

**COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY ENERGY
GRANT AGREEMENT FOR THE
ELECTRICAL POWER RELIABILITY AND RESILIENCE PROGRAM
BETWEEN
PUERTO RICO DEPARTMENT OF HOUSING
AND
BARD SHANNON LTD.
FOR THE BD HUMACAO MICROGRID ENERGY SYSTEM PROJECT**



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This Grant Agreement (**Grant Agreement** or **Agreement**) for the Electrical Power Reliability and Resilience Program (**ER2 Program** or **Program**) under the Community Development Block Grant – Disaster Recovery Energy (**CDBG-DR Energy**) Program is entered into in San Juan, Puerto Rico, on September 06, _____, 2025, by and between:

The **PUERTO RICO DEPARTMENT OF HOUSING (PRDOH)**, a public agency created under Act No. 97 of June 10, 1972, as amended, 3 LPRA § 441 *et seq.*, known as the “Organic Act of the Department of Housing”, with its main offices at 606 Barbosa Avenue, Juan C. Cordero Dávila Building, San Juan, Puerto Rico 00918, herein represented by its Secretary, Hon. Ciary Y. Pérez Peña, of legal age, single, and resident of Las Piedras, Puerto Rico; and **BARD SHANNON LTD. (BENEFICIARY)** a for profit foreign – non U.S. corporation, organized under the laws of Ireland and duly authorized to do business in Puerto Rico, with principal offices in San Geronimo Industrial Park Lot #1 Road #3 KM 77.5, Humacao, Puerto Rico, herein represented by Kelvin O. Ruiz Modesto, in his capacity as Bard Puerto Rico Plant Controller, of legal age, married, and resident of Gurabo, Puerto Rico, duly authorized by the Corporate Resolution issued on October 30, 2024; collectively, the “**Parties**”.

I. RECITALS

WHEREAS, on September 2017, Hurricanes Irma and María made landfall in Puerto Rico causing catastrophic island-wide damage, knocking out power, water, and telecommunications for the entire Island. Hurricane María caused major structure and infrastructure damage to family homes, businesses, and government facilities triggering the displacement of thousands of residents of the Island from their homes and jobs.

WHEREAS, the impact of the hurricanes on the power system was devastating and led to the longest sustained blackout in modern United States (U.S.) history. Without power, residents were unable to gain access to healthcare, communication, refrigeration, water, cooling, and security. With sustained systemic insecurity, residents continue to feel many of the same impacts, economic recovery is hampered, and the cycle of recovery cannot be completed. Energy remains the single most comprehensive and critical factor for the recovery and future development of Puerto Rico.

WHEREAS, on April 10, 2018, the U.S. Department of Housing and Urban Development (**HUD**) allocated nearly \$28 billion dollars in Community Development Block Grant – Disaster Recovery (**CDBG-DR**) funds appropriated by the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2018 (Public Law 115-123, approved February 9, 2018). Of those \$28 billion, HUD allocated \$2 billion for the enhancement or improvement of electrical power systems in Puerto Rico and the U.S. Virgin Islands.

WHEREAS, on June 22, 2021, HUD published a Notice at Federal Register Vol. 86, No. 117 (June 22, 2021), 86 FR 32681, which governs the use of the \$2 billion CDBG-DR allocation for enhanced or improved electrical power systems in Puerto Rico and the U.S. Virgin Islands. Of those \$2 billion, one billion, nine hundred thirty-two million, three hundred forty-seven thousand dollars (\$1,932,347,000) were allocated to Puerto Rico to enhance the Puerto Rico electrical power system.

WHEREAS, on August 5, 2022, PRDOH and HUD signed Grant Agreement Number B-18-DE-72-0001, obligating and allowing PRDOH access to the CDBG-DR funding appropriated under Pub. L. 115-123 for activities designed to enhance or improve electrical power systems.

WHEREAS, according to the approved CDBG-DR Electrical Power Systems Enhancements and Improvements Action Plan (**Action Plan**), the ER2 Program focuses on benefiting Puerto Rican communities by funding projects that enhance the electrical system's reliability, affordability, and resiliency through the development and interconnection of decentralized microgrids and distributed energy resources, including renewable energy generation, combined heat and power systems, and battery energy storage systems.

WHEREAS, the Action Plan allocated a total budget of one billion, three hundred sixteen million, four hundred six thousand, one hundred eighty dollars (\$1,316,406,180) to the ER2 Program for funding electrical power systems improvements projects, which include the acquisition, construction, reconstruction, rehabilitation, or establishment of facilities, improvements, or other components undertaken to expand, modernize, and in some way optimize or enhance the cost-effectiveness, reliability, efficiency, sustainability, or long-term financial viability of the electrical power system.

WHEREAS, PRDOH has the legal power and authority, in accordance with its enabling statute, the federal laws and regulations creating and allocating funds to the CDBG-DR Energy Program, and the current Action Plan, to issue, enter, and perform under this Agreement.

WHEREAS, the BENEFICIARY's project is deemed eligible and compliant with the requirements set forth by PRDOH, and accordingly, the PRDOH issued a Notice of Award dated January 31, 2025, approving CDBG-DR Energy funds to the BENEFICIARY for its Project pursuant to Case Number ER2-00026.

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WHEREAS PRDOH desires to enter into an Agreement with the BENEFICIARY to carry out the project detailed in the application submitted by the BENEFICIARY.

NOW, THEREFORE, in consideration of the mutual promises and the terms and conditions set forth herein, PRDOH and the BENEFICIARY agree as follows:

II. THE PROJECT

PRDOH has committed CDBG-DR Energy funds to partially finance the development and construction of the BD Humacao Microgrid Energy System project (**Project**) in the Municipality of Humacao, Puerto Rico, as described in ATTACHMENTS A, B, and C, subject to the terms and conditions set forth in this Agreement.

The BENEFICIARY certifies to have sufficiently evidenced to PRDOH its ownership interest and control over the site (**Property**) on which the Project will be developed. The Parties acknowledge that, according to the Program Guidelines, ownership of the Property could be demonstrated via mechanisms such as a deed, property acquisition plan, or through a long-term lease agreement, provided the express consent of the owner of the property (**Property Owner**) to lend the Property for the development and construction of the Project.

There shall be no eminent domain or other governmental or judicial action or proceeding, of any nature, pending or threatened against or affecting the Property or any part thereof or the installation, construction, and/or development of the Project, which would in PRDOH's sole opinion affect the use, construction, or development of the Property and/or the Project.

III. SCHEDULE OF ATTACHMENTS

Under this Agreement, the BENEFICIARY shall submit monthly disbursement requisitions to PRDOH based on Attachments A, B, and C, in accordance with the procedure outlined for the Program. The following attachments are incorporated into this Agreement by reference and are hereby made part of this Agreement:

- ATTACHMENT A** Scope of Work
- ATTACHMENT B** Timelines and Performance Goals
- ATTACHMENT C** Budget
- ATTACHMENT D** Certification of Funds
- ATTACHMENT E** HUD General Provisions
- ATTACHMENT F** Subrogation and Assignment Provisions
- ATTACHMENT G** Non-Conflict of Interest Certification
- ATTACHMENT H** Insurance Requirements and Bonding Specifications

All Attachments hereto are fully incorporated herewith such that the terms and conditions of the Attachments, which may be amended from time to time with written consent from both Parties, shall be as binding as any terms and conditions of this executed written Agreement. The Agreement shall prevail if any inconsistency appears between the Attachments and this Agreement.

IV. SCOPE OF WORK

The BENEFICIARY shall develop the Project according to the scope and activities described in Attachments A in accordance with the timelines and authorized budget as detailed in ATTACHMENT B and ATTACHMENT C of this Agreement. Attachments A, B, and C represent the scope of work and responsibilities of the BENEFICIARY under the Agreement. BENEFICIARY agrees to abide by and comply with the roles and responsibilities assigned herein.

The BENEFICIARY shall complete the Project in a manner satisfactory to PRDOH based on consistency and compliance with the terms and conditions of this Agreement, the ER2 Program Guidelines, and applicable Federal and local laws and regulations. Failure to comply with this requirement could result in a potential repayment of funds to PRDOH.

PRDOH will monitor the performance of the BENEFICIARY against the responsibilities assigned under this Agreement and its Attachments.

Until such time as the BENEFICIARY has received the necessary occupancy permits from the appropriate government agencies to occupy, use, and operate the Project, it shall not commence operations at the Project site, BENEFICIARY shall provide PRDOH with monthly, or more frequent if PRDOH reasonably requires, progress reports regarding the status of the Project, including a certification that the actual construction costs to date conform to the approved budget in ATTACHMENT C.

The BENEFICIARY shall provide confirmation of progress towards meeting the established expenditure deadlines through the monthly reports.

The BENEFICIARY shall furnish PRDOH adequate notice and satisfactory evidence that all works requiring inspection by all governmental authorities¹ having jurisdiction have been duly inspected and approved by such authorities.

If at the end of the **six (6) months** from the date of execution of this Agreement, BENEFICIARY has, at any moment, failed to accomplish the performance objectives set forth by PRDOH in ATTACHMENT B, PRDOH may, at its sole discretion, terminate this Agreement, de-obligate funds made available under this Agreement, and/or recapture funds previously expended by the BENEFICIARY under this Agreement from non-federal funds. No Agreement extensions shall be granted unless the BENEFICIARY can document

¹ Governmental authorities refer to any Federal, Government of Puerto Rico, municipal or local unit or subdivision of local government or body having governmental or quasi-governmental authority.

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circumstances beyond its control that prevented the start of an activity. PRDOH shall review the properly filed and documented circumstances which are alleged to have prevented the initiation of an activity and exclusively reserves the right to decide if an extension is warranted, relative to the reasons stated as well as the prevailing circumstances.

V. ELECTRICAL POWER SYSTEM IMPROVEMENT PROJECT

A. General Provisions

As per HUD Notice at 86 FR 32681, 32692, *electrical power system improvements* refer to the acquisition, construction, reconstruction, rehabilitation, or installation of facilities, improvements, or other components that are undertaken to extend, upgrade, and otherwise enhance and improve the cost-effectiveness, reliability, efficiency, sustainability, or long-term financial viability of the grantee's electrical power system. These improvements include activities to increase the electrical power system's resilience to future disasters and address the impacts of climate change. This definition includes interim assistance and the financing of public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of a privately owned property.

The Project must comply with applicable CDBG-DR requirements, including meeting a national objective, and addressing an electrical power system unmet need.

VI. PERFORMANCE MONITORING AND REPORTING

A. Monitoring

PRDOH shall monitor the performance of the BENEFICIARY as necessary to ensure that the funds allocated to the BENEFICIARY are used for authorized purposes, in compliance with applicable Federal and local statutes and regulations, the Program Guidelines, and the terms and conditions of this Agreement, including the timeframes set forth in ATTACHMENT B associated with the activities included in ATTACHMENT A.

This monitoring shall include: (i) reviewing financial and performance reports required by PRDOH; (ii) following up and ensuring that the BENEFICIARY takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the BENEFICIARY from PRDOH detected through audits, on-site reviews, and other means.

PRDOH and/or HUD shall have the right, but shall be under no obligation, to conduct any reasonable monitoring to determine compliance with this Agreement, including but not limited to the right to enter the Property (upon prior written notice to the BENEFICIARY), to inspect the Project, to inspect the books and records kept regarding the Project, and to inquire and receive responses from BENEFICIARY regarding the Project and its operation at any time that may be required by PRDOH and/or HUD. The BENEFICIARY will allow

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on-site monitoring of the Project by PRDOH or an authorized representative on its behalf and/or HUD at such times as PRDOH and/or HUD deems necessary or required.

Substandard performance, defined as performance that fails to meet the standards and criteria specified in this Agreement and its Attachments, shall constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the BENEFICIARY within the period of time established in the required Corrective Action Plan approved by PRDOH, PRDOH may impose additional conditions on the BENEFICIARY and suspend or terminate this Agreement, disallow all or part of the cost of the activity or action not in compliance or initiate other remedies for noncompliance, as appropriate.

B. Reporting

The BENEFICIARY shall complete and submit progress reports for the Project, in the form, timeframe, and with the content specified and required by PRDOH². PRDOH shall later notify BENEFICIARY in writing the guidelines and requirements applicable to the submittal of the progress reports, and such notification shall be deemed incorporated by reference to this Agreement.

VII. PERFORMANCE TIMEFRAME

This Agreement shall be in effect and enforceable between the Parties from the date of its execution. The term of this Agreement is **thirty (30) months** from the date of its execution, ending on March 05, 2028.

A. The BENEFICIARY hereby covenants and agrees to commence and to diligently execute to completion the development and construction of the Project within the timelines set forth in ATTACHMENT B and the subsequent operation of the Project in accordance with the construction documents, plans, and specifications, as approved by PRDOH, subject to delays, including but not limited to those caused by Force Majeure events defined in Section XXV.

1. Construction of the Project will begin after the environmental review process is completed, and the BENEFICIARY receives a Notice to Proceed from PRDOH, which shall only be issued when and if, **an environmental clearance is attained in accordance with 24 C.F.R. Part 58 (Notice to Proceed)**.
2. If additional time is required for completing the development and construction of the Project, the BENEFICIARY may request in writing an extension of the term of the Agreement. The written request must be submitted prior to the expiration of the Agreement. Subject to Force Majeure, as defined in Section XXV, extensions will be sparingly

² In compliance with applicable Guidelines, which may be amended from time to time to ensure consistency with applicable federal and local regulations.

approved and will be awarded at the sole, but reasonable, discretion of PRDOH. If the Project is not completed as provided in this section, PRDOH may request the reimbursement of the CDBG-DR funds granted for the Project.

3. Within **a sixty (60) day** period upon completion of the construction, including off-site utilities and landscape requirements, as applicable, the BENEFICIARY shall furnish to PRDOH satisfactory evidence that any and all required inspection was performed and approved by the governmental authorities with jurisdiction. Also, BENEFICIARY must furnish PRDOH within **ten (10) days** of receipt, a copy of the occupancy permit and any other required approval or certification issued for the Project. The BENEFICIARY shall provide a certification of a qualified registered architect or professional engineer stating that Project construction is in full compliance with construction documents and applicable federal and state regulations. Upon satisfaction of the foregoing, the BENEFICIARY shall promptly execute a Notice of Completion that evidences and determines the satisfactory completion of the construction in accordance with this Agreement.
4. The BENEFICIARY must perform the necessary actions to plan for and carry out the long-term operation and maintenance (**O&M**) of the Project during the useful life of the Project as established by the Parties (**Useful Life**) in compliance with all applicable laws and regulations governing the use of the CDBG-DR funds granted pursuant to this Agreement. Failure to comply with this requirement could result in the repayment of funds to PRDOH.
5. The BENEFICIARY agrees to perform all required deliverables and tasks within the period established in this Agreement.

- B. The term of this Agreement shall not exceed the lifetime of the initial Grant Agreement between PRDOH and HUD, unless the term of said agreement is extended by HUD, in which case the term of this Agreement cannot exceed the extension.

