Federal, state, and local laws, regulations, HUD Notices, policies, and guidelines shall control and this Agreement shall be interpreted in a manner so as to allow for the terms contained herein to remain valid and consistent with such Federal, state, and local laws, regulations, HUD Notices, policies and guidelines.

The Subrecipient shall also comply with applicable PRDOH policies and guidelines, as established in Program Guidelines and their amendments, if any, as found in the CDBG- DR Website (<https://cdbg-dr.pr.gov/en/resources/policies/>) which are herein included and made integral part of this Agreement, as it may be updated from time to time.

- B. Duplication of Benefits. As applicable, the Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155) and described in Appropriations Act. As applicable, the Subrecipient must comply with HUD's requirements for duplication of benefits, imposed by Federal Register notice on the PRDOH, which are published in a separate notice entitled "Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees" (76 FR 71060, published November 16, 2011). As applicable, the Subrecipient shall carry out the activities under this Agreement in compliance with the PRDOH's procedures to prevent duplication of benefits.
- C. Drug-Free Workplace. The Subrecipient must comply with drug-free workplace requirements in Subpart B of part 2429, which adopts the government wide implementation (2 C.F.R. part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. §§ 701-707).
- D. Insurance. The Subrecipient shall carry sufficient insurance coverage from insurers licensed to conduct business in the Government of Puerto Rico to protect all contract assets from loss due to any cause, including but not limited to theft, fraud, and/or physical damage. The Government of Puerto Rico, the Puerto Rico Department of Housing and the U.S. Department of Housing and Urban Development shall be named as additional insured on all such insurance. The Subrecipient shall meet all other insurance requirements as the PRDOH may impose on Enterprise (as applicable) or Enterprise may reasonably impose on the Subrecipient from time to time. In addition, all insurance carriers and bonding companies shall meet minimum size and financial stability/financial rating requirements as may be imposed by the PRDOH or Enterprise from time to time. Certificates of insurance shall be provided to Enterprise and full and complete copies of the policies and/or bonds shall be provided to Enterprise or PRDOH upon either of their request for same. See **Attachment 3** for additional provisions.

- E. Hold Harmless. The Subrecipient shall and hereby agrees to hold harmless, defend (with counsel acceptable to the PRDOH) and indemnify the PRDOH and each and all of its successors, affiliates, or assigns, and any of their employees, officers, directors, attorneys, consultants, agents, managers, and affiliates, from and against any and all damages, costs, attorneys' fees, claims, expenses, injuries, property damage, causes of action, violations of law, violations of this Agreement, and losses of any form or nature arising from or related to the conduct of the Subrecipient in the performance of the Scope of Work. This indemnity shall expressly include, but is not limited to, the obligation of the Subrecipient to indemnify and reimburse the PRDOH for any and all attorneys' fees and other litigation or dispute resolution costs incurred or to be incurred in the PRDOH's enforcement of this Agreement or any portion thereof against the Subrecipient or otherwise arising in connection with the Subrecipient's breach, violation, or other non-compliance with this Agreement. This clause shall survive indefinitely the termination of this Agreement for any reason.
- F. PRDOH Recognition. Unless otherwise directed by the PRDOH, Enterprise shall ensure recognition of the role of HUD and the PRDOH in providing funding, services, and efforts through this Agreement. Unless otherwise directed by the PRDOH, all activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to the role of HUD and of the PRDOH. In addition, Enterprise shall include a reference to the support provided herein in all publications made possible with funds made available under this Agreement. The PRDOH reserves the right to direct specific reasonable recognition requirements on a case-by-case basis, including but not limited, to the size and content, waiver, removal, or addition of such recognition.
- G. Logos Clause. The Subrecipient will not use the name of PRDOH, or its seals, logos, emblems, or any distinctive trademark/trade name, without the prior written express authorization of Enterprise (who will manage the authorization required by PRDOH).
- H. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Subrecipient shall comply with the applicable provisions in 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. part 200. These provisions include:

1) Financial & Program Management

The Subrecipient shall expend and account for all CDBG-DR funds received under this Agreement in accordance with 2 C.F.R. part 200 subpart D §§ 302-303 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

The Subrecipient shall administer its program in conformance with Cost Principles as outlined in 2 C.F.R. part 200 subpart E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

2) Documentation and Record Keeping

The Subrecipient shall maintain all records required by applicable law to be maintained, including but not limited to the Federal regulations specified in (1) 2 C.F.R. part 200; (2) 24 C.F.R. § 570.506; and (3) the applicable HUD Notices that are pertinent to the activities to be funded under this Agreement, as well as any additional records required by Enterprise or by PRDOH (as communicated to the Subrecipient through Enterprise). Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
  - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG-DR Programs, as modified by the HUD Notices, as applicable;
  - c. Records required to determine the eligibility of activities;
  - d. Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with CDBG-DR funds, as applicable;
  - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG-DR Program;
  - f. Financial records as required by (1) 24 C.F.R. § 570.502; and (2) 2 C.F.R. part 200;
  - g. Other records necessary to document compliance with Subpart K of 24 C.F.R. part 570.
- I. Access to Records. The Subrecipient shall furnish all information and reports required hereunder and shall permit access to its books, records and accounts by the PRDOH, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- J. Record Retention and Transmission of Records to the PRDOH. The Subrecipient shall retain all official records on programs and individual activities shall be retained for five (5) years, starting from the closeout of the PRDOH's Federal Award. If any other laws and regulations, as described in 24 C.F.R. § 570.490, apply to a project, the record retention period may be extended. All records involved in litigation, claims, audits, negotiations, or other actions, which have started before the expiration date of their retention, will be kept until completion of the action and resolution of all issues or the end of the regular five (5) year period, whichever is longer. (See 2 C.F.R. § 200.333 and 24 C.F.R. § 570.490(d)). Records shall be made available to PRDOH upon request.
- K. Client Data and Other Sensitive Information. In the event that the Subrecipient comes to possess client data and other sensitive information as a result of this Agreement, then the Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of services provided. Such information shall be made available to PRDOH monitors or their designees for review upon request.

The Subrecipient must comply with 2 C.F.R. § 200.303 and shall take reasonable measures to safeguard protected personally identifiable information, as defined in 2 C.F.R. § 200.82, and other information HUD or the PRDOH designates as sensitive or the Subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality. Additionally, the Subrecipient must comply with the *PRDOH CDBG-DR Personally Identifiable Information, Confidentiality, and Nondisclosure Policy*, as found in the CDBG-DR Website (<https://cdbg-dr.pr.gov/en/download/personally-identifiable-information-confidentiality-and-nondisclosure-policy/>), which is herein included and made integral part of this Agreement, as it may be updated from time to time.

The Subrecipient shall comply with all State or local requirements concerning the privacy of personal records, consistent with 24 C.F.R. § 570.508 (local governments) and § 570.490(c) (States).

- L. Close-Out. The Subrecipient obligation to Enterprise shall not end until all close-out requirements are completed by Enterprise and PRDOH. Activities during this close-out period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the PRDOH), properly addressing Program Income (as that term is defined in section VI (A)(19)(a) of the HUD Notice 83 Fed. Reg. 5844, 5856 (February 9, 2018, as may be amended by HUD)), balances, and accounts receivable to the PRDOH), determining the custodianship of records.

Notwithstanding the terms of 2 C.F.R. § 200.343, upon the expiration of this Agreement, the Subrecipient shall transfer to the recipient any CDBG-DR funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG-DR funds, further, any real property under the Subrecipient's control that was acquired or improved in whole or in part with CDBG-DR funds (including CDBG-DR funds provided to the Subrecipient in the form of a loan) shall be treated in accordance with 24 C.F.R. § 570.503(b)(7).

- M. Audits and Inspections. Upon reasonable prior written notice from Enterprise or PRDOH to the Subrecipient, all Subrecipient records with respect to any matters covered by this Agreement shall be made available to the PRDOH, HUD, and the Comptroller General of the United States, or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within thirty (30) days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements shall constitute a violation of this Agreement and may result in the withholding of future payments and/or termination.

- N. Single Audit. The Subrecipient must be audited as required by 2 C.F.R. part 200, subpart F when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements. Once said threshold is reached or exceeded, the Subrecipient shall notify Enterprise and shall report that event in the corresponding monthly progress report, as provided in Part VI - Performance, Monitoring, and Reporting, Subpart B (Reporting) of this Agreement.

The Subrecipient shall procure or otherwise arrange for the audit to be conducted for that year, as required in 2 C.F.R. § 200.501 (a)-(b); moreover, that it is properly performed and submitted when due in accordance with provisions that include but are not limited to those set forth in 2 C.F.R. § 200.512 - Report submission, as stated in 2 C.F.R. § 200.508(a)– Auditee responsibilities.

Among other relevant provisions, the Subrecipient shall comply with: (a) the Electronic submission of data and reports to the Federal Audit Clearinghouse (FAC) (2 C.F.R. § 200.512(d)) and; (b) ensuring that reports do not include protected personally identifiable information as set forth in 2 C.F.R. § 200.512(a)(2)).