VIII. BUDGET AND USE OF CDBG-DR ENERGY FUNDS

- A. PRDOH is granting CDBG-DR Energy funds in the amount of **THIRTEEN MILLION SIX HUNDRED FORTY-FIVE THOUSAND FOUR HUNDRED SEVENTY-THREE DOLLARS AND SIXTY CENTS (\$13,645,473.60) (Grant)** to cover up to 60% of the Project's costs. The BENEFICIARY shall complete all activities in the ATTACHMENT A of this Agreement in accordance with Attachments B and C. The BENEFICIARY shall use the Grant only to support the development and construction of the Project. PRDOH may require a more detailed budget breakdown than the one contained herein, and the BENEFICIARY shall provide such supplementary budget information in a timely fashion in the

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form and content prescribed by PRDOH. PRDOH will not fund any costs incurred by the BENEFICIARY not included in ATTACHMENT C. Any amendments to the Budget must be approved in writing and signed by the PRDOH and the BENEFICIARY.

- B. The BENEFICIARY acknowledges and agrees that the Grant amount was calculated based upon the estimated total costs for the development and construction of the Project provided by the BENEFICIARY. The BENEFICIARY agrees to provide PRDOH with a cost certification acceptable to PRDOH, prepared by an independent third-party consulting firm acceptable to PRDOH, certifying the actual costs incurred and paid by the BENEFICIARY in the development and construction of the Project, and including such other information as PRDOH may require. The BENEFICIARY agrees to cooperate with PRDOH and to provide any documentation deemed necessary to complete the costs verification process.

C. National Objectives:

1. All activities funded through the ER2 Program will meet either the Benefit to Low and Moderate Income (**LMI**) persons or the Urgent Need (**UN**) national objectives, as specified at 24 C.F.R. § 570.483 or otherwise provided for by waiver or alternative requirement as published in 86 FR 32681.
2. The BENEFICIARY certifies that the activities carried out under this Agreement shall meet at least one (1) of these national objectives as established above. The BENEFICIARY shall ensure that the funded activity meets the applicable CDBG-DR national objective and that the Beneficiary or any subcontractor or third party collects the necessary information and completes the applicable forms to document the national objective.

- D. The BENEFICIARY shall use the Grant only for the payment of eligible expenses permitted under the CDBG regulations set forth in 24 C.F.R. Part 570 (**Eligible Expenses**). The BENEFICIARY shall not use any proceeds from the Grant for prohibited activities as set forth in 24 C.F.R. § 570.207 (**Ineligible Activities**). The BENEFICIARY acknowledges that PRDOH must comply with the provisions of 2 C.F.R. Part 200, as modified by 24 C.F.R. § 570.502, which allow only costs that are necessary, reasonable, and adequately supported to be charged to the Program. Therefore, all development and construction costs as identified in ATTACHMENT C must be necessary and reasonable in accordance with the cost principles outlined in 2 C.F.R. §§ 200.400, 200.401, 200.403, and 200.404, and 86 FR 32681.

- E. Extended overhead costs are an ineligible cost under this Agreement and shall not be reimbursable.

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F. The BENEFICIARY acknowledges and agrees that any CDBG-DR funds not used in accordance with applicable regulations must be repaid to PRDOH by the BENEFICIARY.

G. Pre-award costs in relation to this Agreement are strictly prohibited.

H. Contingency Budget Usage:

1. The BENEFICIARY acknowledges that the use of contingency budget funds for the Project shall not be allowed without the express written authorization of PRDOH.
2. Requests for use of the contingency budget shall only be considered if the BENEFICIARY demonstrates that the proposed use is necessary, reasonable, and due to unforeseen circumstances. PRDOH will evaluate all requests for use of the contingency budget to determine whether costs are necessary and reasonable for the Project's timely completion or to protect the initial investment of CDBG-DR funds. Approval for the use of the contingency budget is subject to PRDOH's discretion and the availability of CDBG-DR funds.

I. Applicable CDBG-DR Requirements:

1. The BENEFICIARY 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. Part 570, and any successor legislation, HUD regulations thereunder, all as modified by certain laws and guidance including, without limitation and as applicable, the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2018, Federal Register Notice Vol. 86, No. 117 (June 22, 2021), 86 FR 32681, Federal Register Notice Vol. 87, No. 236 (December 9, 2022), 87 FR 75644, and any subsequent applicable notice (jointly, **HUD notices**) that govern the use of CDBG-DR funds available under this Agreement. The BENEFICIARY shall also comply with all other applicable Federal, state, and local laws, regulations, executive orders, regulatory requirements, and policies that govern the use of the funds in complying with its obligations under this Agreement. Where waivers or alternative requirements are provided for in the applicable HUD Notices, such requirements, including any regulations referenced therein, shall apply.
2. The BENEFICIARY also agrees to comply with all other applicable Federal, State, and local laws and regulations, and HUD Notices, policies, and guidelines governing the grant funds provided under this Agreement, whether existing or to be established, provided the same are applied to activities occurring after the date the policy or guideline was established. In the event a conflict arises between the provisions of this Agreement and any of the foregoing, the Federal, State, and local laws and regulations, and HUD Notices, policies, and

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Program 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 and regulations, and HUD Notices, policies, and guidelines.

3. The BENEFICIARY shall also comply with applicable PRDOH's policies and guidelines as established in the Program Guidelines and their amendments, if any, as found in the CDBG-DR Website (<https://recuperacion.pr.gov/welcome/en/index.html>) which are herein included and made an integral part of this Agreement, as they may be updated from time to time.

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IX. DISBURSEMENT OF FUNDS

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- A. The BENEFICIARY may not request disbursements of funds under this Agreement until satisfaction of the conditions precedent to disbursements set forth in the Program Guidelines, all applicable CDBG-DR Requirements, all conditions set forth in the Agreement, the completion of regulatory and utility reviews as required by project type, the obtainment of applicable permits, the satisfactory completion of the environmental review as required herein, and the receipt by PRDOH of an Authority to Use Grant Funds (**AUGF**) from HUD pursuant to 24 C.F.R. Part 58, in which case PRDOH shall issue the BENEFICIARY a Notice to Proceed.
- B. The BENEFICIARY shall submit an invoice package to PRDOH on a monthly basis in the form and content specified and required by PRDOH. Said invoice package must be submitted with all the required supporting documents, e.g., monthly reports, timesheets, invoice and photo evidence, expense plan, work projections, etc. If PRDOH determines that the submitted invoice and supporting documents are acceptable, then the invoice will be approved for payment.
- C. In order for the BENEFICIARY to receive payment for any work performed hereunder, the BENEFICIARY shall use the prescribed invoice package provided by PRDOH. The following certification must be included in each invoice submitted to PRDOH for payment:

"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 Agreement which is the basis of this invoice, and should they be a party to, or have an interest in, the profits or benefits to be obtained under the Agreement, a waiver has been previously issued. The only consideration to provide the goods or services under the Agreement 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."**

- D. An authorized representative of PRDOH will review each request for disbursement and, if adequate, approve and process its payment. Payments to the BENEFICIARY shall be made by electronic funds transfer (**EFT**). PRDOH reserves the right to conduct any audits or revisions as it deems necessary. The BENEFICIARY agrees to cooperate fully with any such audit(s) or revision(s).
- E. The BENEFICIARY will adhere to any requirements applicable to the Grant Agreement between PRDOH and HUD. Unallowable funds under said grant or the Program will be disallowed from being paid to the BENEFICIARY.
- F. Disbursements of the funds for the Project are subject to the receipt by PRDOH of CDBG-DR funds from HUD and the applicable conditions for disbursements as established in this Agreement.

X. ENVIRONMENTAL PROVISIONS

A. Limitations pending environmental clearance.

1. The BENEFICIARY does not have a legal claim to any amount of CDBG-DR funds to be used for the specific Project or Property, and any potential award is contingent upon the completion of an environmental review demonstrating compliance with 24 C.F.R. Part 58 to PRDOH's satisfaction. The BENEFICIARY acknowledges and agrees that it will not begin any actions related to the Project or Property, until the environmental review process is completed and it has obtained written acceptance and the subsequent **Notice to Proceed** from PRDOH.
2. Pursuant to 24 C.F.R. § 58.22(a), BENEFICIARY, participants in the development process, and their contractors are not allowed to commit HUD assistance (CDBG-DR funds) on an activity or project until HUD has approved the BENEFICIARY's Request for Release of Funds (**RROF**) and the related certification from PRDOH.

B. Choice Limiting Actions.

1. The BENEFICIARY specifically represents to PRDOH that it understands, acknowledges, and agrees that this Agreement shall not provide for the commitment of any non-HUD (CDBG-DR) funds, nor permit the undertaking of any physical activity or choice-limiting actions such as property acquisition, demolition, movement, rehabilitation, conversion, repair, or construction, among others, prior to receipt of the AUGF and Notice to Proceed from PRDOH. Please refer to 24 C.F.R. Part 58 for all applicable restrictions and requirements.

2. Pursuant to 24 C.F.R. § 58.22(a), until the RROF and the related certification from PRDOH have been approved, neither the BENEFCIARY nor any participant in the development process may commit any funds, including non-HUD funds, or undertake an activity or project if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

C. Environmental Condition Prior to Funds Disbursement. The BENEFCIARY hereby certifies that is not aware of, to the best of its actual knowledge, and has not received any notice or communication from any governmental authority having jurisdiction over the Project, or any other person or entity, notifying it of the presence of Hazardous Materials³ or Hazardous Materials Contamination⁴, on or under the Project, or any portion thereof. The BENEFCIARY does not know of any circumstances, conditions, or events that may now, or may with the passage of time, give rise to any Environmental Claim⁵ against or affecting the Project. The BENEFCIARY further warrants and represents that to its actual knowledge:

1. The project complies with all applicable Environmental Laws.⁶ This representation shall be in place as soon as the Environmental Review is completed.
2. That all approvals from governmental authorities required for the Project by applicable Environmental Law have been obtained or will be obtained in due course.

³ "Hazardous Materials" shall mean (i) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (**CERCLA**); (ii) asbestos; (iii) polychlorinated biphenyls; (iv) petroleum, oil, gasoline (refined and unrefined) and their respective by-products and constituents and any other substance, whether in the form of a solid, liquid, gas, or any other form whatsoever, which by any "Governmental Requirements" (defined below) either requires special handling in its use, transportation, generation, collection, storage, handling, treatment, or disposal, or is defined as hazardous or harmful to the environment.

⁴ "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air, or other elements on, in, or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air, or other elements on, in, or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Agreement) emanating from the Property.

⁵ "Environmental Claim" shall mean (i) any judicial or administrative enforcement actions, proceedings, claims, orders (including consent orders and decrees), directives, notices (including notices of inspection, notices of abatement, notices of non-compliance or violation and notices to comply), requests for information or investigation instituted or threatened by any governmental authority pursuant to any Governmental Requirement; or (ii) any suits, arbitrations, legal proceedings, actions or claims instituted, made or threatened that relate to any damage, contribution, cost recovery, compensation, loss or injury resulting from the Release or threatened Release (whether sudden or non-sudden or accidental or non-accidental) of, or exposure to, any Hazardous Materials, or the violation or alleged violation of any Governmental Requirement, or the generation, manufacture, use, storage, transportation, treatment, or disposal of Hazardous Materials.

⁶ "Environmental Law" shall mean any state or local (including, without limitation, the Government of Puerto Rico) law, rule, regulation, order, ordinance, writ, judgment, injunction, decree, determination or award relating to the environment, health, safety or hazardous or toxic materials, including, without limitation, CERCLA, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Toxic Substances Control Act, the Clean Air Act, the Safe Drinking Water Act, the Atomic Energy Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Occupational Safety and Health Act and similar or related laws each as amended from time to time, and those environmental guidelines, rules or procedures required under the CDBG-DR and ER2 Programs.

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3. The BENEFICIARY has not caused, and has no knowledge of any other person who has caused, any Release,⁷ threatened Release, or disposal of any Hazardous Material at the Project.
4. The Project is not adversely affected by any Release, threatened Release, or disposal of a Hazardous Material originating or emanating from any other property.
5. The Project does not contain and has not contained any underground storage tank, asbestos-containing material, or any landfills or dumps on site nor has it been nominated for the National Priority List promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (**CERCLA**), as amended, 42 U.S.C. § 9601 *et seq.*, and regulations promulgated thereunder.
6. The BENEFICIARY, nor any other person, has used Hazardous Materials on the Property or has conducted Hazardous Material Activity at the Property.
7. The Property is not subject to, and the BENEFICIARY has no actual knowledge of, any imminent restriction on the ownership, occupancy, use, or transferability of the Property in connection with any Environmental Law or Release, threatened Release, or disposal of a Hazardous Material.
8. To the BENEFICIARY's actual knowledge, there are no conditions or circumstances at the Property which pose a risk of damage, injury, threat, or harm to health, safety, endangered or threatened species, or the environment.

D. Environmental Review. BENEFICIARY must provide PRDOH with all information including, without limitation, any and all public or private documents or records in their possession, or that they could have reasonably obtained, concerning compliance by the Property with any applicable Environmental Law. Furthermore, the BENEFICIARY is responsible for the preparation of all required environmental compliance documentation as per the National Environmental Policy Act (**NEPA**) and HUD Environmental Review Procedures at 24 C.F.R. Part 58. All required environmental review documentation shall be submitted to PRDOH for review and approval as the Environmental Certifying Officer. The BENEFICIARY shall also submit any and all corresponding information to PRDOH in order for the agency to complete its submission of all consultations to the concerning Federal Agencies, such as the U.S. Fish and Wildlife Service (**USFWS**) and the State Historic Preservation Office (**SHPO**),

⁷ Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the indoor or outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks and other receptacles containing or previously containing any Hazardous Materials.

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among others. Upon approval, PRDOH shall in turn submit all required documentation to HUD for final approval and issuance of the corresponding AUGF. As previously indicated in this Agreement, the BENEFICIARY shall not commence any physical work on the Project, nor invoice for any work prior to the obtention of the AUGF.

- E. Indemnification. In addition, the BENEFICIARY shall save, protect, pay for, defend, indemnify, and hold harmless PRDOH, the Government of Puerto Rico, HUD, and its officers, employees, representatives, and agents, (collectively, the "**Indemnitees**") from and against any and all liabilities such as suits, actions, claims, demands, penalties, damages (including without limitation penalties, fines, and monetary sanctions), losses, costs or expenses (including without limitation consultants' fees, investigation and laboratory fees, attorneys' fees, and remedial and response costs) (the foregoing hereinafter collectively referred to as "**Liabilities**"), which may now or in the future be incurred or suffered by the Indemnitees by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of:

1. The ownership of all or any part of the Project or Property;
2. Any act or omission of any person other than PRDOH;
3. The presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or Release from the Property of any Hazardous Materials or Hazardous Materials Contamination;
4. The environmental condition of the Property; and
5. Any Liabilities incurred under any Governmental Requirements relating to Hazardous Materials.

Notwithstanding anything herein to the contrary, the BENEFICIARY shall not have any obligation hereunder to indemnify any Indemnitee for any Liability under this Section to the extent that the condition giving rise to such Liability resulted solely from the gross negligence or willful misconduct of such Indemnitee.

- F. Release of Liabilities. Subject to the above, the BENEFICIARY hereby waives, releases, and discharges forever PRDOH, the Government of Puerto Rico, HUD, and its employees, officers, agents, and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with the BENEFICIARY's or the Property Owner's development, construction, use, maintenance, ownership, or operation of the Project and/or the Property, any Hazardous Materials on the Property, or the existence of Hazardous Materials Contamination in any state on the Property, however they came to be emplaced there.

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G. Duty to Prevent Hazardous Material Contamination. Upon the execution of this Agreement, the BENEFICIARY shall take such actions as are necessary or prudent including, but is not limited to, those required under applicable Environmental Laws to prevent the Release of any Hazardous Materials into the environment, on, or under the Property. During the operation and maintenance of the Project and/or the Property, the BENEFICIARY shall take all necessary precautions, or when applicable, cause the Property Owner to take all necessary precautions, including, but is not limited to, those that are required under applicable Environmental Laws to prevent the Release of any Hazardous Materials into the environment, on, or under the Property. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, the BENEFICIARY shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the then prevailing standards including, but is not limited to, applicable Environmental Laws with respect to the disclosure, storage, use, removal, and disposal of Hazardous Materials, or when applicable, shall cause the Property Owner to do so.

The preceding shall not prohibit the ordinary use of Hazardous Materials normally used in the construction, operation, occupancy, or maintenance of properties similar to the Project, provided the amount of such Hazardous Materials do not exceed the quantity necessary for the normal construction, operation, occupancy, and maintenance of the Project in the ordinary course of business and the use, storage, and disposal of such Hazardous Materials strictly complies with all applicable Government Requirements with respect to Hazardous Materials.

H. Environmental Inquiries. The BENEFICIARY shall, or when applicable, shall cause the Property Owner to, notify and provide to PRDOH copy or copies of the following environmental permits, disclosures, applications, entitlements, or inquiries relating to the Project: notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports or Certificates filed, or applications made, pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. The BENEFICIARY shall, or when applicable, shall cause the Property Owner to, immediately report in writing to PRDOH upon knowledge of any unusual or potentially important incidents including, but not limited to the following, as well as provide any reasonably requested documents as they pertain to this Grant Agreement and applicable laws and regulations:

1. Any liability for response or corrective action, natural resource damage, or other harm pursuant to Environmental Law;
2. Any Environmental Claim;

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3. All required reports of Releases of Hazardous Materials, including notices of any Release of Hazardous Materials required by any Governmental Requirements, investigation, compliance schedules, clean-up, disposal or other remedial actions;
4. All notices of suspension of any permits;
5. Any restriction on the ownership, occupancy, use, or transferability of the Property, arising pursuant to any (a) Release, threatened Release, or disposal of a Hazardous Substance or (b) Environmental Law;
6. Any environmental, natural resource, health, or safety conditions which could impair the condition of the Property or affect adjoining or proximate properties;
7. All notices of violation from Federal, state, or local governmental authority;
8. Any notices of violation from OSHA or PR-OSHA concerning employees' exposure to Hazardous Materials; and
9. All complaints and other pleadings filed against the BENEFICIARY, the Property Owner, or PRDOH relating to BENEFICIARY's storage, use, transportation, handling, or disposal of Hazardous Materials on the Property.

In the event of a Release of any Hazardous Materials into the environment, as soon as possible after the Release, the BENEFICIARY shall, or when applicable, shall cause the Property Owner to, furnish to PRDOH a copy of any and all reports relating thereto and copies of all correspondence with governmental authorities relating to the Release. Upon request of PRDOH, the BENEFICIARY shall, or when applicable, shall cause the Property Owner to furnish to PRDOH, a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Project including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

- I. Representations. The BENEFICIARY represents and agrees that:
 1. During the time in which it has site control of the Property or any portion of the same, it will maintain the Property, or any portion of the same, in compliance with any applicable Environmental Law and further agrees to be responsible for making any notification or report concerning the Project to a governmental authority required to be made by any applicable Environmental Law;
 2. It will not enter into any assignment or sublease of the Project, nor retain contractors or sub-contractors, except on terms and

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conditions that comply with applicable environmental, health, and safety regulations;

3. It will expeditiously cure to the reasonable satisfaction of PRDOH any violation of applicable Environmental Law at the Property;
4. It will obtain and maintain in full force and effect all governmental approvals required by any applicable Environmental Law for operations at the Project;
5. It will not create or operate at the Property any landfill or dump nor improperly dispose of or accumulate solid or hazardous wastes as defined pursuant to the Resource Conservation and Recovery Act of 1976 (**RCRA**), as amended, and Government of Puerto Rico laws and regulations.

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XI. ENERGY REGULATORY AND UTILITY PROVISIONS

A. Limitations pending regulatory and utility review and approval:

1. The BENEFICIARY does not have a legal claim to any amount of CDBG-DR funds to be used for the specific Project or Property, and any potential award is contingent upon the completion of regulatory and/or utility reviews and approval determined necessary for the Project to be placed in service and operation.

XII. SPECIAL CONDITIONS

- A. The BENEFICIARY must disclose to PRDOH, in accordance with HUD requirements, information regarding any related assistance or financing from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality or any private for profit or non for profit entity, that is made available or is expected to be made available with respect to the development and construction of the Project. Such related assistance may include, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.
- B. The BENEFICIARY must also keep PRDOH informed of any change regarding the financial structure of the Project and its budget. It is expressly recognized that this is a condition of the present Agreement, and that if the BENEFICIARY fails to accurately represent the financial structure of the Project, its budget, or any changes thereto, it will be a sufficient cause for the termination of this Agreement and the denial of any undisbursed CDBG-DR funds and/or the recovery of disbursed CDBG-DR funds.
- C. The BENEFICIARY shall oversee that no CDBG-DR funds are used for political activities, sectarian or religious activities, lobbying, patronage, and nepotism.

D. PRDOH may require the imposition of any covenant, condition, or term that it, in its sole but reasonable discretion, deems necessary and essential to ensure the Project's long-term viability and compliance with all applicable regulations.

E. Mechanic's liens, stop notices, and notices of completion:

1. If any claim of lien is filed against the Property where the Project is located or a stop notice affecting the funds is served on PRDOH, the BENEFICIARY, or any other third party in connection with the Project, then BENEFICIARY shall notify the event to PRDOH within **ten (10) days** of occurrence. Within **thirty (30) days** of such filing or service, the BENEFICIARY shall, either pay and fully discharge the lien, effect the release of such lien or stop notice by delivering to PRDOH a surety bond in sufficient form and amount, or provide PRDOH with other assurance satisfactory to PRDOH that the claim of lien or stop notice will be paid or discharged.
2. If the BENEFICIARY fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, PRDOH may (but is under no obligation to) discharge such lien, encumbrance, charge, or claim at BENEFICIARY's expense. Alternately, PRDOH may require the BENEFICIARY to immediately deposit in escrow the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. PRDOH may use such deposit to satisfy any claim or lien that is adversely determined against the BENEFICIARY.
3. BENEFICIARY shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Project for a continuous period of **thirty (30) days** or more and take all other steps necessary to forestall the assertion of claims of lien against the Property. BENEFICIARY authorizes PRDOH, but PRDOH has no obligation, to record any notices of completion or cessation of labor, or any other notice that PRDOH deems necessary or desirable to protect its interest in the Project.

XIII. CONTRACTS AND SUBCONTRACTS



A. Specific Requirements: All contracts, including subcontracts, shall contain provisions specifying that:

1. The work performed by the contractor be in accordance with the applicable terms of this Agreement between PRDOH and BENEFICIARY;
2. Nothing contained in such contract shall impair the rights of PRDOH;
3. Nothing contained therein or under this Agreement will create any contractual relation between the contractor and PRDOH;

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4. The contractor specifically agrees to be bound by the confidentiality provision regarding Personal Identifiable Information set forth in this Agreement;
5. BENEFICIARY will be responsible for ensuring all contract work is performed consistent with federal and state regulations and/or policies to be eligible for reimbursement of the approved work; and
6. All applicable Federal flow down provisions are included in the contract per Federal guidelines.

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- B. Monitoring: BENEFICIARY will monitor all contracted services on a regular basis to ensure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.
- C. Content: BENEFICIARY shall cause all the provisions of this Agreement in their entirety to be included in and made a part of any contract or subcontract executed in the performance of this Agreement, as applicable.

XIV. PERFORMANCE WARRANTY

- A. BENEFICIARY warrants that it will perform all work and provide all deliverables (**Deliverables**) under this Agreement in a manner consistent with the degree of care and skill ordinarily exercised by members of the same trade, profession, or industry currently practicing under similar circumstances.
- B. BENEFICIARY warrants that all Deliverables it completes under this Agreement shall: (i) meet or exceed the standards of BENEFICIARY's trade, profession, or industry; (ii) meet or exceed the specifications set forth in the Attachments; and (iii) be fit for ordinary use, of good quality, and with no material defects.
- C. If BENEFICIARY submits Deliverables that do not meet specifications, fails to timely complete Deliverables, or fails to perform its obligations under this Agreement, PRDOH may require BENEFICIARY, at its sole expense, to:
1. Repair or replace Deliverables that do not meet specifications;
 2. Refund payment for Deliverables that do not meet specifications and accept the return of such Deliverables; and
 3. Take necessary action to ensure that future performance and Deliverables meet specifications and conform to the Agreement.

XV. NO OBLIGATION BY THE FEDERAL GOVERNMENT

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to PRDOH, Property Owner, BENEFICIARY, or any other party pertaining to any matter resulting from the Agreement.

XVI. NON-LIABILITY

In no event, PRDOH shall be liable for any indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, data, or use, incurred by either party or any third party, whether in an action in contract or tort, even if the other party or any person has been advised of the possibility of such damages. Third parties operating under this Program, with their agency, will have their own general civil and criminal liability imposed by law towards PRDOH, the BENEFICIARY, and any citizen.

XVII. REMEDIES

Noncompliance by BENEFICIARY will, either at the option of PRDOH or automatically where so specified, relieve PRDOH of any obligation to perform hereunder including, without limitation, to make or continue the disbursement of funds, and shall give PRDOH the right to proceed with any and all remedies set forth in this Agreement including, but not limited to, the following:

- A. Termination of the Agreement.
- B. Recapture of funds, expenses, costs, and fees:
 - 1. Recapture of funds as established in this Agreement and pursuant to applicable regulations.
 - 2. The BENEFICIARY shall be liable to pay PRDOH on demand all reasonable expenses, costs, and fees including without limitation, attorneys' fees, costs, and related expenses paid or incurred by PRDOH in connection with the recapture of the funds.
- C. Specific Performance: PRDOH shall have the right to file a suit, action, or proceeding at law or in equity to require the BENEFICIARY to perform its obligations and covenants under the Agreement or to challenge acts which may be unlawful or in violation of the provisions under this Agreement.

No right, power, or remedy given to PRDOH by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to PRDOH by the terms of this Agreement or by any statute or otherwise against the BENEFICIARY and any other person. Neither the failure nor the delay on the part of PRDOH to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by PRDOH of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

The BENEFICIARY shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute cause for PRDOH to request a remedy hereunder. Any such contest shall be prosecuted diligently and, in a manner, un-prejudicial to PRDOH or the rights of PRDOH hereunder.

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Additionally, the BENEFICIARY acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the BENEFICIARY's actions pertaining to this Agreement.

In any litigation, arbitration, or other proceeding arising from, as a result of, or pursuant to this Agreement and/or due to the resulting selection of PRDOH's process to grant funds under the Program and/or as a consequence of an award determination under any other participating programs or any other proceeding arising from or as a result of or pursuant to any noncompliance during the development, construction, and/or operation of the Project, when PRDOH appears as a party, intervenor, or *amicus curie*, it shall be entitled to receive reasonable attorney's fees, costs, and expenses incurred, regardless of which party initiated the litigation, arbitration, or other proceeding.

XVIII. NOTICES

Any notice, demand, claim, or other communications under this Agreement shall be in writing and shall be deemed to be effective as of the date sent by certified mail, return receipt requested, or email. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice:

PRDOH: Hon. Ciary Pérez Peña
Secretary
Puerto Rico Department of Housing
606 Barbosa Avenue
Juan C. Cordero Building
Río Piedras, Puerto Rico 00918

BENEFICIARY: Kelvin O. Ruiz Modesto
Bard Puerto Rico Plant Controller
Bard Shannon LTD.
P.O. Box 2001
Humacao, Puerto Rico 00701
kelvin.ruiz@bd.com
(787) 656-5521

XIX. AMENDMENTS, TERMINATION, SUSPENSION, AND DEBARMENT

A. Amendments

1. General Provisions

This Agreement may be amended provided that such amendments make specific reference to this Agreement, comply with programmatic policies, procedures, and guidelines, are executed in writing and signed by a duly authorized representative of each party, and approved by PRDOH. Such amendments shall not invalidate this Agreement, nor relieve or release the Parties from their obligations under this Agreement. Unless specified, such

amendments are not intended to affect, nor will they constitute an extensive novation of, the obligations of the Parties under this Agreement.

PRDOH may, at its discretion, amend this Agreement 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 the schedule of the activities to be undertaken as part of this Agreement, such modifications shall be incorporated only by a written amendment signed by both PRDOH and the BENEFICIARY.

PRDOH reserves the right to notify the BENEFICIARY in writing, email, or any other electronic method, of any applicable policies, procedures, regulations, requirements or 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 or guidelines, and laws shall be deemed incorporated by reference to this Agreement without the need of executing a separate written and signed amendment.

2. Change Orders to Contracts

The BENEFICIARY acknowledges that any changes in plans or specifications after this Agreement has been executed, including any increase or decrease to the quantity of work to be performed or the materials, equipment, or supplies to be furnished, shall not be allowed without the express written authorization of PRDOH.

Requests for change orders shall only be considered if the BENEFICIARY demonstrates that the proposed change is necessary, reasonable, and can be accomplished through funding sources other than CDBG-DR. PRDOH will evaluate all requests for a change order under consultation with a third-party cost estimator to determine whether costs are necessary and reasonable for the timely completion of the Project or to protect the initial investment of CDBG-DR funds.

Any work performed outside of the approved scope of work without prior authorization by means of a change order is not reimbursable under this Agreement. The BENEFICIARY shall be responsible for all costs incurred due to activities performed beyond the approved scope of work without prior authorization by a duly authorized change order.

B. Suspension or Termination

1. Termination for Cause or Default

PRDOH may terminate this Agreement, in whole or in part, whenever it determines that the BENEFICIARY has failed to comply with any term, condition, requirement, or provision of this Agreement. Failure to comply, includes (but is not limited to) the following:

- i. Failure to comply with any of the rules, regulations, or provisions referred to herein, or such statutes, regulations,

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executive orders, HUD guidelines, Program Guidelines, as applicable, and policies or directives as may become applicable at any time;

- ii. Failure, for any reason, of the BENEFICIARY to fulfill in a timely and proper manner its obligations under this Agreement;
- iii. Ineffective or improper use of funds provided under this Agreement; and
- iv. Submission of reports by the BENEFICIARY to the PRDOH that are incorrect or incomplete in any material respect.

BENEFICIARY shall, upon written notice of non-compliance, be provided a **ten (10) calendar day** opportunity to submit a Corrective Action Plan to be approved by PRDOH to cure the alleged defect that resulted in the perceived default. If the defect is not cured within the period of time established in the PRDOH-approved Corrective Action Plan,⁸ PRDOH shall terminate this Agreement by delivering to the BENEFICIARY a **thirty (30) calendar day** notice of termination specifying the extent to which the performance of the scope of work under this Agreement is terminated, the reason therefor, and the effective date of termination. BENEFICIARY shall immediately discontinue all such work being terminated and deliver to the PRDOH all information, notes, drafts, documents, analyses, reports, compilations, studies, and other materials accumulated or generated in performing the work contemplated in this Agreement, whether completed or in process.