- O. Inspections and Monitoring. The Subrecipient shall permit the PRDOH and auditors to have access to the Subrecipient's records and financial

statements as necessary for the PRDOH to meet therequirements of 2 C.F.R. part 200.

- P. Corrective Actions. The PRDOH may issue management decisions and may consider taking enforcement actions including but not limited to corrective actions in 24 C.F.R. § 570.910 if noncompliance is detected during monitoring and audits. The PRDOH may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from the pass-through entity detected through audits, on-site reviews, and other means. A timely and appropriate action shall be predicated on reasonable standard wherein the Subrecipient utilizes all available resources to correct the noted issue or issues. In response to audit deficiencies or other findings of noncompliance with this Agreement, the PRDOH may impose additional conditions on the use of the CDBG-DR funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.
- Q. Procurement and Contractor Oversight. The Subrecipient shall ensure that every process of procurement of goods and services comply with the federal procurement rules and regulations found in 2 C.F.R. § 200.318 through §200.327, procurement requirements that include, but are not limited to: (a) providing full and open competition; (b) following required steps to ensure the use of small and minority businesses, women's business enterprises, and labor surplus area firmswhen possible; (c) performing a cost or price analysis; (d) evaluating and documenting contractor's integrity, compliance with public policy, record of past performance, and financial and technical resources; (e) ensuring that the Subrecipient has not been suspended or debarred; (f) prohibiting the use of statutorily or administratively imposed state, local, or tribal geographic preferences in evaluating bids or proposal; (g) excludingcontractors that may have an unfair competitive advantage, and; (h) maintaining records to detail the history of procurement considerations. Enterprise must obtain and maintain records to document how the procurement performed by the Subrecipient complied with the aforementioned federal procurement rules and regulations, as amended from time to time.

In regard to the provisions of the Procurement Manual for CDBG-DR Programs, as found in the CDBG-DR Website (<https://cdbg-dr.pr.gov/en/download/procurement-manual-cdbg-dr-program/>) which is herein incorporated by reference and made integral part ofthis Agreement, as it may be updated from time to time, the Subrecipient shall comply with the provisions related to: minority, women, small, and Section 3 business participation; low and very low-income persons or firms participation.

The Subrecipient shall include all applicable PRDOH's conditions (as revised from time totime by the PRDOH in accordance with applicable law, rule or regulation) in any contract entered into under this Agreement. Subrecipient shall also require all contractors to flowdown the PRDOH's Conditions, as well as termination for convenience of the PRDOH, to all subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors. These Conditions include required terms for project contracts, HUDGeneral Provisions, Participation by Minority Group Members and Women Requirementsand Procedures for Contracts with Housing Trust Fund Corporation, Standard Clauses forContracts with the PRDOH, and required diversity forms.

The Subrecipient must comply with CDBG-DR regulations regarding debarred or suspended entities at 24 C.F.R. § 570.609 or 24 C.F.R. § 570.489(l) as appropriate. CDBG- DR funds may not be provided to excluded or disqualified persons.

The Subrecipient shall maintain oversight of all activities under this Agreement and shall ensure that for any procured contract or Agreement, as applicable, its contractors perform according to the terms and conditions of the procured contracts or Agreements, and the terms and conditions of this Agreement.

- R. Nondiscrimination. The Subrecipient shall comply with 24 C.F.R. part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. § 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance.

The Subrecipient shall adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (Section 504). Section 109 of the Housing and Community Development Act of 1974 makes these requirements applicable to programs or activities funded in whole or in part with CDBG-DR funds. Thus, the Subrecipient shall comply with regulations of 24 C.F.R. part 8, which implement Section 504 for HUD programs, and the regulations of 24 C.F.R. part 146, which implement the Age Discrimination Act for HUD programs.

The Subrecipient shall ensure that all CDBG-DR activities conducted by itself or its contractors are consistent with the applicable federal and local legal provisions, regulations, and policies that prohibit discrimination on the basis of race, creed, color, national origin, religion, sex, disability, familial status, actual or perceived sexual orientation or gender identity, marital status, or age, as established in the CDBG-DR Fair Housing and Equal Opportunity (FHEO) Policy for CDBG-DR Programs as found in the CDBG-DR website <https://cdbg-dr.pr.gov/en/download/fair-housing-and-equal-opportunity-fheo-policy-for-cdbg-dr-programs/>.

- S. Architectural Barriers Act and the Americans with Disabilities Act. The Subrecipient shall ensure that its Activities are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act. The Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151 - 4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 C.F.R. § 40.2 or the definition of "building" as defined in 41 C.F.R. § 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151 - 4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 C.F.R. part 40 for residential structures, and appendix A to 41 C.F.R. part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State

and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable that is, easily accomplishable and able to be carried out without much difficulty or expense.

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 C.F.R. § 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

T. Title VI of the Civil Rights Act of 1964 (24 C.F.R. part 1)

1. General Compliance:

The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended and 24 C.F.R. §§ 570.601 and 570.602. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this Agreement. The specific nondiscrimination provisions at 24 C.F.R. § 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 C.F.R. part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 24 C.F.R. part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 24 C.F.R. part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

2. Assurances and Real Property Covenants:

As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement shall be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided shall be operated and administered in compliance with all requirements imposed by or pursuant to this part 1.

If the Federal financial assistance under this Agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended

pursuant to the contract or application. This assurance gives the PRDOH and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-DR funds and provided to the Subrecipient under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.

3. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient shall take the affirmative steps listed in 2 C.F.R. § 200.321 (b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible when the Subrecipient procures property or services under this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. § 632), and "minority and women's business enterprise" means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

In compliance with the CDBG-DR Minority and Women-Owned Business Enterprise Policy (M/WBE Policy), the Subrecipient shall complete a utilization plan to identify how they plan on successfully achieving the contracting goals for MBE and WBE's. Subrecipient shall also complete quarterly reporting to provide information on contracting opportunities and payouts provided to WBE or MBE contractors or subcontractors. Subrecipient shall also document their efforts and submit those to PRDOH on a quarterly basis. See the M/WBE Policy, as found in the CDBG-DR Website ([www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov)) which is herein included and made integral part of this Agreement, as it may be updated from time to time.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining Agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and

shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

U. Labor Standards

The Subrecipient shall comply with the in labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended, and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis Bacon Act, as amended (40 U.S.C. § 3141, *et seq.*), and 29 C.F.R. part 1, 3, 5, 6, and 7, provided, that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than eight (8) units.

The Subrecipient agrees to comply with the (18 U.S.C. § 874) and its implementing regulations of the U.S. Department of Labor at 29 C.F.R. part 3 and part 5. The Subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to the PRDOH for review upon request.

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; or nepotism activities.

V. Section 3 of the Housing and Urban Development Act of 1968

The Subrecipient shall comply with the provisions of Section 3 of the HUD Act of 1968, as amended, 12 U.S.C. § 1701u, and thereby implementing its regulations set forth in 24 C.F.R. § 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon Grantee, Subrecipient, and any of Subrecipient's subrecipient, contractors, and subcontractors. Failure to fulfill these requirements shall subject Grantee, Subrecipient, and any of Subrecipient, contractors, and subcontractors, as well as their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. Subrecipient certifies and agrees that no contractual or other impediment exists that would prevent compliance with these requirements.

Subrecipient further agrees to comply with the Section 3 requirements stated below and to include verbatim this language in all subsequent subrecipient Agreements, contracts, and subcontracts executed under this Agreement:

"A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development

Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- C. The Subrecipient agrees to send to each labor organization or representative of workers with which the Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Subrecipient's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The Subrecipient agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 75. The Subrecipient will not subcontract with any subcontractor where the Subrecipient has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 75.
- E. The Subrecipient acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.
- F. The Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Subrecipient is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 75 require employment opportunities to be directed, were not filled to circumvent the Subrecipient's obligations under 24 C.F.R. part 75.
- G. Noncompliance with HUD's regulations in 24 C.F.R. part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- H. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions

of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

- I. The Subrecipient agrees to submit, and shall require its subcontractors to submit to them, quarterly reports to the PRDOH detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 Workers and Targeted Section 3 Workers."

Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area of the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient agrees to submit, and shall cause and review its contractors and subcontractors to submission of recordkeeping efforts and, quarterly reports to the PRDOH detailing the number of new employees hired, the number of new Section 3 employees hired, the number of construction subcontracts, the number of subcontracts provided to Section 3 businesses, the number of non-construction contracts, the number of non-construction contracts to Section 3 businesses and any affirmative efforts made to direct hiring efforts to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing during the previous quarter.

Subrecipient certifies and agrees that no contractual or other legal impediment exists that would prevent compliance with these requirements.

W. Conduct

1. Monitoring: Enterprise will monitor all contracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported to PRDOH with documented evidence of follow-up actions taken to correct areas of noncompliance.