Notwithstanding the above, the BENEFICIARY shall not be relieved of liability to PRDOH for damage sustained to PRDOH CDBG-DR Program by virtue of any breach of the Agreement by the BENEFICIARY. PRDOH may withhold any payments to the BENEFICIARY for the purpose of off-set or partial payment, as the case may be, of amounts owed to PRDOH by the BENEFICIARY. PRDOH shall make payment, in accordance with the terms of this Agreement, of any amounts due to BENEFICIARY for allowable work performed prior to the notice of termination.

2. Termination for Convenience of PRDOH

PRDOH may terminate this Agreement at any time by notice in writing from PRDOH to the BENEFICIARY. If the Agreement is terminated by PRDOH as provided herein, the BENEFICIARY shall be paid the total compensation for the allowable work actually performed up until the date of termination. Any compensation, expenses and/or other amounts referenced in this paragraph and due under the Agreement must be for documented costs that are CDBG-DR eligible, allowable, allocable, and reasonable in accordance with Uniform Administrative Requirements.

⁸ As per Program Guidelines, when inspection of project site results in a finding of non-compliance, BENEFICIARY has ninety (90) calendar days from the date of the inspection to correct deficiencies and request a re-inspection.

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3. Notification and Recoupment of Costs Incurred Prior to Termination

PRDOH shall promptly notify the BENEFICIARY, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect. Upon termination, PRDOH retains the right to recover any improper expenditures from the BENEFICIARY and the BENEFICIARY shall return to PRDOH any improper expenditures no later than **thirty (30) calendar days** after the date of termination. In the case of a Termination for Convenience only, the PRDOH may, at its sole discretion, allow the BENEFICIARY 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 this Agreement, and any other applicable state or Federal statutes, regulations, or requirements.

4. Unilateral Termination

PRDOH may terminate this Agreement, in whole or in part, at PRDOH's sole discretion, with or without cause, at any time. PRDOH will terminate this Agreement by delivering to the BENEFICIARY a **thirty (30) calendar day** notice of termination specifying the extent to which the performance of the work under this Agreement is terminated, and the effective date of termination. Upon receipt of such notice, the BENEFICIARY shall immediately discontinue all work affected and deliver to PRDOH all information, studies, and other materials property of PRDOH. If the BENEFICIARY does not deliver to PRDOH all information, studies, and other materials property of the PRDOH within the established timeframe,⁹ and PRDOH invests any additional funds to reproduce the information, studies, and other materials not provided by the BENEFICIARY upon termination, then PRDOH will disallow from payments to the BENEFICIARY under this Agreement the funds expended by PRDOH to reproduce such information, studies, and other materials. In the event of a termination by Notice, PRDOH shall be liable only for payment of allowable work performed up to and including the effective date of termination.

5. Immediate Termination

In the event the BENEFICIARY is subjected to a criminal or civil action, suit, proceeding, or inquiry in a court with jurisdiction, or any governmental agency or the BENEFICIARY is subjected to an order, judgment, or opinion issued by any federal or local authority, a court with jurisdiction, or any governmental agency in connection with the execution, delivery, and performance by the BENEFICIARY of this Agreement, or the BENEFICIARY has been non-compliant, in breach, inaccurate in any representation, warranties, covenants, or the certifications provided herein, or in violation of Act No. 2-2018, as amended, 3 LPRA § 1881 *et seq.*, known as the "Anti-Corruption Code for the New Puerto Rico" (**Act No. 2-2018**), PRDOH shall have the right to the immediate termination of

⁹ In compliance with applicable Guidelines, which may be amended from time to time to ensure consistency with applicable federal and local regulations.

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this Agreement. The BENEFICIARY has a continuous obligation to report to PRDOH any proceedings which apply to the BENEFICIARY under this paragraph.

In the event that the grant of funds by HUD under the CDBG-DR energy allocation is suspended, withdrawn, or canceled, this Agreement will be immediately terminated.

6. 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, PRDOH has the right upon **ten (10) business days** written notice to the BENEFICIARY, to terminate this Agreement without damage, penalty, cost or expenses to PRDOH of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

7. Suspension and Debarment

This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 2424. As such, the BENEFICIARY is required to verify that none of the contractors or subcontractors, its principals, or its affiliates are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. §180.935).

This certification is a material representation of fact relied upon by PRDOH. If it is later determined that the BENEFICIARY did not comply with 2 C.F.R. Part 180, Subpart C, and 2 C.F.R. Part 2424, Subpart C, in addition to the remedies available to PRDOH, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The BENEFICIARY agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C, and 2 C.F.R. Part 2424, Subpart C, while this Agreement is valid and throughout the period of any contract that may arise from this Agreement. The BENEFICIARY further agrees to include a provision requiring such compliance in its lower tier covered transactions.

XX. COMPLIANCE WITH FEDERAL STATUTES, REGULATIONS, AND THE TERMS AND CONDITIONS OF THE FEDERAL AWARD, GOVERNMENTAL REQUIREMENTS, RECORDKEEPING, AND ADDITIONAL PRDOH REQUIREMENTS

A. Compliance with Attachments

1. The BENEFICIARY agrees to carry out its obligations under this Agreement in compliance with all the requirements described in ATTACHMENT E attached to this Agreement. During the Useful Life of the Project, the BENEFICIARY agrees to comply with the Applicable

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CDBG-DR Requirements and the Program Guidelines, as well as all applicable recordkeeping and reporting provisions described in ATTACHMENT E.

2. Moreover, ATTACHMENT G attached herein and made an integral part of this Agreement, outlines several situations that may reasonably be considered as conflicts of interest. The BENEFICIARY shall disclose and certify that, to the best of its knowledge, none of the situations exist or may exist at the date of the execution of the Agreement. The aforementioned certification aids PRDOH, in its role as CDBG-DR grantee before HUD, to identify, evaluate, disclose, and manage apparent, potential, or actual conflicts of interest related to CDBG-DR funded projects, activities, and/or operations.

3. The BENEFICIARY certifies that it is current with all laws and regulations related to governmental impositions set forth in this Agreement and Attachments applicable to it and/or the BENEFICIARY's personnel, businesses, and organizations.

B. Property standards. CDBG-DR-assisted new construction and rehabilitation projects must meet the Federal and State building codes, as applicable, and all applicable codes, rehabilitation standards, ordinances, and zoning ordinances at the time of the Project completion and throughout the Useful Life of the Project.

C. Ethics clause

1. Pursuant to Act No. 2-2018, no employee or officer of PRDOH nor any member of their families can have any interest in the earnings or benefits from this Agreement.
2. The PRDOH and the BENEFICIARY hereby certify that in signing this Agreement they are in compliance with Act No. 1-2012, as amended, 3 LPRA § 1854 *et seq.*, known as the "Puerto Rico Government Ethics Office Organic Act," in connection with the possibility of a conflict of interest.

D. Non-conviction. The BENEFICIARY certifies that it has not been convicted nor accused of a felony or misdemeanor against the government, public faith and function, or that involves public property or funds, either federal or local in origin, including but not limited to the provisions of Act 2-2018. Furthermore, BENEFICIARY also certifies that:

1. It has not been convicted nor has plead guilty at a state or federal bar, in any jurisdiction of the United States of America, of crimes consisting of fraud, embezzlement, or misappropriation of public funds, as stated in Act No. 2-2018, which prohibits the award of offers

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for government contracts to those convicted of fraudulent appropriation of public funds.

2. It understands and accepts that any guilty plea or conviction for any of the crimes specified in Article 3 of Act No. 2-2018 will also result in the immediate cancellation of any contracts in force at the time of the guilty plea or conviction between the undersigned and Government Agencies, Instrumentalities, Public Corporations, Municipalities, and the Legislative or Judicial Branches.
3. It declares under oath the abovementioned in conformity with what is established in Act No. 2-2018, which prohibits awarding offers for government contracts to those convicted of fraud, embezzlement, or misappropriation of public funds.
4. The BENEFICIARY represents and guarantees that none of its employees, officials, or agents have been convicted of a felony or misdemeanor as described in this sub-section, including but not limited to Act 2-2018. Moreover, the BENEFICIARY agrees to notify PRDOH should any of the BENEFICIARY's officials as provided in Act 2-2018 are convicted of a felony or misdemeanor as described in this sub-section after the execution of this Agreement. Said notice shall be made within **ten (10) days** from the time of the conviction.
5. No action, suit, investigation, litigation, or proceeding affecting the Property or the BENEFICIARY exists or, to the knowledge of the BENEFICIARY, is threatened before any court, Governmental authority, or arbitrator that (i) is reasonably likely to materially affect the business and operations of the BENEFICIARY, (ii) is reasonably likely to materially affect the Property and/or the Project, or (iii) purports to affect the legality, validity, or enforceability of this Agreement or the consummation of the transactions contemplated hereby or thereby.

E. Ownership and use of documents.

1. With the exception of the BENEFICIARY's working papers, the BENEFICIARY acknowledges PRDOH's ownership of all information, drafts, documents, reports, papers, and other materials developed and prepared by the BENEFICIARY, its agents or representatives for purposes of performing key obligations hereunder. In the event of any termination, the BENEFICIARY shall deliver such information, drafts, reports, papers, and other materials to PRDOH, in document form or as computer program data, and the BENEFICIARY recognizes PRDOH's right to request such documentation or computer program data. If the BENEFICIARY fails to deliver said information, PRDOH may seek a judicial order to enforce its rights.

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2. Proof of expenditures incurred by the BENEFICIARY in connection to the development and construction of the Project shall be made available to PRDOH. The BENEFICIARY agrees to maintain accurate records and files of all contract documents, correspondence, book estimates, bills, and other information related to the BENEFICIARY's management of the funds. These documents shall be open for PRDOH examination at all reasonable times during the term of this Agreement, and up to **five (5) years** from the closeout of the Grant Agreement between PRDOH and HUD, or the period required by other local applicable laws and regulations.

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F. Non-disclosure and confidentiality.

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1. Confidential Information; Definition: The term Confidential Information as used throughout this Section, means any information concerning the operations of PRDOH, the Government of Puerto Rico, HUD, and that of the BENEFICIARY (e.g., the projects, computer processing systems, object and source codes, and other PRDOH, the Government of Puerto Rico, and HUD business and financial affairs). The term Confidential Information shall also be deemed to include all notes, analysis, compilation, studies, interpretation, or other documents prepared by BENEFICIARY, its agents or representatives in connection with the operations of PRDOH, the Government of Puerto Rico, and HUD.
2. Non-Disclosure: BENEFICIARY agrees to take all reasonable steps or measures to safeguard all Confidential Information and will not, at any time, present or future, without the express written authorization of PRDOH signed by the Secretary of PRDOH, use or sell, market, or disclose any Confidential Information to any third party, contractor, corporation, or association for any purpose whatsoever, except in the case of the BENEFICIARY's consultant, as authorized by PRDOH. BENEFICIARY further agrees that, except as they relate to the normal course of the work execution, the BENEFICIARY will not make copies of the Confidential Information except upon PRDOH's express written authorization, signed by an authorized representative of PRDOH, and will not remove any copy or sample of Confidential Information without prior written authorization from PRDOH. BENEFICIARY retains the right to control its work papers subject to these confidentiality provisions.
3. Return Documents: Upon receipt of a written request from PRDOH, BENEFICIARY will return to PRDOH all copies or samples of Confidential Information which at the time of the notice are in BENEFICIARY's or its agent's possession. BENEFICIARY reserves the right to retain a set of its work papers.

4. Equitable Relief: The BENEFICIARY acknowledges and agrees that a breach of the provision of this sub-section will cause PRDOH to suffer irreparable damage that cannot be remedied or compensated adequately only by mere monetary retribution. The BENEFICIARY further agrees that money damages may not be a sufficient remedy for any breach of this sub-section. Accordingly, the BENEFICIARY agrees that PRDOH shall have the right to seek injunctive relief and the specific performance of the provisions of this sub-section to enjoin a breach or attempted breach of the provision hereof, such right being in addition to any and all other rights and remedies that are available to PRDOH by law, equity, or otherwise.

G. Solid Waste Disposal Act. In the performance of this Agreement, the BENEFICIARY shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

1. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
2. Meeting Agreement performance requirements; or
3. At a reasonable price.

XXI. INSURANCE AND BONDING

A. Insurance Specifications.

1. The BENEFICIARY shall carry sufficient insurance coverage and bonding from insurers licensed to conduct business in Puerto Rico to protect all Agreement assets from loss due to any cause, including but not limited to theft, fraud, and/or physical damage. The aforementioned insurance coverage shall be provided by the BENEFICIARY, via Commercial General Liability (**CGL**) insurance policy, during the life of the Agreement. The Government of Puerto Rico, PRDOH, and HUD shall be named as additional insured on all such insurance. The BENEFICIARY shall meet all other insurance requirements as PRDOH may impose from time to time. In addition, all insurance carriers and bonding companies shall meet minimum size and financial stability and rating requirements as may be imposed by PRDOH from time to time. Certificates of insurance shall be provided to PRDOH and full and complete copies of the policies and/or bonds shall be provided to PRDOH upon its request for such.
2. Moreover, the BENEFICIARY must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by PRDOH. Federally owned property need not be insured unless required by the terms and conditions of the Federal award.

3. The BENEFICIARY shall submit proof of the CGL insurance and Workers' Compensation insurance policies to the PRDOH before the execution of the Grant Agreement. The BENEFICIARY shall also ensure that all other insurance policies and bonds required under this Agreement are secured by its subcontractors. The BENEFICIARY is responsible for providing to the PRDOH evidence of these additional insurance policies and bonds within five (5) days after the execution of each individual subcontract agreement.
4. Upon the execution of this Agreement, the BENEFICIARY, at the request of the PRDOH, must furnish PRDOH with an original and two (2) certified copies of the insurance policies described in ATTACHMENT H and any other evidence PRDOH may request as to the policies' full force and effect.

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B. Failure to procure coverage.

1. In the event that any policy of insurance required by PRDOH does not comply with PRDOH's requirements, is not procured, or is canceled and not replaced, PRDOH has the right to terminate the Agreement or obtain insurance if it deems necessary and any premiums paid by PRDOH will be promptly reimbursed by the BENEFICIARY or PRDOH's disbursements to the BENEFICIARY will be reduced to pay for PRDOH's purchased insurance.

C. Related requirements.

1. The BENEFICIARY shall furnish original Certificates of Insurance evidencing the required coverage to be in force on the effective date of the 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 BENEFICIARY commencing work. Neither the BENEFICIARY nor its authorized representatives are to begin their responsibilities under the Agreement prior to full compliance with this requirement and notification from PRDOH to proceed.
2. Renewal Certificates of Insurance or such similar evidence is to be received by PRDOH prior to expiration of insurance coverage. At PRDOH's option, non-compliance will result in one (1) or more of the following actions: (i) PRDOH will purchase insurance on behalf of the BENEFICIARY and will charge back all cost to the BENEFICIARY; (ii) all payments due the BENEFICIARY will be held until the BENEFICIARY has complied with the Agreement; and/or (iii) the BENEFICIARY will be assessed Five Thousand Dollars (\$5,000.00) for every day of non-compliance.

3. The receipt of any certificate does not constitute agreement by PRDOH 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 **ninety (90) days** of written notice to be given to PRDOH if coverage is substantially changed, cancelled, or non-renewed.
4. The BENEFICIARY shall require all contractors, subcontractors, and consultants to carry the insurance required herein or the BENEFICIARY may provide the coverage for any or all of its contractors and subcontractors and, if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined above.
5. The BENEFICIARY expressly understands and agrees that, whenever the BENEFICIARY is covered by other primary, excess, or excess contingent insurance, any insurance or self-insurance program maintained by PRDOH shall apply in excess of and will not contribute with insurance provided by the BENEFICIARY under this Agreement.

For further details concerning insurance requirements or specifications, please refer to ATTACHMENT H.

XXII. FEDERAL LAWS AND REGULATIONS APPLICABLE TO CONSTRUCTION CONTRACTS

The BENEFICIARY acknowledges that federal regulations require all projects receiving CDBG-DR funds to adhere to applicable federal labor standards. Therefore, the BENEFICIARY shall, and/or shall cause its contractors and subcontractors to, comply with federal labor standards laws, including Davis-Bacon Act of 1931, as amended, 40 U.S.C. § 3141 *et seq.*, and Related Acts (**DBRA**); Fair Labor Standards Act of 1938 (**FLSA**), as amended, 29 U.S.C. § 201 *et seq.*; Contract Work Hours and Safety Standards Act (**CWHSSA**), as amended, 40 U.S.C. § 3701 *et seq.*; and Copeland Anti-Kickback Act, as amended, 40 U.S.C. § 3145 *et seq.* Together, these laws ensure that workers are paid the appropriate prevailing wage rate and are treated fairly by employers receiving CDBG-DR funding to execute Program activities. The BENEFICIARY acknowledges and understands that each of these laws requires important recordkeeping practices to ensure compliance and allow for accurate and efficient reporting as required by PRDOH. These laws are described in ATTACHMENT E.

XXIII. CDBG-DR POLICIES AND PROCEDURES

In addition to what is established in this Agreement, the BENEFICIARY shall comply with all CDBG-DR Program-specific and general policies and procedures, which may include, but are not limited to, OS&H Policy, URA & ADP Guidelines, Cross Cutting Guidelines, AFWAM Policy, Section 3 Policy, Personally Identifiable Information, Confidentiality and Nondisclosure Policy, Language

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Access Plan, and Conflict of Interest and Standards of Conduct Policy, as found in the CDBG-DR/MIT Website (<https://recuperacion.pr.gov/en/resources/policies/>), which are herein included and made an integral part of this Agreement, as they may be updated from time to time.

XXIV. SYSTEM FOR AWARD MANAGEMENT REGISTRATION

The BENEFICIARY must be registered in the System for Award Management (**SAM**) and shall maintain its registration active during the performance of the Agreement and through final payment. The BENEFICIARY is responsible during performance and through final payment for the accuracy and completeness of the data within SAM. Failure to maintain registration in SAM can impact obligations and payments under this Agreement.

XXV. FORCE MAJEURE

In the event of a fire, flood, earthquake, natural disaster, hurricane, inclement weather, riot, act of governmental authority in its sovereign capacity, pandemic, officially declared by the Government of Puerto Rico, strike, labor dispute or unrest, embargo, war, insurrection or civil unrest, herein collectively referred to as "Force Majeure", during the term of this Agreement, neither PRDOH nor the BENEFICIARY shall be liable to the other party for nonperformance during the conditions created by such event. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and shall resume performance at the earliest possible date.

The BENEFICIARY shall notify PRDOH in writing as soon as possible, but in any event within **ten (10) business days** of the occurrence of the Force Majeure event and describe in reasonable detail the nature of the Force Majeure event, how the non-performance or delay relates to or arises from the Force Majeure event, its anticipated duration and any action taken to minimize its effect. The BENEFICIARY may be entitled to reasonable adjustments in schedules, among other measures, in the foregoing circumstances. If non-performance continues for more than **thirty (30) days**, without reasonable justification, PRDOH may terminate this Agreement immediately upon written notification to the BENEFICIARY.

XXVI. INDEPENDENT CONTRACTOR

A. The BENEFICIARY shall have exclusive control over its employees, contractors, and subcontractors (the BENEFICIARY's employees, contractors, and subcontractors are herein, collectively, referred to as the "**BENEFICIARY's Personnel**"), its labor and employee relations, and its policies relating to wages, hours, working conditions and other employment conditions. The BENEFICIARY has the exclusive right to hire, transfer, suspend, lay off, recall, promote, discipline, discharge, and adjust grievances with the BENEFICIARY's Personnel. The BENEFICIARY is solely

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responsible for all salaries and other compensation of the BENEFICIARY's Personnel.

- B. The BENEFICIARY is solely responsible for making all deductions and withholdings from its employees' salaries and other compensation and paying all contributions, taxes, and assessments, including union payments. The BENEFICIARY shall be responsible for and shall defend, indemnify, and hold harmless PRDOH, the Government of Puerto Rico, HUD, and their agents, officers, directors, employees, and representatives, as well as BENEFICIARY's successors and assigns against all costs, expenses, and liabilities, including without limitation reasonably prudent attorneys' fees relative to the situation, in connection with the BENEFICIARY's employment and/or hiring of any BENEFICIARY's Personnel providing any of the services, including without limitation: (i) payment when due of wages and benefits, retirement, life and/or medical insurance; (ii) withholding of all payroll taxes, including but not limited to, unemployment insurance, workers' compensation, FICA and FUTA; (iii) compliance with the Immigration Reform and Control Act; and (iv) compliance with any other applicable laws relating to employment and/or hiring of any BENEFICIARY's Personnel in connection with this Agreement.

XXVII. ASSIGNMENT OF RIGHTS

The BENEFICIARY shall not assign or transfer any interest in this Agreement without the prior written consent of PRDOH. This Agreement shall be binding upon and shall inure to the benefit of PRDOH and the BENEFICIARY, their successors and assigns.

XXVIII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

XXIX. HEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement, and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

XXX. CONSOLIDATIONS, MERGERS, CHANGE OF NAME, OR DISSOLUTIONS

A. Consolidation or Merger

In the event that the BENEFICIARY moves for consolidation or merger with another entity, by its discretion or otherwise, written notice of such decision or event shall be delivered to the PRDOH Legal Division at contractscdbgdr@vivienda.pr.gov **at least fifteen (15) days** prior to the effective date of the consolidation or merger. The notice shall include, but not limited to, a description of: the expected effective date of the, consolidation or

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merger; the name of each of the constituent entities moving to consolidate or merge into the single resulting or surviving entity; the proposed name of the resulting entity (in case of a consolidation) or the name of the surviving entity (in case of a merger) if necessary; reference to the projected capacity of the resulting or surviving entity to comply with the terms, conditions, obligations, tasks, services, and performance goals or requirements included in the Agreement as well as its Attachments; and a brief summary of the proposed plan to achieve the transition of duties, tasks, and performance goals or requirements to the resulting or surviving entity.

Upon the, consolidation or the merger becoming effective and supporting evidence of such event is notified to PRDOH, execution of an Amendment to the Agreement may follow. The Amendment would include, but not limited to, modifications to the clauses that refer to the identity, personal circumstances, address, and any other information related to the BENEFICIARY deemed relevant by PRDOH for the execution of the Amendment. **No amendment to the Agreement will be necessary if the BENEFICIARY becomes the surviving entity following a merger.**

Failure to comply with any of the before-mentioned conditions may result in the activation of the termination clauses provided in the Agreement.

B. Change of Name

In the event that the signing BENEFICIARY initiates a change of name process, written notice of such decision or event shall be delivered to the PRDOH Legal Division at contractscdbgdr@vivienda.pr.gov **at least fifteen (15) days** prior to the effective date of such event. The notice shall include, but not limited to, a description of: the expected effective date of the change of name; the proposed name; inform of any change of address; and reference of any change in the capacity of the entity to comply with the terms, conditions, obligations, tasks, services, and performance goals or requirements included in the Agreement, as well as its Attachments.

Upon the change of name becoming effective and supporting evidence of such event is notified to PRDOH, execution of an Amendment to the Agreement may follow. The Amendment would include, but not limited to, modifications to the clauses that refer to the identity, personal circumstances, address, and any other information related to the BENEFICIARY deemed relevant by PRDOH for the execution of the Amendment.

Failure to comply with any of the before-mentioned conditions may result in the activation of the termination clauses provided in the Agreement.

C. Dissolution

In the event that the BENEFICIARY moves for dissolution of the entity, written notice of such decision or event shall be delivered to the PRDOH Legal Division at contractscdbgdr@vivienda.pr.gov **at least fifteen (15) days** prior to the effective date of such event. The notice shall include, but not limited to, a

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description of the expected effective date of the dissolution; and contact information of one or more of its directors, officials, or agents. Upon dissolution becoming effective and supporting evidence of such event is notified to PRDOH, termination of the Agreement will follow. Consequently, the BENEFICIARY acknowledges and agrees to provide PRDOH, after termination of the Agreement, the assistance reasonably requested to facilitate the orderly transfer of responsibility for the performance of the tasks or services to the PRDOH or a third party designated by the PRDOH. Moreover, all finished or unfinished records (files, data, work product) connected with this Agreement will be turned over to PRDOH following the Agreement termination.

XXXI. NON-WAIVER

The failure or delay of either party to insist upon the performance of and/or the compliance with any of the terms and conditions of this Agreement shall not be construed as a waiver of such terms and conditions or the right to enforce compliance with such terms and conditions.

XXXII. HOLD HARMLESS

BENEFICIARY shall and hereby agrees to hold harmless, defend (with counsel acceptable to the PRDOH) and indemnify the Government of Puerto Rico, PRDOH, HUD, 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, liabilities, attorney's 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 BENEFICIARY in the performance of the efforts called for in this Agreement. This indemnity shall expressly include, but is not limited to, the obligation of the BENEFICIARY to indemnify and reimburse 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 BENEFICIARY or otherwise arising in connection with the BENEFICIARY's breach, violation, or other noncompliance with this Agreement. This clause shall survive indefinitely the termination of this Agreement for any reason.

XXXIII. BANKRUPTCY

In the event that BENEFICIARY files for bankruptcy protection, the Government of Puerto Rico and PRDOH may deem this Agreement null and void and terminate this Agreement without notice.

XXXIV. GOVERNING LAW: JURISDICTION

This Agreement shall be governed by, interpreted, and enforced in accordance with the laws of the Government of Puerto Rico and any applicable federal laws and regulations. The Parties further agree to assert any claims or causes of action that may arise out of this Agreement in the Puerto Rico Court of First Instance, Superior Court of San Juan, Puerto Rico.

XXXV. COMPLIANCE WITH THE LAW

It is the intention and understanding of the Parties hereto that each and every provision of law required to be inserted in this Agreement should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not inserted in the correct form, then this Agreement shall forthwith, upon the application of any Party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of any Party.

XXXVI. SUBROGATION

The BENEFICIARY 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 BENEFICIARY 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 F.

XXXVII. COMPTROLLER REGISTRY

PRDOH shall remit a copy of this Agreement to the Office of the Comptroller for registration within **fifteen (15) days** following the date of execution of this Agreement and any subsequent amendment thereto. The work object of this Agreement may not be invoiced or paid until this Agreement has been registered by PRDOH at the Comptroller's Office, pursuant to Act No. 18 of October 30, 1975, 2 LPRA § 97 *et seq.*, known as the "Contract Registry Act", as amended by Act No. 127-2004.

XXXVIII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement among the Parties for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written among the Parties with respect to this Agreement.

XXXIX. FEDERAL FUNDING

The fulfillment of this Agreement is based on funds being made available to the PRDOH as the lead administrative agency for the CDBG-DR Program. All expenditures under this Agreement must be made in accordance with this Agreement, the policies and procedures promulgated under the CDBG-DR

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Program, and any other applicable laws. Further, BENEFICIARY acknowledges that all funds are subject to recapture and repayment for non-compliance.

XL. RECAPTURE OF FUNDS

PRDOH may recapture payments it makes to Subrecipient 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 the term specified by PRDOH via notification, as per CDBG-DR/MIT Program Recapture of Funds Policy. ([Recapture of Funds Policy – CDBG-DR/MIT Recovery Funds](#)).

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XLI. OVERPAYMENT

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BENEFICIARY shall be liable to PRDOH for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Agreement. BENEFICIARY shall reimburse such disallowed costs from funds other than those BENEFICIARY received under this Agreement.

XLII. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of whom shall be deemed to be an original, however, all of which together shall constitute one and the same instrument. If the Agreement is not executed by PRDOH within **thirty (30) days** of execution by the other party, this Agreement shall be null and void.

XLIII. SURVIVAL OF TERMS AND CONDITIONS

The terms and conditions of this Agreement related to the following subjects shall survive the termination or expiration of this Agreement: interpretive provisions; consideration; warranties; general affirmations, federal assurances, federal and state certifications; CDBG-DR and state funding, recapture of CDBG-DR and/or state funds, overpayment of CDBG-DR and/or state funds; ownership and intellectual property, copyright; records retention methods and time requirements; inspection, monitoring and audit; confidentiality; public records; indemnification and liability; infringement of intellectual property rights; independent contractor relationship; compliance with laws; notices; choice of law and venue; severability; dispute resolution; consolidations, mergers, change of name and dissolution. Terms and conditions that, explicitly or by their nature, evidence the Parties' intent that they should survive the termination or expiration of this Agreement shall so survive.

[SIGNATURES ON THE NEXT PAGE]

IN WITNESS THEREOF, the parties hereto execute this Agreement in the place and on the date first above written.

PUERTO RICO DEPARTMENT OF HOUSING
CDBG-DR GRANTEE

By: 
Name: **Hon. Ciary Pérez Peña**
Title: Secretary


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BARD SHANNON LTD.
BENEFICIARY

By: 
Kelvin Ruiz (Sep 5, 2025 10:00:35 EDT)
Name: **Kelvin O. Ruiz Modesto**
Title: Bard Puerto Rico Plant Controller



ATTACHMENT A

SCOPE OF WORK

ELECTRICAL POWER RELIABILITY AND RESILIENCE (ER2)

PROGRAM

BARD SHANNON LTD

BD Humacao Microgrid Energy System

The Puerto Rico Department of Housing (**PRDOH**) has established the following Scope of Work as part of the Grant Agreement (**GA**) between PRDOH and Bard Shannon LTD (**Beneficiary**) under the Electrical Power Reliability and Resilience Program (**ER2 Program** or **Program**) of the Community Development Block Grant – Disaster Recovery Energy (**CDBG-DR Energy**).

The proposed Project is a combined heat and power (“CHP”) system with the capacity to produce 2.28 MW of electrical power, an 800 kW photovoltaic system, and a 2 MW battery energy storage system (“BESS”) located on the company’s premises in Humacao. The final generation and storage capacity and project details will be subject to the development of the Project Implementation Plan and the completion of design development, in addition to utility and regulatory coordination and compliance, as required.

The Beneficiary will prepare and submit all necessary documentation related to the project identified above (**Project**) for development under this Program. All Project documentation shall demonstrate compliance with all eligibility requirements established in the published ER2 Program Guidelines.