2. Content: The Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any contract executed in the performance of this Agreement, as applicable.
3. Selection Process: The Subrecipient shall ensure that all contracts awarded after the execution of this Agreement and in the performance of such, follow the procurement policies and procedures described in Section X, subsection S of this Agreement.
4. Notification: The Subrecipient shall notify and provide a copy of any and all contracts related to this Agreement and CDBG-DR funds to Enterprise within three (3) business days of its execution. Additionally, the Subrecipient shall provide a copy of any and all subcontracts executed by its subcontractors to Enterprise within three (3) business days of its execution.
5. Hatch Act. The Subrecipient shall comply with the Hatch Act, 5 U.S.C. §§ 1501 – 1508, and shall ensure that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
6. Conflict of Interest. The Subrecipient agrees to abide by the provisions of 2 C.F.R. part 200, as applicable, and 24 C.F.R. § 570.611, which include (but are not limited to) the following:
  - a. It is presumed that the Subrecipient is subject to state and local ethic laws and regulations related to the conduct of its officers, employees or agents engaged in the award and administration of this Agreement.
  - b. In the event the Subrecipient is not, the Subrecipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of this Agreement. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the Parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or Parties to sub Agreements. However, recipients may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.
  - c. No covered persons who exercise or have exercised any

functions or responsibilities with respect to CDBG-DR assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or Agreement with respect to the CDBG-DR assisted activity, or with respect to the proceeds from the CDBG-DR assisted activity, either for themselves or those with whom they have business or immediate families, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the PRDOH, the Subrecipient, or any designated public agency.

d. Clause of Governmental Ethics Certification of Absence of Conflict of Interests - The Subrecipient certifies that: (1) No public server of the Subrecipient has pecuniary interest in this Agreement; (2) No public server of the Subrecipient has solicited or accepted, directly or indirectly, for themselves, for any member of their family unit or for any other person, gifts, allowances, favors, services, donations loans or any other thing of monetary value. (3) No public server of the Subrecipient related to this transaction, asked for or accepted any good of economic value, from any person or organization as payment for the duties and responsibilities of their employment. (4) No public server of the Subrecipient has solicited, directly or indirectly, for themselves, any member of their family unit, neither for any other person, business or organization, any good of economic value, including gifts, loans, promises, favors or services in exchange for their obligations and performance of said public employment, to influence or favor any organization. (5) No public server of the Subrecipient has kinship relationship, within the fourth degree of consanguinity and second by affinity, with nobody in public employment that has faculty to influence and to participate in the institutional decisions of this Agreement.

- X. Citizen Grievances. If the Subrecipient receives any complaint or grievance, it shall refer said complaint or grievance immediately to Enterprise who will then notify the PRDOH CDBG-DR Program so that PRDOH may respond appropriately.
- Y. Technical Assistance and Trainings. The Subrecipient shall attend any and all technical assistance and/or trainings that Enterprise or the PRDOH requires from time to time at its discretion. Failure to attend may be considered as cause for termination.
- Z. Disaster Relief Account. Pursuant to Federal Register Vol. 85, No. 17, 85 FR 4681 (January 27, 2020), PRDOH must comply with an additional requirement imposed by an Order of October 26, 2017, granted by the United States District Court for the District of Puerto Rico, as may be amended from time to time. As required by the Order, grant funds or disaster relief funds received by the Commonwealth of Puerto Rico or other

Non-Federal Entities (as defined by 2 C.F.R. § 200.69) shall be deposited solely into a Disaster Relief Account.

As a result thereof, under the terms of the beforementioned Court order and under the conditions of this Agreement, any and all CDBG-DR/MIT funds subawarded by PRDOH to its subrecipients shall be deposited into a new, separate, non-co-mingled, unencumbered account held in the name of the subrecipient (in this case, Enterprise). The funds shall be used solely for eligible activities. Further, Enterprise shall provide and make available to PRDOH any and all documentation related to such account.

- AA. Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). Every project funded in part or in full by Community Development Block Grant – Disaster Recovery (CDBG-DR) funds, and all activities related to that project, are subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, 42 U.S.C. § 4601 et seq., and section 104(d) of the Housing and Community Development Act of 1992, as amended (HCDA), 42 U.S.C. § 5304(d), except where waivers or alternative requirements have been provided by the U.S. Department of Housing and Urban Development (HUD). The implementing regulations for URA are at 49 C.F.R. Part 24, and the regulations for section 104(d) are at 24 C.F.R. Part 42, subpart C. Additionally, HUD has established regulations specific to CDBG-funded housing activities at 24 C.F.R. § 570.606. PRDOH has also established the Uniform Relocation Assistance Guide & Residential Anti-Displacement and Relocation Assistance Plan (URA & ADP Guide) which provides guidance and requirements regarding URA compliance and minimizing displacement that are applicable to all CDBG-DR programs. The primary purpose of these laws and regulations is to provide uniform, fair, and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally funded projects.

When CDBG-DR funds are planned, intended, or used for any activity or phase of a project and the phases are interdependent, URA applies to that activity or project. This includes any property acquisition, even if CDBG-DR funds are not used to fund the purchase, if the contract to acquire property is executed with the intention of seeking CDBG-DR funds to complete the project or an interdependent phase of the project. Subrecipients are responsible for ensuring URA compliance throughout the design, proposal, and implementation of any project that includes real property acquisition or displacement of residential or business occupants.

- IX. CDBG-DR POLICIES AND PROCEDURES.** In addition to what is established in this Agreement, the Subrecipient shall comply with all CDBG-DR Program specific and general policies and procedures, including, but not limited to, the Subrecipient Management Policy, OS&H Guideline, MWBE Policy, Procurement Manual for CDBG-DR Programs, URA & ADP Guidelines, Cross Cutting Guidelines, AFWAM Policy, Section 3 Policy, Personally Identifiable Information, Confidentiality, and Nondisclosure Policy and Conflict of Interest and Standards of Conduct Policy, as found in the CDBG-DR Website (<https://cdbg-dr.pr.gov/en/resources/policies/>), which are herein included and made integral part of this Agreement, as they may be updated from time to time, and reporting requirements as established by the PRDOH.
- X. FORCE MAJEURE.** In the event of a fire, flood, earthquake, natural disaster, hurricane, riot, act of governmental authority in its sovereign capacity, pandemic officially declared by the Government of Puerto Rico or the federal government, strike, labor dispute or unrest, embargo, war, insurrection or civil unrest, any *Force Majeure* including inclement weather, herein collectively referred to as *Force Majeure* during the term of this Agreement, neither the PRDOH, Enterprise nor the Subrecipient shall be liable to the other party(ies) for nonperformance during the conditions created by such event. The Subrecipient shall notify, as soon as

possible, Enterprise of the occurrence of the *Force Majeure* event and describe in reasonable detail, the nature of the *Force Majeure* event.

- XI. INDEPENDENT CONTRACTOR.** Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee as between PRDOH and the Subrecipient. The Subrecipient shall at all times remain an "independent contractor" with respect to the efforts to be performed under this Agreement. The PRDOH shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent entity.
- XII. NON-WAIVER.** The PRDOH's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the PRDOH to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.
- XIII. SUBROGATION.** The Subrecipient acknowledges that funds provided through this Agreement are Federal funds administered by HUD under the CDBG-DR Program and that all funds provided by this Agreement are subject to audit, disallowance, and repayment. Any disagreement with adverse findings may be challenged and subject to Federal regulation, however, the Subrecipient shall promptly return any and all funds to the PRDOH, which are found to be ineligible, unallowable, unreasonable, a duplication of benefits, or non-compensable, no matter the cause. This clause shall survive indefinitely the termination of this Agreement for any reason in accordance with **Attachment 2** ("Subrogation and Assignment Provisions").
- XIV. FEDERAL FUNDING.** The fulfillment of this Agreement is based on funds being made available to the PRDOH as the lead administrative agency for Recovery. All expenditures under this Agreement must be made in accordance with this Agreement, the policies and procedures promulgated under the CDBG-DR Program, and any other applicable laws. Further, Subrecipient acknowledges that all funds are subject to recapture and repayment for non-compliance.
- XV. RECAPTURE OF FUNDS.** PRDOH may recapture payments it makes to Enterprise that (i) exceed the maximum allowable rates; (ii) are not allowed under applicable laws, rules, or regulations; or (iii) are otherwise inconsistent with this Agreement, including any unapproved expenditures. Subrecipient must refund such recaptured payments within thirty (30) days after Enterprise issues notice of recapture to Subrecipient.
- XVI. OVERPAYMENT.** Subrecipient shall be liable to Enterprise for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Agreement. Subrecipient shall reimburse such disallowed costs from funds other than those Subrecipient received under this Agreement.

## ATTACHMENT 1

### HUD GENERAL PROVISIONS AND OTHER FEDERAL STATUTES, REGULATIONS, AND PRDOH REQUIREMENTS

#### TECHNICAL ASSISTANCE AND CAPACITY BUILDING PROVIDERS

##### ENTERPRISE COMMUNITY PARTNERS, INC.

Given that the Subrecipient Agreement (**SRA**) (the agreement executed by and between PRDOH and Enterprise) involves funds for which the U.S. Department of Housing and Urban Development (**HUD**) is the oversight agency, the following terms and conditions may apply to the SRA. In addition, Enterprise shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at <https://www.hudexchange.info/resource/2490/hud-form-4010-federal-labor-standards-provisions/>.