The Beneficiary shall ensure compliance with Act No. 173 of August 12, 1988, as amended, known as the “Board of Examiners of Engineers, Architects, Surveyors, and Landscape Architects of Puerto Rico Act,” 20 LPRA §§ 7n-7llz, which requires all personnel that will exercise the profession of engineering, architecture, surveying or landscaping architecture in Puerto Rico, be registered in the official Register of the Board, and be an active member of the College of Engineers and Surveyors of Puerto Rico or the College of Architects and Landscape Architects of Puerto Rico, as applicable.

The Beneficiary will be directly responsible for ensuring the accuracy, timeliness, and completion of all tasks assigned under this Grant Agreement (**GA**) as part of the ER2 Program. PRDOH will provide funding and technical assistance to the Beneficiary to complete the following tasks:

Task 1. Project Management Services

Activity: Utilizing internal staff and/or contracted professional services, the Beneficiary shall perform all required Project Management services including the following examples of roles and responsibilities:

- a) Act as point of contact for the Program and between PRDOH, its representatives, and the Beneficiary’s contractors.
- b) Coordinate and manage the execution of approved project activities ensuring budget, schedule and quality standards are observed.

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- c) Establish necessary tools for controlling schedule, budget, and scope.
 - d) Identify, communicate, and resolve delays or situations that affect the scope, budget, or schedule of the project.
 - e) Plan and implement change management, risk management, and quality assurance activities.
 - f) Track project status and performance of overall and specific project activities.
 - g) Monitor and prepare progress reports to communicate the status of work, pending matters, and the budgetary situation of the project.
 - h) Participate in program meetings as required by PRDOH.
 - i) Lead, coordinate, and facilitate internal and/or external presentations and meetings upon request by PRDOH.
 - j) Maintain a complete understanding of all applicable CDBG-DR Energy Program's policies, requirements, procedures, and guidelines; and identify/promote all necessary corrective actions, if required. Ensure that all such requirements are met throughout project development and implementation.
 - k) Monitor compliance with regulations, laws, safety codes, standards, policies, and current procedures applicable to the project.
 - l) Produce and submit all invoice documentation using the PRDOH Financial Management System (**FMS**).
 - m) Manage the project from its development throughout all phases including planning, design, construction, and closeout into Operations and Maintenance (**O&M**).
 - n) Be responsible for document control and information technology management and maintenance in accordance to PRDOH and HUD's policies and procedures.
 - o) Gather information to address concerns and grievances from stakeholders, measure the impact and importance stakeholder groups for reporting to PRDOH upon request.
 - p) Prepare and update the Project Implementation Plan, as needed, identifying key activities, deliverable, and timeframes of performance for the Project.

Deliverable:

- **Project Implementation Plan and Construction Documents** – The Beneficiary shall submit a Project Implementation Plan indicating the general implementation strategy and baseline schedule (including key activities and milestones).

Task 2. Architecture and Engineering (A&E) Services/Project Design Development

Activity: Utilizing internal staff and/or procured professional services, the Beneficiary shall perform all required Architecture and/or Engineering Design services including, and not limited to, the following responsibilities:

- a) Ensure professional, architectural, or engineering services are performed by licensed professionals with the proper qualifications, skills, and experience necessary to perform such services, according to applicable federal and local rules and regulations.
- b) Lead and complete the A&E Design Services of the project through all applicable stages to 100% Construction Documents, with the ultimate purpose of completing construction.

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- c) Participate in the identification of current best practices and cost-effective solutions required to be considered in construction documentation.
 - d) Services are to be provided in compliance with HUD Regulations including Section 3 and Minority- and Women-Owned Business Enterprises (**M/WBE**) best faith efforts.
 - e) Coordinate and perform necessary field studies required for project design and implementation, including but not limited to Geotechnical Studies, and Hazardous Materials Assessments (lead-based paint, asbestos, etc.), among others.
 - f) Prepare, coordinate, and manage required permitting documentation.
 - g) Coordinate and prepare necessary cost estimates to determine reasonable costs of the project.
 - h) If necessary, participate in the supervision of construction activities.
 - i) Prepare, coordinate, and manage required environmental review documentation and requirements.
 - j) Apply the most recent federal and local construction codes applicable to the project.
 - k) Manage changes and risks associated with changes in policies, regulations, and construction codes applicable to the project.
 - l) As necessary, prepare presentations for PRDOH regarding the project.

The Beneficiary shall prepare all necessary documents for project development and implementation, including the following examples: drawings, specifications, property acquisition drawings and documentation, technical studies and analyses, required permits and endorsements, cost estimates, and construction schedule.

During the performance of this task, the Beneficiary shall perform all necessary deliveries to PRDOH of construction documents at established benchmarks for revision and to demonstrate progress of the work. The schedule of deliveries shall be coordinated with the PRDOH before commencing the design development of the project.

After the revision of each delivery, the Beneficiary may receive comments from PRDOH that may result in required revisions of the documentation. PRDOH expects to receive all necessary progress deliveries with a compliance certification of applicable codes and regulations and the progress accomplished, prepared by the Architect/Engineer(s) in charge of the design of the project.

Task 3. Environmental Review and Clearance

Activity: The Beneficiary shall coordinate and prepare all necessary information to complete the Environmental Review for the project in compliance with 24 C.F.R. Part 58 regulation. This task can be carried out with internal staff and/or procured professional services. The Beneficiary may request technical assistance from the PRDOH for this task.

The Beneficiary shall prepare and submit for PRDOH's review all required documentation necessary to support the environmental findings for one of the following, as applicable:

- a) If Exempt or Categorically Excluded Not Subject to 24 C.F.R. § 58.5 (**CENST**), complete review for this category using the provided template and submit to PRDOH for review.

- b) If Categorically Excluded Subject to 24 C.F.R. § 58.5 (**CEST**), complete review for this category using the provided template and submit to PRDOH for review.
- c) If an Environmental Assessment (**EA**) is required, complete review for this category (including any requirements for Phase I or II site assessment) using the provided template and submit to PRDOH for review.

The Beneficiary shall submit the Environmental Review Record (**ERR**), in accordance with 24 C.F.R. § 58.38, to the PRDOH for review and signature of PRDOH's Certifying Officer. All activities must be of no impact or with obtainable mitigation activities to render the action to one of no impact. All mitigation activities must be clearly identified in the Environmental Review.

If approved and the Findings of No Significant Impact (**FONSI**) and CEST are certified by the Certifying Officer, the Beneficiary must publish the FONSI or the Notice of Intent (**NOI**) to Request Release of Funds (**RROF**) public notice for an EA or a NOI/RROF for a CEST in a newspaper of general circulation (in accordance with 24 C.F.R. § 58.43).

After all comments are received and addressed by the Beneficiary with revisions to the Environmental Review, as appropriate, the PRDOH will complete the applicable Sections of the provided template for the RROF and submit the RROF to HUD for approval as the responsible entity.

The Beneficiary cannot initiate any activities for which the funding is requested before the Authority to Use of Grant Funds (**AUGF**) is received by the PRDOH and forwarded to the Beneficiary. The Beneficiary shall notify the PRDOH, in writing, of any changes to the approved project scopes and shall perform a re-evaluation of the Environmental Review to determine if the change(s) impact the environmental determination for the Project. During the performance of this Task, the Beneficiary shall deliver reports of progress of the work to PRDOH for revision. After PRDOH's review of each delivery, the Beneficiary shall expect comments from PRDOH that may result in required revisions of the documentation.

The Beneficiary shall perform all necessary Environmental Services including, but not limited to, the following roles and responsibilities:

- a) Maintain awareness, knowledge, and applicability of most recent federal and local environmental laws, regulations, and policies that may apply to PRDOH CDBG-DR Energy projects.
- b) Support preliminary environmental evaluations to determine eligibility of project under CDBG-DR Energy program.
- c) Lead the coordination and preparation of environmental related studies, analysis of impacts, and recommendations for Project under CDBG-DR Energy programs.
- d) Participate in the identification of current best practices and cost-effective solutions required to be considered in construction documentation.
- e) Lead the coordination and preparation of all required documentation to comply with NEPA, 24 C.F.R. Part 58, and all applicable environmental related laws and regulations in Puerto Rico.
- f) Prepare, complete, and submit to PRDOH, for review and approval, all documents for Environmental Review of the project.
- g) Lead the coordination and preparation of all documentation required to accomplish environmental reviews, for example: project description, maps,

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photographs, studies, consultations and other correspondence, public notices, programmatic agreements, etc.

- h) Provide all necessary support to the PRDOH to develop and process activities regarding RROFs for CDBG-DR Energy programs.
- i) Lead the coordination of monitoring activities for environmental compliance during the construction of the project.

The Beneficiary must perform any necessary activities to complete this task, in compliance with local and federal rules and regulations.

Deliverable:

- **Environmental Publications** – If not Exempt, the publication of the FONSI/NOI/RROF for an EA or a NOI/RROF for a CEST in a newspaper of general circulation (in accordance with 24 C.F.R. § 58.43). Afterwards, PRDOH will submit the RROF to HUD. With HUD's approval for the AUGF, the Beneficiary will be allowed to move forward with the project.

Task 4. Construction, Construction Inspection, and Testing/Commissioning Services

Activity: Upon the completion of the Environmental Review, and receipt of HUD's AUGF, the Beneficiary shall perform all required services required to procure, contract, implement, monitor, supervise, inspect, and complete the construction of the Project in accordance with established requirements and in compliance with applicable laws and regulations, including all established CDBG-DR Energy compliance requirements, providing appropriate construction, construction inspection, testing, and commissioning services for the project.

The Beneficiary shall comply with at least the following roles and responsibilities for construction inspection services:

- a) Utilizing internal staff and/or selected professional services, the Beneficiary shall perform all services required to implement, monitor, supervise, inspect, and complete the construction of the Project in accordance with established requirements and in compliance with applicable laws and regulations, including all established CDBG-DR Energy compliance requirements.
- b) Services shall be provided by a professional engineer or architect licensed in Puerto Rico.
- c) Supervise all construction activities to be performed as a part of the project.
- d) Attend preconstruction meetings and participate in recurrent construction meetings.
- e) Serve as the field/construction Point of Contact.
- f) Provide daily and regular correspondence with the Construction Contractor(s).
- g) Coordinate Project schedules with Construction Contractor(s) and other required participants.
- h) Maintain necessary written communication with Project Manager(s) and the Beneficiary.
- i) Inspect progress and construction methods to ensure construction work meets contract requirements.

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- j) Communicate and resolve field problems with Construction Contractor(s), Project Manager(s), and any other affected parties.
 - k) Coordinate necessary activities to perform required materials and equipment testing.
 - l) Coordinate testing results evaluation with Architect and/or Engineer to ensure compliance with Project requirements.
 - m) Aid in the coordination of inspection activities with required Public or Private Utility Entity as required by permits or endorsements.
 - n) Prepare and submit necessary digital daily and monthly reports to at least document weather conditions, on-site construction personnel, hours worked, construction equipment used, detailed description of construction activities observed, photos, and documentation of any field decisions.
 - o) Ensure compliance with all permits and endorsements of construction projects.
 - p) Measure and document Project quantities, maintain digital record, and log of all quantities.
 - q) Review and recommend Contractor invoices & change order requests (cost estimates). Coordinate review and approval of such documentation as needed by the Project Manager, Architect and/or Engineer.
 - r) Review Contractor quality control documentation.
 - s) Coordinate survey and field-testing needs for the project.
 - t) Supervise compliance with HUD requirements, including Davis Bacon. This may require conducting wage interviews with individual employees and providing reporting documentation to PRDOH and/or its authorized representative.
 - u) Prepare necessary Project closeout documentation.
 - v) Prepare punch list with, among other necessary items, list of deficiencies that need to be corrected.
 - w) Monitor work zone traffic control.
 - x) Monitor Project safety in compliance with OSHA regulations.
 - y) Monitor and report on environmental requirements established in the ERR for the project.

The Beneficiary shall comply with at least the following roles and responsibilities for commissioning services:

- a) Develop the project's Commissioning Plan.
- b) Attend preconstruction meetings and participate in recurrent construction meetings.
- c) Oversee each project's functional or operational system testing prior to placement in service, in coordination with system manufacturers, utility, and other stakeholders.
- d) Prepare the commissioning issues log to track deficiencies that need to be corrected.
- e) Develop the Commissioning Report.
- f) Review the Project's Turnover Package.

The Beneficiary is responsible for coordinating these services to ensure they are contracted prior to construction start. Construction inspection services shall be provided in compliance with all applicable laws and regulations.

Deliverable:

- **Inspectors and Commissioners** – Ensure appropriate construction inspection and commissioning services capacity are in place in alignment with construction activities. Submit evidence and credentials of the selected inspector(s) and commissioners to PRDOH.
- **Inspection Reports** – The Beneficiary will be responsible for providing recurrent project inspection reports to PRDOH as part of the project record.
- **Commissioning Plan** – The Beneficiary will be responsible for developing and providing the project's Commissioning Plan.
- **Commissioning Report** – The Beneficiary will be responsible for developing and providing the final Commissioning Report including the summary of the commissioning process along with findings and their resolutions.
- **Project Turnover Package** – The Beneficiary will be responsible for providing a copy of the Project's Turnover Package.

Task 5. Interconnection, Commissioning, and Placement in Service

Activity: Once the project has been constructed, the Beneficiary will be responsible for the interconnection process with the electrical utility, including but not limited to any required testing and commissioning for the systems to be placed in service.

Deliverable:

- **Distributed Energy Resource/Microgrid Registration** – Ensure appropriate certification and/or approval from the PREB and/or electric utility for the Project's interconnection and the placement in service.

Task 6. Energy Service Provider or Microgrid Regulatory Requirements Compliance

Activity: The Beneficiary shall be responsible for ensuring compliance with all applicable laws, regulations, and standards governing the operations of energy service providers and/or microgrids in Puerto Rico. As part of this task, the Beneficiary will:

- a) Ensure required organizational and legal entity structure is in place and approved by the Puerto Rico Energy Bureau (**PREB**) to operate as an energy service provider, Electric Power Company, or as a Microgrid, as applicable.
- b) Ensure compliance with PREB Regulation No. 8701, Amendment to Regulation No. 8616, on Certifications, Annual Charges and Operational Plans of the Electric service companies in Puerto Rico, if applicable.
- c) Comply with the relevant and applicable regulation for Microgrid Development, Regulation No. 9028 May 16, 2018, or as amended/modified, and any other supplemental and compatible regulations of the PREB.
- d) Comply with applicable codes and standards identified by the PREB through resolution and/or order. The Beneficiary will be required to meet the latest applicable local, state, and federal codes, standards, and regulations.
- e) Be responsible for payment of any fees related to registering as an Electric Power Company, energy service provider, or microgrid.
- f) Perform any other tasks required to ensure compliance with applicable laws, regulations, and standards related to the provision of electric services.

Deliverable:

- **Electric Service Company Certification and/or Microgrid Registration Package** – Copy of documentation submitted to the PREB for certification as an Electric Power Company, energy service provider, and/or microgrid.
- **Electric Service Company Certificate and/or Registered Microgrid Certificate** – Proof of certification as PREB-approved Electric Power Company, energy service provider, and/or microgrid.