Enterprise must include these terms and conditions **as written** in all subcontracts or purchase orders directly servicing the SRA. *As such, "Subrecipient" in this instance is referring to **Enterprise** and the phrase "and any of its subcontractors" refers to the **Contractor**. In some instances, the obligations of Enterprise (only) as Subrecipient are included even though there is no direct obligation to the Contractor. Those provisions are included because, in general, the Contractor must perform in such a way that enables Enterprise to comply with its obligations (e.g., if there is a reporting requirement due from Enterprise, Contractor must cooperate with Enterprise to provide the details as needed for the report.). As such, those provisions are to provide a full picture of Enterprise's obligations. All provisions should be read "as applicable" in the context of the work that the Contractor is performing and the Contractor's relationship to Enterprise.*

These general provisions may be updated from time to time. It is the sole responsibility of the Subrecipient to be aware of any changes hereto, to amend and implement such changes and to ensure subcontracts terms and conditions are modified as necessary, if any.

#### **General Provisions:**

##### **1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

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

##### **2. STATUTORY AND REGULATORY COMPLIANCE**

Subrecipient shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115-56), approved September 8, 2017 (**Appropriations Act**), as amended, including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including if certain expenses are allowed.

### **3. BREACH OF SUBRECIPIENT AGREEMENT TERMS**

The Puerto Rico Department of Housing (**PRDOH**) reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this SRA, in instances where the Subrecipient or any of its subcontractors violate or breach any SRA term. If the Subrecipient or any of its subcontractors violate or breach any SRA term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the SRA documents, and the rights and remedies available thereunder, shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

### **4. REPORTING REQUIREMENTS**

The Subrecipient shall complete and submit all reports, in such form and according to such schedule, as may be required by the PRDOH and/or the Government of Puerto Rico. The Subrecipient shall cooperate with all the PRDOH and/or the Government of Puerto Rico efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 2 C.F.R. § 200.328 and 24 C.F.R. § 570.507, when applicable.

### **5. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

The Subrecipient will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include, but are not limited to:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

Additionally, for contracts of \$10,000 or more, the Subrecipient shall file Form HUD 2516 (Contract and Subcontract Activity) with the PRDOH on a quarterly basis.

### **6. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements", and any implementing regulations issued by HUD.

### **7. DEBARMENT, SUSPENSION, AND INELIGIBILITY**

The Subrecipient represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. Part 2424.

## **8. CONFLICTS OF INTEREST**

The Subrecipient shall notify the PRDOH as soon as possible if this SRA or any aspect related to the anticipated work under this SRA raises an actual or potential conflict of interest (as defined 2 C.F.R. § 200.318(c), if applicable). The Subrecipient shall explain the actual or potential conflict in writing in sufficient detail so that the PRDOH is able to assess such actual or potential conflict. The Subrecipient shall provide the PRDOH any additional information necessary to fully assess and address such actual or potential conflict of interest. The Subrecipient shall accept any reasonable conflict mitigation strategy employed by the PRDOH, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict.

## **9. SUBCONTRACTING**

When subcontracting, the Subrecipient shall solicit for and contract with such subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (ii) Requiring unnecessary experience and excessive bonding;
- (iii) Noncompetitive pricing practices between firms or between affiliated Companies;
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest;
- (vi) Specifying only a "brand name" product instead of allowing an "equal product" to be offered and describing the performance of other relevant requirements of the procurement; and
- (vii) Any arbitrary action in the procurement process.

The Subrecipient represents to the PRDOH that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this SRA.

The Subrecipient will include these HUD General Provisions in every subcontract issued by it, so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

## **10. ASSIGNABILITY**

The Subrecipient shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the PRDOH.

## **11. COPELAND "ANTI-KICKBACK" ACT (Applicable to all construction or repair contracts)**

Salaries of personnel performing work under this SRA shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland

"Anti-Kickback Act" of 1934, 48 Stat. 948; (codified at 18 U.S.C. § 874; and 40 U.S.C. § 3145). The Subrecipient shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of

subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

## **12. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**(Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$2,500 that involve the employment of mechanics or laborers.)**

The Subrecipient shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (**CWHSSA**), 40 U.S.C. §§ 3701-3708, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

All laborers and mechanics employed by SUBRECIPIENTS or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the CWHSSA, and the Subrecipients and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

## **13. DAVIS-BACON ACT**

**(Applicable to construction contracts exceeding \$2,000 when required by Federal program legislation.)**

The Subrecipient shall comply with the Davis Bacon Act (40 U.S.C. § 3141, *et seq.*) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

All laborers and mechanics employed by SUBRECIPIENTS or subcontractors, including employees of other governments, on construction work assisted under this SRA, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

On a semi-annual basis, the Subrecipient shall submit Form HUD 4710 (Semi-Annual labor Standards Enforcement Report) to PRDOH.

## **14. TERMINATION FOR CAUSE**

**(Applicable to contracts exceeding \$10,000)**

If, through any cause, the Subrecipient shall fail to fulfill in a timely and proper manner his or her obligations under this SRA, or if the Subrecipient shall violate any of the covenants, agreements, or stipulations of this SRA, the PRDOH shall thereupon have the right to terminate this SRA by giving written notice to the Subrecipient of such termination and specifying the effective date thereof, at least **five (5) days** before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Subrecipient under this Agreement shall, at the option of the PRDOH, become the PRDOH's property and the Subrecipient shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Subrecipient shall not be relieved of liability to the Government of Puerto Rico and PRDOH for damages sustained by the Government of Puerto Rico and/or PRDOH by virtue of any breach of the Agreement by the Subrecipient, and the Government of Puerto Rico and/or PRDOH may withhold any payments to the Subrecipient for the purpose of set-off until such time as the exact amount of damages due to the Government of Puerto Rico and/or PRDOH from the Subrecipient is determined.

## **15. TERMINATION FOR CONVENIENCE**

**(Applicable to contracts exceeding \$10,000)**

The PRDOH may terminate this SRA at any time by giving at least a **ten (10) day** notice in writing to the Subrecipient. If the SRA is terminated by the PRDOH as provided herein, the Subrecipient will be paid for the time provided and expenses incurred up to the termination date.

**16. SECTION 503 OF THE REHABILITATION ACT OF 1973  
(Applicable to contracts exceeding \$10,000)**

The Subrecipient shall comply with Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers with Disabilities:

- 1) The Subrecipient will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Subrecipient agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
  - (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - (iii) Rates of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Subrecipient;
  - (vii) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the Subrecipient including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.
- 2) The Subrecipient agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 3) In the event of the Subrecipient's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 4) The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Subrecipient's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Subrecipient must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subrecipient may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
- 5) The Subrecipient will notify each labor organization or representative of workers

with which it has a collective bargaining agreement or other contract understanding, that the Subrecipient is bound by the terms of Section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

- 6) The Subrecipient will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Rehabilitation Act of 1973, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

**17. EQUAL EMPLOYMENT OPPORTUNITY  
(Applicable to construction contracts and subcontracts exceeding \$10,000)**

The Subrecipient shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. Subpt. B, Ch. 60).

During the performance of this Agreement, the Subrecipient agrees as follows:

- 1) The Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subrecipient shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 2) The Subrecipient shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this non-discrimination clause. The Subrecipient shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 3) The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 4) The Subrecipient will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Subrecipient's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The Subrecipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the

Secretary of Labor.

- 6) The Subrecipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 7) In the event of the Subrecipient's non-compliance with the non-discrimination clause of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Subrecipient may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- 8) SUBRECIPIENT shall incorporate the provisions of 1 through 7 above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such subcontractor. The Subrecipient will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the Subrecipient becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

**18. CERTIFICATION OF NONSEGREGATED FACILITIES  
(Applicable to construction contracts exceeding \$10,000)**

The Subrecipient certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Subrecipient agrees that a breach of this certification is a violation of the equal opportunity clause of this Agreement.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Subrecipient further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

**19. CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS  
(Applicable to contracts exceeding \$100,000)**

The Subrecipient and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*, and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Ch. I, Subch. C, Pt. 60, Subpt. B and Ch. I, Subch. C, Pt. 93, Subpt. B, as amended, Section 508 of the Federal Water Pollution Control Act (33 U.S.C. § 1368) and Executive Order 11738 of September 10, 1973.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- 1) A stipulation by the Subrecipient or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to Ch. I, Subch. C, Pt. 93, Subpt. B or on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Ch. I, Subch. C, Pt. 60, Subpt. B, as amended.
- 2) Agreement by the Subrecipient to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 7414) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- 3) A stipulation that as a condition for the award of the Agreement, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Agreement, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.
- 4) Agreement by the Subrecipient that he or she will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Subrecipient will take such action as the government may direct as a means of enforcing such provisions.