Task 7. Compliance with CDBG-DR Energy Operation and Maintenance Requirements

Activity: The Beneficiary shall perform the necessary actions to plan for the long-term operation and maintenance (**O&M**) of the Project funded under this Beneficiary Agreement.

The Beneficiary shall submit an Operation and Maintenance Plan (**OMP**) to the PRDOH that shall describe, at minimum, the following:

- a) The Beneficiary's ability to operate the Project for its useful life.
- b) Preliminary estimate of that useful life.
- c) The O&M costs required and the proposed source of such funding.
- d) Identify the responsible entity (or entities) in charge of such O&M activities including, but not limited to, any letters of intent, Memorandums of Understanding (**MOUs**), or other agreements, as necessary, when multiple parties are involved, as well as any other aspect or requirement established by the PRDOH, CDBG-DR Energy Program and/or HUD, associated with this task.
- e) Identify non-CDBG sources of funding to be used for the O&M of the project to ensure its operation throughout its useful life.

The OMP shall be updated and submitted for PRDOH review and comments as the Project progresses in accordance with PRDOH Guidelines.

All Beneficiaries who are awarded funds for a Project acknowledge the requirement of an OMP as part of compliance with the Program. Failure to comply with this requirement could result in a potential repayment of funds to PRDOH.

Deliverable:

- **Operations and Maintenance Plan** – An OMP updated at established Project development milestones. The OMP should describe and comply with established PRDOH requirements.
- **Executed O&M Contract** – If the O&M will be performed by a contracted party, the Beneficiary shall submit a copy of the O&M Contract.

Task 8. Performance Monitoring

Activity: Once the project is complete and placed in service, the Beneficiary will be responsible for performance monitoring. The Beneficiary shall establish a performance monitoring plan and conduct performance monitoring for at least one (1) year after the project has been completed and placed in service and ensure performance is recorded and reported to PRDOH.

Deliverable:

- **Performance Monitoring Plan** – The Beneficiary shall develop a performance monitoring plan that establishes the performance criteria to be monitored. Performance monitoring can also be included as part of the O&M Plan.
- **Performance Reports** – Performance data shall be collected and reported upon on a quarterly basis, at a minimum.

Task 9. Compliance with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (more commonly known as URA) and Section 104(d) of the Housing and Community Development Act of 1992, as amended (Section 104(d))

Activity: Utilizing internal staff and/or contracted professional services, the Beneficiary shall comply with URA requirements for the Project, as applicable.

Relocation and Real Property Acquisition shall be carried out in compliance with URA, Section 104(d) and PRDOH requirements.

Deliverable:

- **URA Documentation** – If applicable, upon completion of all URA activities, the Beneficiary shall submit to PRDOH all required documentation for URA phase closeout in compliance with PRDOH's requirements

Task 10. Training

Activity: The Beneficiary will be responsible to participate in mandatory training sessions pertaining to the following topics:

- a) CDBG-DR/MIT eligible Project requirements and national objectives,
- b) Prevention of Fraud, Waste, and Abuse,
- c) Duplication of Benefits avoidance,
- d) CDBG-DR/MIT financial management,
- e) CDBG-DR/MIT monitoring and reporting, and
- f) Others, as requested by PRDOH.

Task 11. Reporting

Activity: The Beneficiary will be responsible for submitting monthly reports to the PRDOH to inform status of tasks, work progress, construction schedule analysis, and financial status of the project and other required information. Each report must be prepared in compliance with PRDOH's reporting requirements. The Beneficiary is responsible for submitting any other report required pursuant to this Agreement.

As requested, the Beneficiary shall meet with the PRDOH to discuss the status of the project, risks, concerns, and any other issues that may have arisen during the project's implementation.

The Beneficiary will provide the PRDOH, through the Grant Management System (**GMS**), with milestone reports on the established schedule, as well as required documents to monitor the project. This system will serve as the Beneficiary's digital platform to upload all required information permitting the review and approval by designated personnel.

The Beneficiary will compile, review, and submit the necessary information to prepare any report required by HUD upon the PRDOH's request. Additionally, the Beneficiary will assist with any monitoring and/or audits performed by PRDOH, HUD, or other regulatory agencies.

Finally, the Beneficiary will complete any other task necessary to ensure proper accounting and reporting as required by the Program.

Deliverable:

- **Monthly Reports** – The Beneficiary shall submit monthly reports to the PRDOH through the GMS. Monthly reports must include an updated schedule.

Task 12. Invoicing

Activity: The Beneficiary will be responsible for submitting monthly invoices for reimbursement of project costs. Each invoice must be prepared in compliance with PRDOH's invoicing requirements. The PRDOH will not reimburse the Beneficiary for work performed outside the scope of work without prior authorization or notice to proceed.

Upon compliance determination by the Program, the Beneficiary agrees to submit a Request for Reimbursement, uploaded to PRDOH's Financial Management System (**FMS**). The Beneficiary will be required to set up a unique account through the FMS and provide all required information, including information related to dedicated bank accounts.

A key area of focus for HUD is ensuring that CDBG-DR Energy projects are reimbursement-based and that Contractors who undertake work are paid for services provided. HUD requires all documented costs be incurred and completed at the time of invoice submission. As such, PRDOH cannot approve reimbursement for work that the Beneficiary undertook until it has obtained proof that the work was performed, completed and all required information is uploaded to PRDOH databases. The Beneficiary shall submit supporting documents for invoices as requested by PRDOH.

Deliverable:

- **Cost Breakdown** – The Beneficiary shall submit the cost breakdown for the project for PRDOH approval prior to the start of Invoicing.
- **Monthly Invoices** – The Beneficiary shall submit monthly invoices to the PRDOH through the FMS.

Task 13. Closeout

Activity: Once the activities established herein have been verified as completed, the Beneficiary shall submit to PRDOH all required documentation necessary for Agreement closeout in compliance with PRDOH's requirements.

Deliverable:

Agreement Closeout Binder – The Beneficiary will be responsible for submitting a GA closeout binder.

END OF DOCUMENT

ATTACHMENT B

TIMELINES AND PERFORMANCE GOALS

ELECTRICAL POWER RELIABILITY AND RESILIENCE (ER2) PROGRAM

BARD SHANNON LTD

1. PROJECTS OBJECTIVE:

The objective of the ER2 Program is to enhance electrical system reliability, affordability, and resiliency through the funding of projects that qualify as Electrical Power System Enhancements and Improvements, with an emphasis on projects that provide enhanced electric power services to critical facilities such as hospitals.

The Bard Shannon LTD project has been selected under the ER2 Program due to its alignment with the Program's goals and objectives and compliance with the Program's eligibility requirements. The timelines and performance goals detailed herein apply to the Project.

2. TERMS:

- **Key Deliverable** – The major objectives the Program wants to achieve.
- **Key Activity** – The activities necessary to carry out the Key Deliverables.
- **Indicator** – The quantitative method used to demonstrate that the Key Activities have been performed.
- **Source of Verification** – The documentation used to verify that the Indicators have been met, and thus the activities are complete.
- **Target** – The goal for each of the Indicators.
- **Timeline** – The expected completion date or timeframe.

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3. PERFORMANCE INDICATORS & GOALS:

Key Deliverable	Key Activity	Indicator(s)	Source of Verification	Target	Timeline
1. Project Implementation Plan	1.1 Development & approval of the Project Implementation Plan (and accompanying project schedule)	(#) of Project Implementation plans	Approved Project Implementation Plan	1 Project Implementation Plan	60 calendar days from execution of the Grant Agreement.
2. Design, Operations & Maintenance Plan, Environmental, and Permitting	2.1 Project Planning Phase design is completed and delivered.	(#) of projects that receive Planning Phase Design approval of Project Design Development	Approval of Project Design Development at Planning Phase threshold.	1 Completion of all required Planning design phases.	As per the Project Implementation Plan.
	2.2 Project Design Development	(#) of projects that receive 60%, 90%, and 100% approval of Project Design Development	Approval of Project Design Development at 60%, 90% and 100% threshold.	1 Completion of all design phases.	As per the Project Implementation Plan.
	2.3 Development & Submission of Operations & Maintenance Plan (OMP)	(#) of OMP that are updated and submitted at specified development stages	Approval of OMP at specified development stages.	1 Prepare and/or update OMP at Conceptual/ Schematic Design (30%), 60%, and 90% Design	As per the Project Implementation Plan.

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				Development and Completed OMP at Construction Completion.	
	2.4 Completion of Environmental Review Documents	(#) of document package to be submitted to complete the Environmental Review Process	HUD form 7015.18 – Authority to Use Grant Funds (AUGF)	1 Complete Environmental Review Record per project towards obtaining AUGF.	As per the Project Implementation Plan.
	2.5 Permits	(#) of projects that receive approval of Construction Permits.	Construction Permits issued by OGP and other regulatory agencies (including applicable PREB registration(s) step 1)	1 Acquisition of all Construction Permits.	As per the Project Implementation plan.
3. Relocation and Acquisition of Real Property	3.1 Land Acquisition, if applicable	(#) of properties acquired	Deeds of properties acquired.	Land Acquisition for project.	As per the Project Implementation Plan.

	3.2 Relocations Performed, if applicable	(#) Commercial Entities Relocated	Relocation Plan	Relocations of all tenants	As per the Project Implementation Plan.
4. Construction	4.1 Project Construction is completed	(#) of projects that started construction,	Construction Documents submission, Inspection Certification, and Construction Monitoring	1 Start of Construction	As per the Project Implementation Plan.
		(#) of projects that achieve substantial completion, and	Substantial completion Certificate	1 Substantial Completion	
		(#) of projects that achieve final completion	Final Inspection Certification	1 Final Inspection Certification for construction	
5. Construction Closeout and Placement in Service	5.1 Project Delivery & Closeout. Proper documentation is provided to ensure that construction was completed to standard.	(#) of Turnover Packages including final OMP and Commissioning Report.	Turnover Package delivered including OMP and	1 Project complete Closeout process and submit complete required documentation.	As per the Project Implementation Plan.

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		(#) of certificates of occupancy	Commissioning Report Certificate of Occupancy – (“Permiso de Uso”)	1 Certificate of Occupancy and Project’s Final Acceptance from Beneficiary.	
		(#) of certificates of Electric Service Company, electric service provider, and/or microgrid registration	Electric Service Company, electric service provider, and/or Microgrid registration approval by PREB	1 Electric Service Company, electric service provider, and/or Microgrid registration certificate.	
6. GA Closeout	6.1 GA Closeout is completed	(#) of closeout binders	Closeout binder delivered	1 Complete GA Closeout process and submit completed required documentation	As per the Project Implementation Plan.

END OF DOCUMENT



ATTACHMENT C

BUDGET

ELECTRICAL POWER RELIABILITY AND RESILIENCE (ER2) PROGRAM

BARD SHANNON LTD

1. Total Allocation and Authorized Budget

- a) The Puerto Rico Department of Housing (**PRDOH**) designated to Bard Shannon LTD (**"the Beneficiary"**) a total allocation amount of **thirteen million, six hundred and forty-five thousand, four hundred and seventy-three dollars and sixty cents (\$13,645,473.60)** for the Project under the ER2 Program.

2. Distribution of Authorized Maximum Budget

- a) The maximum budget amount shall be distributed in the following items:

Item Id	Item Name	Maximum Authorized Budget
1	Authorized Amount at Award	\$13,645,473.60
2	Contingency Reserve at Award	\$0
Total Authorized Budget		\$13,645,473.60

3. Budget Redistribution

- a) The Beneficiary may request in writing to the PRDOH a re-distribution of the Maximum Authorized Budgets shown above without exceeding the Total Authorized Budget.
- b) The PRDOH will evaluate the redistribution request to validate purpose and balance of funds, and if determined the redistribution is in benefit to the Program and the balance of funds is validated, the PRDOH will provide written authorization to the Beneficiary. Until the written authorization is submitted by the PRDOH, the redistribution cannot be considered as authorized.

- c) This redistribution of funds as described here shall be considered binding and will not require an amendment to this Grant Agreement (**GA**).
- d) The use of contingency budget shall not be allowed without the express written authorization of PRDOH. Requests for use of the contingency budget shall only be considered if the Beneficiary demonstrates that the proposed use is necessary and reasonable through the submission of a Request for Approval (**RFA**). PRDOH will evaluate all RFAs for use of the contingency budget to determine whether costs are necessary and reasonable for the timely completion of the Project or to protect the initial investment of CDBG-DR funds.

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ATTACHMENT D

Contract Code: 10799
Type: StandAloneSRA_V2
Original Registered Code:

CERTIFICATION OF FUNDS

Requested on behalf: CDBG-DR Director

The Finance Division certifies the availability of the following funds:

Contracting Of: Bard Shannon LTD
Source of Funds: 14.228 CDBG Funds
For: Electric Power Reliability and Resilience Program (ER2) Grant Agreement (GA)
Amount: \$13,645,473.60

The breakdown and grant of the certified funds is as follows:

Grant	Area / Project	Activity Code	Category Description	Account	Amount
B-18-DE-72-0001		esp-ier2doh-un	I - Program Subsidy	6090-01-000	\$13,645,473.60
					\$13,645,473.60

The above distribution of funds is subject to changes and will be allocated in accordance with the executed agreement within the parties. These funds do not affect the Puerto Rico Department of Housing (PRDOH) operational budget, and are available to be use.

If you have any questions, feel free to contact us at (787)274-2527.

Cesar Candelario Signed Date - 03/21/2025
Electronic Approval
Budget Manager

Nilda Baez Signed Date - 03/25/2025
Electronic Approval
Finance Director

**This transaction does not represent an overcharge of the account herein.*



DEPARTMENT OF

HOUSING

GOVERNMENT OF PUERTO RICO

ATTACHMENT E

HUD GENERAL PROVISIONS

Given that the Grant Agreement 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 this Grant Agreement. In addition, Beneficiary shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/4010.pdf> and must include Form HUD-4010 clauses as an appendix, or by reference, to all covered contracts. Also, beneficiaries, awardees, contractors and subcontractors are required to insert them in any lower-tier subcontracts.

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The terms and conditions outlined in this document (HUD General Provisions) must be included in their entirety by the Beneficiary in all purchase orders or subcontracts that are directly related to the Agreement, even though some of the terms and conditions might not apply to a particular kind of purchase order or subcontract.

These general provisions may be updated from time to time. It is the sole responsibility of the Beneficiary 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 Grant Agreement shall be deemed to be inserted herein and the Grant Agreement 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 Grant Agreement shall forthwith be physically amended to make such insertion or correction.

2. STATUTORY AND REGULATORY COMPLIANCE

Beneficiary shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by: the Continuing Appropriations Act, 2018, and Supplemental Appropriations for Disaster Relief Requirements, 2017 (**Pub. L. 115-56**) approved on September 8, 2017, as amended; the Bipartisan Budget Act of 2018 (**Pub. L. 115-123**) approved on February 9, 2018, as amended; the Additional Supplemental Appropriations for Disaster Relief Act, 2019, (**Pub. L. 116-20**) approved on June 6, 2019, as amended; as well as 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 GRANT 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 Grant Agreement, in instances where the Beneficiary or any of its subcontractors violate or breach any Grant Agreement or Contract term. If the Beneficiary or any of its subcontractors violate or breach any Grant Agreement or Contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the Grant Agreement or Contract documents, and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

4. REPORTING REQUIREMENTS

The Beneficiary shall complete and submit all reports, in such form and according to such schedule, as may be required by PRDOH and/or the Government of Puerto Rico. The Beneficiary 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 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and § 570.507, when applicable.