**20. ANTI-LOBBYING**

**(Applicable to contracts exceeding \$100,000)**

By the execution of this SRA, the Subrecipient certifies, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.
- 3) The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **21. BONDING REQUIREMENTS**

### **(Applicable to construction and facility improvement contracts exceeding \$100,000)**

The Subrecipient shall comply with 2 C.F.R. § 200.326 minimum bonding requirements:

- 1) A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his or her bid, execute such contractual documents as may be required within the time specified.
- 2) A performance bond on the part of the Subrecipient for one hundred percent (100%) of the Agreement price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Subrecipient's obligations under such contract.
- 3) A payment bond on the part of the Subrecipient for one hundred percent (100%) of the Agreement price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

## **22. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

- A. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. Part 75, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

- C. The Subrecipient agrees to send to each labor organization or representative of workers with which the Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Subrecipient's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The Subrecipient agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 75. The Subrecipient will not subcontract with any subcontractor where the Subrecipient has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 75.
- E. The Subrecipient acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contracting requirements of 24 C.F.R. 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.
- F. The Subrecipient will certify that any vacant employment positions, including training positions, that are filled: (1) after the Subrecipient is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 75 require employment opportunities to be directed, were not filled to circumvent the Subrecipient's obligations under 24 C.F.R. Part 75.
- G. Noncompliance with HUD's regulations in 24 C.F.R. Part 75 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- H. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (46 U.S.C. § 5307) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
- I. The Subrecipient agrees to submit, and shall require its subcontractors to submit to them, quarterly reports to the PRDOH detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 Workers and Targeted Section 3 Workers.

### **23. FAIR HOUSING ACT**

SUBRECIPIENT shall comply with the provisions of the Fair Housing Act of 1968, as amended. The Act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, disability, or familial status. The

Equal Opportunity in Housing Act prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

#### **24. ENERGY POLICY AND CONSERVATION ACT**

SUBRECIPIENT shall comply with mandatory standards and policies relating to energy efficiency as contained in the Government of Puerto Rico's energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*).

#### **25. POLITICAL ACTIVITY**

The Subrecipient agrees to comply with mandatory standards and policies relating to Hatch Political Activity Act (Hatch Act), 5 U.S.C. §§ 1501–1508, which limits the political activity of employees.

The Subrecipient shall comply with the Hatch Act and shall ensure that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, 5 U.S.C. §§ 1501–1508.

The Hatch Act applies to political activities of certain state and local employees. As a PRDOH's SUBRECIPIENT, you may participate in any of the following activities: be a candidate in nonpartisan elections; attend political meetings and conventions; contribute money; campaign in partisan elections; and hold office in political parties.

The Subrecipient may not do the following activities: be a candidate in partisan elections; use official influence to interfere in elections; coerce political contributions from subordinates in support of political parties or candidates the office of special counsel operates a website that provides guidance concerning hatch act issues.

#### **26. HEALTH AND SAFETY STANDARDS**

All parties participating in this project agree to comply with Sections 3702 and 3704 (a) of the Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C. §§ 3702 and 3704. Section 3704 (a) of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to a contract to acquire a commercial product (as defined in 41 U.S.C. § 103) or a commercial service (as defined in 41 U.S.C. § 103a).

#### **27. PERSONNEL**

The Subrecipient represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of, or have any contractual relationship with, the contracting party. All the services required hereunder will be performed by the Subrecipient or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. No person who is serving sentence in a penal or correctional institution shall be employed on work under this SRA.

## **28. WITHHOLDING OF WAGES**

If in the performance of this Agreement, there is any underpayment of wages by the Subrecipient or by any subcontractor thereunder, the PRDOH may withhold from the Subrecipient out of payment due to him or her an amount sufficient to pay to employees underpaid the difference between the wages required thereby to be paid and the wages actually paid to such employees for the total number of hours worked. The amounts withheld may be disbursed by the PRDOH for and on account of the Subrecipient or subcontractor to the respective employees to whom they are due.

## **29. CLAIMS AND DISPUTES PERTAINING TO WAGE RATES**

Claims and disputes pertaining to wage rates or to classifications of professional staff or technicians performing work under this SRA shall be promptly reported in writing by the Subrecipient to the PRDOH for the latter's decision, which shall be final with respect thereto.

## **30. DISCRIMINATION BECAUSE OF CERTAIN LABOR MATTERS**

No person employed on the services covered by this Agreement shall be discharged or in any way discriminated against because he or she has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to his or her employer.

## **31. INTEREST OF MEMBERS OF LOCAL PUBLIC AGENCY AND OTHERS**

The Subrecipient agrees to establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have a family, business, or other tie. The Subrecipient will be aware of and avoid any violation of the laws of this State which prohibit municipal officers and employees from having or owning any interest or share, individually or as an agent or employee of any person or corporation, either directly or indirectly, in any contract made or let by the governing authorities of such municipality for the construction or doing of any public work, or for the sale or purchase of any materials, supplies or property of any description, or for any other purpose whatsoever, or in any subcontract arising therefrom or connected therewith, or to receive, either directly or indirectly, any portion or share of any money or other thing paid for the construction or doing of any public work, or for the sale or purchase of any property, or upon any other contract made by the governing authorities of the municipality, or subcontract arising therefore or connected therewith.

The Subrecipient will also be aware of and avoid any violation of the laws of this State which prescribe a criminal penalty for any public officer who has an interest in any contract passed by the board of which he or she is a member during the time he or she was a member and for **one (1) year** thereafter.

## **32. INTEREST OF CERTAIN FEDERAL OFFICERS**

No member of, or delegate to, the Congress of the United States and no Resident Commissioner shall be admitted any share or part of this Agreement or to any benefit to arise therefrom.

## **33. INTEREST OF SUBRECIPIENT**

The Subrecipient agrees that it presently has no interest and shall not acquire any interest, direct or indirect, in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of the Work hereunder. The Subrecipient further agrees that no person having any such interest shall be employed in the performance of this Agreement.

#### **34. RELIGIOUS ACTIVITY**

The Subrecipient agrees to provide equal participation to faith-based organizations in HUD programs and activities and to abstain from disfavoring any faith-based organization, including by failing to select a faith-based organization, disqualifying anfaith-based organization, or imposing any condition or selection criterion that otherwise disfavors or penalizes an faith-based organizations in the selection processusing any funds related to this Agreement. 24 C.F.R. 570.200(j); 24 C.F.R. § 5.109 (c).

#### **35. FLOOD DISASTER PROTECTION ACT OF 1973**

The Subrecipient will ensure that procedures and mechanisms are put into place to monitor compliance with all flood insurance requirements as found Section 202(a) ofthe Flood Disaster Protection Act of 1973, 42 U.S.C. 4106, and the regulations in 44 C.F.R. parts 59 through 79. 24 C.F.R. § 570.605.

#### **36. LEAD BASED PAINT**

The Subrecipient must comply with the regulations regarding lead-based paint found at 24 C.F.R. Subt. A, Pt. 35, Subpt. A on LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES with regards to all housing units assisted using CDBG-DR funds.

#### **37. VALUE ENGINEERING**

**(Applicable to construction contracts exceeding \$2,000 when required by Federalprogram legislation.)**

The Subrecipient must comply with the regulations regarding systematic and organized approach to analyze functions of systems, equipment, facilities, services, and materials to ensure they achieve their essential functions at the lowest cost consistent to life cycle in execution, reliability, quality, and safety, in accordance with2 C.F.R. § 200.318(g).

**END OF DOCUMENT**

## ATTACHMENT 2

### SUBROGATION AND ASSIGNMENT PROVISIONS

#### TECHNICAL ASSISTANCE AND CAPACITY BUILDING PROVIDERS

##### ENTERPRISE COMMUNITY PARTNERS, INC.

#### 1. General Provisions

a) The Parties acknowledge that the following provisions of this Exhibit are hereto incorporated by reference and made an integral part of the aforementioned Subrecipient Agreement as **Exhibit G**.

b) Changes in the provisions of this Exhibit will require an amendment to the Subrecipient Agreement. Such amendment would result in the incorporation by reference of a modified **Exhibit G** to the Subrecipient Agreement.

#### 2. Subrogation and Assignment Relating to Funds Received from the Puerto Rico Department of Housing - Technical Assistance and Capacity Building Providers Program.

a) These provisions are incorporated into the Subrecipient Agreement in consideration of the commitment by PRDOH to evaluate Subrecipient's application for the award of disaster assistance funds (the "**Application**") or the Subrecipient's receipt of CDBG-DR disaster recovery funds (the "**Grant Proceeds**") under the Program being administered by PRDOH.

b) Subrecipient understands and acknowledges that the Program is subject to the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. §§ 5121-5207 (the "**Act**") and that, under such Act, the Subrecipient may only receive assistance to the extent that the Subrecipient has a disaster recovery need that is not fully met by insurance or other forms of disaster assistance. Subrecipient further acknowledges that these provisions are intended to ensure that Subrecipient does not receive duplicate benefits available to the Subrecipient from another source, for the same purposes as the Grant Proceeds provided under the Program, and that, any assistance determined to be duplicative must be deducted from the Program's calculation of the Subrecipient's total need prior to awarding assistance.

c) Subrecipient hereby subrogates and assigns to PRDOH any and all of Subrecipient's future rights to, and any interest Subrecipient may have in, any reimbursement and all payments received or subsequently received from any grant, loan, insurance policy or policies of any type (each individually, a "**Policy**" and collectively, the "**Policies**"), or under any subsidy, reimbursement or relief program related to or administered by the Federal Emergency Management Agency ("**FEMA**"), insurance payments, or any other federal, state or local government agency (each, individually, a "**Disaster Program**" and collectively, the "**Disaster Programs**") to the extent of all Grant Proceeds paid or to be paid under the Program and that are determined, in the sole discretion of PRDOH or its designated agent, to be a duplication of benefits ("**DOB**"). Any payments referred to in this paragraph, whether they are from Policies, FEMA, or any other source, and whether or not such amounts are a DOB, shall be referred to herein as "Proceeds," and any Proceeds that are determined to be a DOB shall be referred to herein as "DOB Proceeds." Subrecipient agrees that, in the event that Subrecipient receives additional Proceeds related to disaster recovery that are not listed on the Duplication of Benefits Certification submitted in connection with the Application, Subrecipient will notify the PRDOH within **ten (10) working days** of receipt of the funds by sending a written notification

to [kcruz@vivienda.pr.gov](mailto:kcruz@vivienda.pr.gov). PRDOH will, in turn determine, in its sole discretion, if such Proceeds constitute DOB Proceeds. If any of the Proceeds are determined to be DOB Proceeds, the Subrecipient shall pay PRDOH the DOB Proceeds, to be disbursed as provided in Section 3 of this Agreement.

### **3. Cooperation and Further Documentation.**

a) If PRDOH elects to pursue any of the claims Subrecipient has or may have under any Policies, Subrecipient agrees to assist and cooperate with PRDOH. Subrecipient's assistance and cooperation shall include, but shall not be limited to, allowing suit to be brought in Subrecipient's name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing records and other evidence, testifying at trial, and any other form of assistance and cooperation reasonably requested by the PRDOH. Subrecipient also agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

b) If requested by PRDOH, Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better subrogate and assign to PRDOH (to the extent of the Grant Proceeds paid to Subrecipient under the Program) the Policies, any amounts received under the Disaster Programs that are determined to be DOB Proceeds and/or any rights thereunder. Subrecipient further agrees to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the PRDOH to consummate and make effective the purposes of this Subrogation Agreement.

c) Subrecipient expressly allows and authorizes PRDOH to request information from any company with which Subrecipient holds or held any insurance policy or policies of any type, any other company or entity -public or private- from which the Subrecipient has applied for or is receiving assistance (such as FEMA, or others), or any non-public or confidential information determined by PRDOH, in its sole discretion, to be reasonably necessary to monitor/enforce its interest in the rights subrogated and assigned to it under this Agreement, and grant consent to such company or entity to release said information to the PRDOH.

### **4. Agreement to Turn Over Proceeds; Future Reassignment.**

a) If Subrecipient (or, to the extent permitted by superior loan documents, any lender to which DOB Proceeds are payable) hereafter receives any DOB Proceeds, Subrecipient agrees to promptly pay such amounts to PRDOH, if Subrecipient received Grant Proceeds under the Program in an amount greater than the amount Subrecipient would have received if such DOB Proceeds had been considered in the calculation of Subrecipient's award.

b) In the event that Subrecipient receives or is scheduled to receive any Proceeds not listed on its Duplication of Benefits Certification ("**Subsequent Proceeds**"), Subrecipient shall pay such Subsequent Proceeds directly to the PRDOH, and PRDOH will determine the amount, if any, of such Subsequent Proceeds that are DOB Proceeds ("**Subsequent DOB Proceeds**"). Subsequent Proceeds shall be disbursed as follows:

- (i) If Subrecipient has received full payment of the Grant Proceeds, Subrecipient shall remit any Subsequent DOB Proceeds to PRDOH. PRDOH shall return to the Subrecipient any Subsequent Proceeds in excess of the Subsequent DOB Proceeds. If Subrecipient has received no payment of the Grant Proceeds, PRDOH shall reduce the payment of the Grant Proceeds to Subrecipient by the amount of the Subsequent DOB Proceeds and shall return all Subsequent Proceeds in excess of the Subsequent DOB Proceeds to Subrecipient.
- (ii) If Subrecipient has received a portion of the Grant Proceeds, the following shall occur: (A) PRDOH shall reduce the remaining payments

of the Grant Proceeds and return Subsequent DOB Proceeds in such amount to the Subrecipient; and (B) Subrecipient shall remit any remaining Subsequent DOB Proceeds to PRDOH. PRDOH shall also return to the Subrecipient any Subsequent Proceeds in excess of the Subsequent DOB Proceeds.

(iii) If the PRDOH makes the determination that Subrecipient does not qualify to participate in the Program or Subrecipient decides not to participate in the Program, PRDOH shall return the Subsequent Proceeds to Subrecipient, and the Agreement shall terminate.

c) Once PRDOH has recovered an amount equal to the Grant Proceeds paid to Subrecipient, PRDOH will reassign to Subrecipient any rights given to PRDOH pursuant to this Subrogation Agreement.

## **5. Miscellaneous.**

a) Subrecipient hereby represents that all statements and representations made by Subrecipient regarding any Proceeds are true and correct, as of the date of the issuance of the Grant Proceeds.

b) In any proceeding to enforce these provisions, PRDOH shall be entitled to recover all costs of enforcement, including PRDOH's attorney fees.

c) The parties hereto each waive the right to have any judicial proceeding concerning any of the provisions hereof tried by a jury.

d) Neither this provision nor any portion or provisions hereof may be changed, waived or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by all parties hereto and approved by PRDOH.

e) This Subrogation and the rights and obligations of the parties shall be governed and construed in accordance with federal law and the laws of the Government of Puerto Rico without giving effect to conflict of law provisions. Any action arising out of or related to this Subrogation shall be brought within the Government of Puerto Rico.

f) The captions of the various sections of this Subrogation have been inserted only for the purpose of convenience; such captions are not a part of the Agreement and shall not be deemed in any manner to modify, explain, enlarge or restrict any provisions of this Subrogation.

g) Subrecipient acknowledges that making a false, fictitious, or fraudulent statement or representation in this agreement is punishable under Federal and State law and shall constitute a separate criminal offense each time a public benefit is fraudulently received.

h) Subrecipient acknowledges that they have been informed and understand the penalties for making a materially false or misleading statement to obtain CDBG-DR funds under the Program or any other of the PRDOH's programs.

**END OF  
DOCUMENT**

## ATTACHMENT 3

### INSURANCE REQUIREMENTS BASED ON SRA

**NOTE: Contractor must also satisfy Enterprise's requirements as set forth in Enterprise's Standard Terms and Conditions**

#### Required Coverage

The Subrecipient shall keep in force and effect for the period beginning from the execution of the Agreement and ending at the completion of all services to be provided hereunder, insurance policies in compliance with the PRDOH's requirements.

Any deductible amount, under any of the policies, will be assumed in whole by the Subrecipient for any and all losses, claims, expenses, suits, damages, costs, demands or liabilities, joint and several of whatever kind and nature arising from the Agreement.

Neither Enterprise nor PRDOH shall be held responsible under any circumstances for payments of any nature regarding deductibles of any Commercial Liability Policies for the aforementioned Agreement.

#### Endorsements

Each insurance policy maintained by the Subrecipient must be endorsed as follows:

1. PRDOH, Government of Puerto Rico, HUD and its officers, agents and employees are named as additional insured (except Worker's Compensation) but only with respect to liability arising out of tasks performed for such insured by or on behalf of the named insured.
2. To provide waiver of subrogation coverage for all insurance policies provided or herein in favor of PRDOH and its respective officers, agents, and employees.
3. The insurer shall be required to give PRDOH written notice at least thirty (30) days in advance of any cancellation in any such policies.

The Subrecipient shall furnish to Enterprise, prior to commencement of the work, certificates of insurance from insurers with a rating by the A.M. Best Co. of B+ and five (5) or over on all policies, reflecting policies in force, and shall also provide certificates evidencing all renewals of such policies. Insurers shall retain an A.M. Best Co. rating of B+ and five (5) or over on all policies throughout the term of this Agreement and all policy periods required herein. The insurance company must be authorized to do business in Puerto Rico and be in good standing.

## **Related Requirements**

The Subrecipient shall furnish Certificates of Insurance evidencing the required coverage to be in force on the Effective Date of this Agreement. In the case of Payment and Performance Bond, Certificate of Authority, Power of Attorney and Power of Attorney License issued by the Commissioner of Insurance shall be furnished. THE REQUIRED DOCUMENTATION MUST BE RECEIVED PRIOR TO THE SUBRECIPIENT COMMENCING WORK. NO SUBRECIPIENT OR ITS AUTHORIZED REPRESENTATIVES ARE TO BEGIN THEIR RESPONSIBILITIES UNDER THE AGREEMENT PRIOR TO FULL COMPLIANCE WITH THIS REQUIREMENT AND NOTIFICATION FROM ENTERPRISE TO PROCEED.

Enterprise will execute this Agreement conditioned to the submission of the aforementioned document within thirty (30) days of the signing of this Agreement. Failure to comply with the submission of the aforementioned insurance may result in the withholding of reimbursements or the termination of this Agreement.

Renewal Certificates of Insurance or such similar evidence is to be received by Enterprise prior to expiration of insurance coverage. At Enterprise's option, non-compliance will result in one or more of the following actions: all payments due the Subrecipient will be held until the Subrecipient has complied with the Agreement.

The receipt of any certificate does not constitute agreement by PRDOH or Enterprise that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of the Agreement. The insurance policies shall provide for thirty (30) days written notice to be given to Enterprise and PRDOH in the event coverage is substantially changed, cancelled or non-renewed.

The Subrecipient shall require all subcontractors or consultants to carry the insurance required herein or the Subrecipient, may provide the coverage for any or all of its subcontractors and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined above.

The Subrecipient expressly understands and agrees that whenever the Subrecipient is covered by other primary, excess, or excess contingent insurance that, any insurance or self-insurance program maintained by PRDOH shall apply in excess of and will not contribute with insurance provided by the Subrecipient under this Agreement.

**Endorsements; Additional Insured**

The policies to be obtained must contain the following endorsements including as additional insured the **Puerto Rico Department of Housing (\*PRDOH), U.S. Department of Housing and Urban Development (HUD),** and the **Government of Puerto Rico.**

- (X) a. Breach of warranty
- (X) b. Waiver and / or Release of Subrogation
- (X) c. Additional Insured Clause
- (X) d. Hold Harmless Agreement
- (X) e. 30 Days Cancellation Clause

**1) DEPTO DE LA VIVIENDA DE PUERTO RICO**

606 BARBOSA AVE.  
BUILDING JUAN C. CORDERO DAVILA  
RIO PIEDRAS, SAN JUAN, PR 00918

POSTAL: PO Box 21365, San Juan, P.R. 00928-1365

**2) GOBIERNO DE PUERTO RICO**

CALLE FORTALEZA #63  
VIEJO SAN JUAN  
SAN JUAN, PR 00936

POSTAL: PO Box 9020082, San Juan, P.R. 00902-0082

**3) DEPTO DE LA VIVIENDA Y DESARROLLO URBANO DE LOS ESTADOS UNIDOS (HUD)**

PARQUE LAS AMERICAS 1  
BUIDLING 235 FEDERICO COSTA STREET  
SUITE 200  
SAN JUAN, PR 00936

POSTAL: 451 7th Street S.W., Washington, DC 20410

**State Fund Workers' Compensation Insurance Policy**

In accordance with the Workmen's Compensation Act No. 45, to facilitate its acquisition, the **\*PRDOH** shall provide a letter to the successful contractor addressed to the State Insurance Fund.

**Commercial General Liability (Broad Form) including the following insurance coverage**

COVERAGE	LIMIT
I. Commercial General Liability:	

<b>COVERAGE</b>	<b>LIMIT</b>
• General Aggregate	\$2,000,000
• Products & Complete Operations	\$1,000,000
• Personal Injury & Advertising	\$1,000,000
• Each Occurrence	\$1,000,000
• Fire Damage	\$ 100,000 (Any one Fire)
• Medical Expense	\$ 5,000 (Any one person)
<b>II. Employer's Liability Stop Gap:</b>	
• Bodily Injury by Accident Each Employee Each Accident	\$1,000,000 \$1,000,000
• Bodily Injury by Disease Each Employee Each Accident	\$1,000,000 \$1,000,000

**Comprehensive Automobile Liability Form including the following insurance coverages**

<b>LIMIT</b>
• Auto Liability - \$1,000,000
• Physical Damages - \$ 300,000
• Medical Payments - \$ 5,000
<b>The Commercial Auto cover must be applied to the following symbols:</b>
• Liability Coverage -1
• Physical Damages – 2 and 8
• Hired – Borrowed Auto – 8
• Non-Owned Auto Liability – 9

**Directors and Officers Liability**

Limit: \$1,000,000.00

## **STANDARD TERMS & CONDITIONS**

1. **Confidential Information.** “Confidential Information” is information which Enterprise, in its sole determination, regards as confidential or proprietary including, but not limited to: borrower, grantee, or subcontractor/contractor information; fundraising materials; information regarding Enterprise’s financial and strategic planning; Personally Identifiable Information (as defined herein); information regarding Enterprise staffing; and other data, files, and/or other material, whether such information is both tangible and intangible, in writing and orally imparted. Contractor hereby agrees that Contractor shall not disclose or divulge any Confidential Information or any part thereof to any other person or entity or use any Confidential Information for its pecuniary benefit or for any other purpose without the prior written consent of Enterprise. Upon the request of Enterprise, Contractor shall promptly deliver to Enterprise all documents or other materials in its possession, and all copies thereof, constituting or containing Confidential Information. For purposes of this Contract, “Confidential Information” shall not include the following: (1) information which is or becomes publicly available without fault on the part of the party disclosing such information,; (2) information which is already in the recipient’s possession prior to the effective date of the Contract and is not otherwise Confidential Information; (3) is independently developed by the recipient outside the scope of this Contract and without references to Confidential Information; (4) is rightfully obtained by Contractor (and not through Enterprise) from third parties who are not known to Contractor to be subject to a confidentiality obligation and does not otherwise constitute Personally Identifiable Information, or (5) is demanded by a valid court order or subpoena or disclosure of which is required under applicable law or regulation, provided, however, that the party served (“Party Served”) with any interrogatory, request for information or documents, subpoena, deposition, civil investigative demand or other process will provide the other party with prompt notice of the requested disclosure, if counsel for the Party Served determines that such notice is permitted by law, so that the other party may seek an appropriate protective order or waive compliance with the provisions of this Contract.

2. **Payment.** **Payments shall not be made without Enterprise’s receipt of a completed W-9 form in accordance with Section 3 below,** a Contract signed by all parties and acceptance by Enterprise of the work performed. When submitting invoices, Contractor should use the attached Enterprise Request for Payment form. If Contractor chooses to use Contractor’s own form, each invoice must reference the Contract number, award value and period of performance. Payment will be made within 30 days of receipt of approved invoices containing the aforementioned information. Contractor must also submit all invoices within 60 days of the end of the Contract’s period of performance. Contractor agrees that Enterprise will be under no obligation to pay for any invoice that is not timely submitted and received by Enterprise within the aforementioned 60-day period.

3. **W-9 Form / Federal Tax Identification Number.** Contractor must provide Enterprise with a signed and completed W-9 Form. **Contractor’s name on the W-9 Form must match the name on this Contract, and, the W-9 Form must include Contractor’s Federal Tax Identification number. *PAYMENT WILL NOT BE MADE TO CONTRACTOR WITHOUT ENTERPRISE’S RECEIPT OF A COMPLETED W-9 FORM WHICH COMPLIES WITH THESE REQUIREMENTS.*** Payment will be made payable to the name and corresponding Federal Tax Identification number found on the W-9 Form. Contractor hereby agrees to notify Enterprise immediately upon any change of any information submitted on Contractor’s W-9 Form.

4. **Ownership of Deliverables.** Contractor hereby agrees and acknowledges that all documents and other Deliverables developed or produced by Contractor under this Contract and the copyrights thereto, are the sole and exclusive property of Enterprise. Contractor must not reproduce, publish or otherwise use the work products or any portion thereof, or allow others to reproduce, publish, or otherwise use the work products or any portion thereof, without the prior written permission of Enterprise.

5. **Contractor's Performance.** Enterprise expects Contractor to perform in a high quality manner and in accordance with the standards set by this Contract. If the performance of the Scope of Work or Deliverables does not meet the obligations contained in this Contract and its Scope of Work, Enterprise reserves the right to avail itself of all administrative, contractual, legal and equitable remedies, including, but not limited to, reducing or withholding payment to Contractor, canceling the Contract, and hiring another party to complete the Scope of Work. Contractor will be liable to Enterprise for any additional costs incurred by Enterprise if the all or any portion of the Scope of Work is completed by others.

6. **Use of Sub-contractors.** If Contractor retains a sub-contractor to perform any portion of the Scope of Work, Contractor must first request approval from Enterprise, which shall not be unreasonably withheld. Any such subcontractors must agree in writing to be bound by the terms and conditions of this Contract that apply to the subcontractor’s scope of work and deliverables, including but not limited to, Confidentiality, Personally Identifiable Information, Return of Documents, Right to Audit/Record Retention, Non-Discrimination, Licenses, and Compliance with All Laws.

7. Return of Documents. Upon Enterprise's request or upon the completion, termination or cancellation of this Contract, subject to payment of all rightfully due compensation, Contractor must deliver all records, notes, data, memoranda, models and equipment, of any nature, that are in Contractor's possession or under Contractor's control and that are Enterprise's property or relate to Enterprise's business and destroy any materials that cannot be delivered back to Enterprise, including, without limitation, Personally Identifiable Information.

8. Right to Audit/Record Retention. Contractor must keep for a minimum of three (3) years from the end date of the period of performance (a) accurate documentation in connection with the Scope of Work to be performed herein, and (b) a legible set of books of account in accordance with generally accepted accounting principles. Contractor's documentation and books of account shall be open for inspection by Enterprise or its auditors to assure that the work has been properly performed and that funds are being paid in the proper manner for the work performed.

9. Benefits/Insurance. Enterprise is not responsible for any fringe benefits or insurance, including, but not limited to, social security, workers' compensation, state unemployment, federal and state income tax withholdings, retirement, leave benefits, general liability, automobile, and professional liability, for Contractor or employees of Contractor. Contractor assumes full responsibility for the provision of all such insurances and fringe benefits for Contractor and all of Contractor's employees. Contractor maintains, and must maintain throughout the term of this Contract, commercial general liability insurance, automobile insurance (or hired and non-owned coverage on the commercial general liability insurance policy), miscellaneous professional liability insurance and workers' compensation insurance each in an amount not less than \$1,000,000.00 (except that the coverage for workers' compensation shall be in accordance with statutory requirements) to cover its activities under this Contract. Contractor must name Enterprise as an "Additional Insured" on its commercial general liability insurance and commercial automobile insurance and name Enterprise as "Certificate holder" on its workers' compensation coverage. Within 48 hours of Enterprise's request, Contractor must provide Enterprise with a certificate of insurance evidencing Contractor's compliance with all the foregoing required coverages.

10. Relationship of the Parties. Contractor is not an employee, partner, agent of or joint-venturer with Enterprise for any purpose. Contractor is and will remain an independent contractor in its relationship to Enterprise pursuant to this Contract.

11. Termination. Either party may terminate this Contract without cause upon the delivery of written notice to the other party in accordance with the terms of this Contract ("Termination"). In such event, the Contract will terminate thirty (30) days after such written notice was received. Any such Termination by either party shall be subject to an equitable adjustment of the Compensation due. Any such Termination by either party shall also be subject to an equitable reimbursement of Compensation paid prior to Termination for future performance rendered impracticable by Termination of the Contract. All obligations which were to be performed as of the date of Termination are discharged but any right based on prior breach of performance survives.

12. Cancellation. Upon the occurrence of a breach hereunder, Enterprise may cancel this Contract upon the delivery of written notice to Contractor in accordance with the terms of this Contract ("Cancellation") and retain any remedy for breach of the whole Contract or any unperformed balance thereof.

13. Indemnification.

(a) Indemnification by Contractor. Contractor will indemnify, defend and hold harmless Enterprise and its affiliates, officers, directors, employees, consultants, advisors and representatives (the "Enterprise Parties") from and against any and all liability to third parties (including, without limit, all related damage, third party claims, demands, costs, judgments, fees, reasonable attorney's fees or loss), relating to or arising out of any material breach by Contractor of this Contract, or the gross negligence or willful misconduct of Contractor, its affiliates, officers, directors, employees, consultants, advisors or representatives (the "Contractor Parties").

(b) Indemnification by Enterprise. Enterprise will indemnify, defend and hold harmless Contractor and the Contractor Parties from and against any and all liability to third parties (including, without limit, all related damage, third party claims, demands, costs, judgments, fees, reasonable attorney's fees or loss), relating to or arising out of any material breach by Enterprise of this Agreement, or the Contract, or the gross negligence or willful misconduct of the Enterprise Parties.

14. Limitation of Liability.

- (a) Limitation on Liability Type. Except for liability relating to a breach of Section 1 of these Standard Terms and Conditions, or for claims relating to a party's gross negligence or willful misconduct, in no event will Enterprise or Contractor be liable to the other for any indirect, incidental, special or consequential damages.
- (b) Limitation on Liability Amount. Except for liability arising from (i) the indemnification obligations set forth in Section 13 above; (ii) the confidentiality provisions in Section 1 above; or (iii) either of the parties' gross negligence or willful misconduct, the aggregate liability of Enterprise and of Contractor arising in connection with this Contract, however caused, and on any theory of liability, including without limitation contract, strict liability, negligence and/or other tort, shall in no event exceed the Contract Amount that has been paid or payable to Contractor by Enterprise during the twelve (12) months immediately preceding the first event giving rise to such liability

15. Personally Identifiable Information. Contractor represents that it has implemented and maintains reasonable security procedures and practices that are: (i) appropriate to the nature of the Personally Identifiable Information (as defined herein) disclosed under this Contract; and (ii) reasonably designed to help protect the Personally Identifiable Information from unauthorized access, use, modification, disclosure, or destruction. Personally Identifiable Information shall be defined as any information pertaining to an individual that can be used to distinguish or trace a person's identity such as name, email address, home address and phone number. Personally Identifiable Information includes the following, it being understood that the list is not exhaustive and may be defined otherwise under the applicable jurisdiction:

- Social Security Number—inclusive of the entire number of the last 4 digits;
- Driver's License Number or State ID Number;
- Passport Number;
- Alien Registration Number;
- Financial account numbers;
- Email addresses;
- Phone numbers;
- Image;
- IP address;
- Mother's maiden name;
- Any such information as would reasonably be expected to have the same protection as the foregoing examples in Contractor's industry.

Contractor agrees to keep all Personally Identifiable Information physically within the borders of the United States. Contractor shall notify Enterprise within 48 hours if any Personally Identifiable Information has been the subject of a data breach.

16. Amendment. Any Amendment to the provisions of this Contract must be in writing and executed by both parties. Administrative changes or corrections that do not affect the rights and obligations of Contractor may be made unilaterally by Enterprise with notice to, but without consent of, Contractor.

17. Delegation; Assignment. Contractor shall not delegate any duties or assign any rights under this Contract without the prior written approval of Enterprise. A delegation of performance will not relieve Contractor of any duty to perform or any liability for breach of this Contract.

18. Governing Law; Venue. This Contract must be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Maryland exclusive of its conflicts of law rules. Contractor agrees that any litigation must be brought and prosecuted in any District or Circuit Court of Maryland, as appropriate, or Federal District Court, with venue in the United States Court for the District of Maryland, Baltimore Division and Contractor consents to the *in personam* jurisdiction of such courts. Contractor irrevocably waives any objection to, and any right of immunity from, the jurisdiction of such courts or the execution of judgments resulting therefrom, on the grounds of venue or the convenience of the forum.

19. Nonwaiver. The failure of Enterprise in any instance to insist upon a strict performance of the terms of this Contract or to exercise any option hereunder must not be construed as a waiver or relinquishment for the future of such term or option.

20. Notice. Any notice which either party desires to provide the other party under the terms of this Contract must be sufficiently given, in writing and delivered to the party's address in this Contract or such other address as either party may specify in writing (i) by electronic mail, return receipt requested, or (ii) overnight courier or certified or registered first class mail, return receipt requested and postage prepaid, at such other party's principal place of business at the address set forth on the Contract. If by electronic mail, delivery shall be deemed effective when sent in accordance with the above provisions. If by overnight courier, delivery shall be deemed effective one (1) business day after dispatch in accordance with the above provisions. If by mail, delivery shall be deemed effective three (3) business days after mailing in accordance with the above provisions.

21. Compliance with Laws. Contractor shall comply with the requirements of all laws, rules, regulations and orders of any governmental authority applicable to it or the services being provided under this Contract, including without limitation, the data privacy laws of any state in which Contractor shall be providing such services. Contractor shall not take any action in violation of any applicable legal requirement that could result in liability being imposed on Enterprise.

22. Authorizing Action, Parties Bound. The execution, delivery and performance by Contractor are within Contractor's powers and have been duly authorized by all necessary action. The terms and provisions of this Contract are binding upon the parties hereto, their legal representatives, successors and assigns.

23. Severability. If any provision of this Contract or application thereof to any person or circumstances is held invalid, such invalidity will not affect other provisions of this Contract that can be given effect without the invalid provision, and to this end the other provisions are deemed to be severable.

24. Entire Contract. No statement, promises or inducements made by any party hereto, or agent of either party hereto, which is not contained in this Contract, will be valid or binding; and this Contract may not be enlarged, modified or altered except in writing and signed by the parties.

25. Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

26. Electronic Signature. The use of an electronic signature ("E-Signature") by any party in executing this Contract shall constitute the legal equivalent of a manual or handwritten signature as if the party signed this Contract in writing. No certification authority or other third-party verification shall be required to validate the party's E-Signature, and the lack of such certification or third-party verification will not in any way affect the enforceability of the E-Signature/s or this Contract.