5. ACCESS TO RECORDS

The Government of Puerto Rico, the PRDOH, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Beneficiary which are related to this Grant Agreement, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

6. MAINTENANCE/RETENTION OF RECORDS

All records (files, data, work product) connected with this Grant Agreement will be turned over to PRDOH following the Agreement termination to be maintained for the remainder of the grant and post grant closeout.

7. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The Beneficiary will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting and purchases from material suppliers 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 Beneficiary shall comply with PRDOH established quarterly reporting regarding contract and subcontract activity. This will enable PRDOH to complete federal reporting on all efforts to HUD as per the previously used HUD Form 2516 (Contract and Subcontract Activity) and data requested on this form.

8. 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.

9. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Proposer will comply with the provisions of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives Federal funds or other Federal financial assistance. Programs that receive Federal funds cannot distinguish among individuals on the basis of race, color or national origin, either directly or indirectly, in the types, quantity, quality or timelines of program services, aids or benefits that they provide or the manner in which they provide them. This prohibition applies to intentional discrimination as well as to procedures, criteria or methods of administration that appear neutral but have a discriminatory effect on individuals because of their race, color, or national origin. Policies and practices that have such an effect must be eliminated unless a recipient can show that they were necessary to achieve a legitimate nondiscriminatory objective.

10. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Beneficiary shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, religion or sex be excluded from participation in,

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be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

11. SECTION 504 OF THE REHABILITATION ACT OF 1973

The Beneficiary shall comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations.

The Beneficiary agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

12. AGE DISCRIMINATION ACT OF 1975

The Beneficiary shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under, any program or activity receiving Federal financial assistance.

13. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Beneficiary 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.

14. CONFLICTS OF INTEREST

The Beneficiary shall notify the PRDOH as soon as possible if this Grant Agreement or any aspect related to the anticipated work under this Grant Agreement raises an actual or potential conflict of interest (as defined at 24 C.F.R. §578.95; 24 C.F.R.

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§570.489(g) and (h); and 24 C.F.R. §570.611, if applicable). The Beneficiary 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 Beneficiary shall provide the PRDOH any additional information necessary to fully assess and address such actual or potential conflict of interest. The Beneficiary 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.

15. SUBCONTRACTING

When subcontracting, the Beneficiary 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 Beneficiary 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 Grant Agreement.

The Beneficiary 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.

16. ASSIGNABILITY

The Beneficiary 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.

17. INDEMNIFICATION

The Beneficiary shall indemnify, defend, and hold harmless the Government of Puerto Rico and PRDOH, its agents and employees, from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Beneficiary in the performance of the services called for in this Grant Agreement.

18. COPELAND "ANTI-KICKBACK" ACT

The Beneficiary will comply with "anti-kickback" regulations found in section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 3145) known as the Copeland Act which applies to this Grant Agreement subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The Copeland Act enforces minimum wage provisions of the Davis-Bacon Act and the various statutes for federally assisted construction, including those provisions which are not subject to Reorganization Plan No. 14 of 1950. This act also enforces overtime provisions of the Contract Work Hours and Safety Standards Act whenever they are applicable to construction work.

Each beneficiary, awardee, contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, each week must provide a copy of its weekly payroll for all laborers and mechanics engaged on

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CAPP

work covered by this part and part 5 of this chapter during the preceding weekly payroll period, accompanied by a statement of compliance certifying the accuracy of the weekly payroll information. This statement must be executed by the Beneficiary, contractor or subcontractor or by an authorized officer or employee of the Beneficiary, contractor or subcontractor who supervises the payment of wages, and must be on the back of Form WH-347, "Payroll (For Contractors Optional Use)" or on any form with identical wording.

Each certified payroll required under § 3.3 must be delivered by the beneficiary, awardee, contractor or subcontractor, within 7 days after the regular payment date of the payroll period, to a representative at the site of the building or work of the agency contracting for or financing the work, or, if there is no representative of the agency at the site of the building or work, the statement must be delivered by mail or by any other means normally assuring delivery by the beneficiary, awardee, contractor or subcontractor, within that 7 day time period, to the agency contracting for or financing the building or work. After the certified payrolls have been reviewed in accordance with the contracting or sponsoring agency's procedures, such certified payrolls must be preserved by the agency for a period of 3 years after all the work on the prime contract is completed and must be produced for inspection, copying, and transcription by the Department of Labor upon request.

The Beneficiary will abide by federal regulation in § 3.5 regarding permissible payroll deductions and follow guidance on obtaining approval from the Secretary of Labor for additional deductions.

19. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The Beneficiary will comply with the provisions of the Contract Work Hours and Safety Standards Act applicable to this Grant Agreement in excess of \$100,000 and subject to its overtime provisions.

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

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

- (2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in [paragraph \(b\)\(1\)](#) of this section the beneficiary, awardee, contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such beneficiary, awardee, contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in [paragraph \(b\)\(1\)](#) of this section, in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1).

- (3) **Withholding for unpaid wages and liquidated damages –**

- (i) **Withholding process.** The PRDOH may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this [paragraph \(b\)](#) on this Grant Agreement, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in [§ 5.2](#)). The necessary funds may be withheld from the contractor under this Grant Agreement, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or

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CAPP

assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

- (ii) **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with [paragraph \(a\)\(2\)\(i\)](#) or [\(b\)\(3\)\(i\)](#) of this section, or both, over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901-3907](#).

- (4) **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in [paragraphs \(b\)\(1\)](#) through [\(5\)](#) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

- (5) **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:


- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

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- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- (iv) Informing any other person about their rights under CWHSSA or this part.

20. DAVIS-BACON ACT

The Beneficiary will comply with labor standards provisions contained in the Davis-Bacon Act (46 Stat. 1494, as amended; 40 U.S.C. 3141 et seq.) and its related statutes ("Related Acts") for this Grant Agreement, in excess of \$2,000, which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the laws referenced by § 5.1, the following clauses:

(1) **Minimum wages** —

- (i) **Wage rates and fringe benefits.** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in [paragraphs \(d\) and \(e\)](#) of this section,

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CAPP

the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of [paragraph \(a\)\(1\)\(v\)](#) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in [paragraph \(a\)\(4\)](#) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under [paragraph \(a\)\(1\)\(iii\)](#) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) **Frequently recurring classifications.**

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to [§ 1.3\(f\)](#), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to [paragraph \(a\)\(1\)\(iii\)](#) of this section, provided that:

- (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
- (2) The classification is used in the area by the construction industry; and

(3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with [paragraph \(a\)\(1\)\(iii\)\(A\)\(3\)](#) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) **Conformance.**

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is used in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid the application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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CAPP

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under [paragraphs \(a\)\(1\)\(iii\)\(C\)](#) and [\(D\)](#) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to [paragraph \(a\)\(1\)\(iii\)\(C\)](#) or [\(D\)](#) of this section must be paid to all workers performing work in the classification under this Grant Agreement from the first day on which work is performed in the classification.

- (iv) **Fringe benefits not expressed as an hourly rate.** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (v) **Unfunded plans.** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in [§ 5.28](#), that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (vi) **Interest.** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) **Withholding –**

- (i) **Withholding requirements.** The PRDOH may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in [paragraph \(a\)](#) of this section for violations of this Grant Agreement, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in [§ 5.2](#)). The necessary funds may be withheld from the contractor under this Grant Agreement, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in [paragraph \(a\)\(3\)\(iv\)](#) of this section, the [Agency] may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (ii) **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with [paragraph \(a\)\(2\)\(i\)](#) or [\(b\)\(3\)\(i\)](#) of this section, or both, over claims to those funds by:

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CAPP

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901-3907](#).

(3) Records and certified payrolls –

(i) Basic record requirements –

(A) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(B) Information required. Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under [paragraph \(a\)\(1\)\(v\)](#) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in

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CAPP

writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) **Additional records relating to apprenticeship.** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) **Certified payroll requirements –**

(A) **Frequency and method of submission.** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the PRDOH if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency]. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(B) **Information required.** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under [paragraph \(a\)\(3\)\(i\)\(B\)](#) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division

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CAPP

website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

(C) **Statement of Compliance.** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

- (1) That the certified payroll for the payroll period contains the information required to be provided under [paragraph \(a\)\(3\)\(ii\)](#) of this section, the appropriate information and basic records are being maintained under [paragraph \(a\)\(3\)\(i\)](#) of this section, and such information and records are correct and complete;
- (2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) **Use of Optional Form WH-347.** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by [paragraph \(a\)\(3\)\(ii\)\(C\)](#) of this section.

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CAPP

(E) **Signature.** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) **Falsification.** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(G) **Length of certified payroll retention.** The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

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CAPP
(iii) **Contracts, subcontracts, and related documents.** The contractor or subcontractor must maintain this Grant Agreement or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iv) **Required disclosures and access –**

(A) **Required record disclosures and access to workers.** The contractor or subcontractor must make the records required under [paragraphs \(a\)\(3\)\(i\) through \(iii\)](#) of this section, and any other documents that the [write the name of the agency] or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by [§ 5.1](#), available for inspection, copying, or transcription by authorized representatives of the [write the name of the agency] or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) **Sanctions for non-compliance with records and worker access requirements.** If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the

contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to [§ 5.12](#). In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) **Required information disclosures.** Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the PRDOH if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency], the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) Apprentices and equal employment opportunity –

(i) Apprentices –

(A) **Rate of pay.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered

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CAPP

with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits. Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) Apprenticeship ratio. The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to [paragraph \(a\)\(4\)\(i\)\(D\)](#) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in [paragraph \(a\)\(4\)\(i\)\(A\)](#) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.


(D) Reciprocity of ratios and wage rates. Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the

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journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

- (ii) **Equal employment opportunity.** The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of [Executive Order 11246](#), as amended, and [29 CFR part 30](#).

-  (5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of [29 CFR part 3](#), which are incorporated by reference in this Grant Agreement.

(6) **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses contained in [paragraphs \(a\)\(1\) through \(11\)](#) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the PRDOH may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

- (7) **Contract termination: debarment.** A breach of the contract clauses in [29 CFR 5.5](#) may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in [29 CFR 5.12](#).

- (8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in [29 CFR parts 1, 3, and 5](#) are herein incorporated by reference in this Grant Agreement.

(9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Grant Agreement shall not be subject to the general disputes clause of this Grant Agreement. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in [29 CFR parts 5, 6, and 7](#). Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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(10) **Certification of eligibility.**

- (i) By entering into this Grant Agreement, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).
- (ii) No part of this Grant Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).
- (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

(11) **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

- (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

21. TERMINATION FOR CAUSE

(Applicable to contracts exceeding \$10,000)

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If, through any cause, the Beneficiary shall fail to fulfill in a timely and proper manner his or her obligations under this Grant Agreement, or if the Beneficiary shall violate any of the covenants, agreements, or stipulations of this Grant Agreement, the PRDOH shall thereupon have the right to terminate this Grant Agreement by giving written notice to the Beneficiary 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 Beneficiary under this Agreement shall, at the option of the PRDOH, become the PRDOH's property and the Beneficiary shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Beneficiary 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 Beneficiary, and the Government of Puerto Rico and/or PRDOH may withhold any payments to the Beneficiary 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 Beneficiary is determined.

22. TERMINATION FOR CONVENIENCE

(Applicable to contracts exceeding \$10,000)

The PRDOH may terminate this Grant Agreement at any time by giving at least ten (10) days' notice in writing to the Beneficiary. If the Contract is terminated by the PRDOH as provided herein, the Beneficiary will be paid for the time provided and expenses incurred up to the termination date.

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

The Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary;
 - (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 Beneficiary including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.

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- 2) The Beneficiary 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 A Beneficiary'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 Beneficiary 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 Beneficiary's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Beneficiary must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Beneficiary 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 Beneficiary will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Beneficiary 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 Beneficiary 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 act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Beneficiary 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.

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24. EQUAL EMPLOYMENT OPPORTUNITY

(Applicable to construction contracts and subcontracts exceeding \$10,000)

The Beneficiary 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. chapter 60).

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

- 1) The Beneficiary shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Beneficiary 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 Beneficiary shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Beneficiary shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 3) The Beneficiary will, in all solicitations or advertisements for employees placed by or on behalf of the Beneficiary, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 4) The Beneficiary 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 Beneficiary's

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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 Beneficiary will comply with all provisions of Exec. Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- 6) The Beneficiary will furnish all information and reports required by Exec. Order No. 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 Beneficiary'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 Beneficiary 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 Exec. Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- 8) Beneficiary 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 Beneficiary 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 Beneficiary becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Beneficiary may request the United States to enter into such litigation to protect the interests of the United States.

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25. CERTIFICATION OF NONSEGREGATED FACILITIES

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

The Beneficiary 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 Beneficiary agrees that a breach of this certification is a violation of the equal opportunity clause of this Agreement.

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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 Beneficiary 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).

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

CLEAN AIR ACT

- 1) -The Beneficiary agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*
- 2) -The Beneficiary agrees to report each violation to the PRDOH and understands and agrees that the PRDOH will, in turn, report each violation as required to assure notification to the Government of Puerto Rico, HUD, and the appropriate Environmental Protection Agency Regional Office.
- 3) -The Beneficiary agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by HUD.

WATER POLLUTION CONTROL ACT

- 1) -The Beneficiary agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, *et seq.*
- 2) -The Beneficiary agrees to report each violation to the PRDOH and understands and agrees that the PRDOH will, in turn, report each violation as required to assure notification to the Government of Puerto Rico, HUD, and the appropriate Environmental Protection Agency Regional Office.
- 3) -The Beneficiary agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by HUD.

The Beneficiary 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 5 C.F.R. Part 919 Subpart E and 24 C.F.R. Part 58 as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

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

- 1) A stipulation by the Beneficiary 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 40 C.F.R. Part 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 24 C.F.R. Part 58, as amended.
- 2) Agreement by the Beneficiary 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 Beneficiary 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 Beneficiary will take such action as the government may direct as a means of enforcing such provisions.

27. ANTI-LOBBYING (Applicable to contracts exceeding \$100,000)

By the execution of this Grant Agreement, the Beneficiary 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 Beneficiary, 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 Beneficiary shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.
- 3) The Beneficiary 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 Section 1352, Title 31, U.S. Code. 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.

28. BONDING REQUIREMENTS

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

The Beneficiary shall comply with Puerto Rico bonding requirements, unless they have not been approved by HUD, in which case the Beneficiary shall comply with the following 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 Beneficiary for one hundred percent (100%) of the Agreement price. A "performance bond" is one executed in connection with a contract to secure the fulfillment of all the Beneficiary's obligations under such contract.
- 3) A payment bond on the part of the Beneficiary 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 the law of all persons supplying labor and material in the execution of the work provided for in the contract.

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29. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (As required by applicable thresholds)

- 1) 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.
- 2) 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.
- 3) The Beneficiary agrees to send to each labor organization or representative of workers with which the Beneficiary has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Beneficiary'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.

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- 4) The Beneficiary 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 Beneficiary will not subcontract with any subcontractor where the Beneficiary has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 75.
 - 5) The Beneficiary will certify that any vacant employment positions, including training positions, that are filled: (1) after the Beneficiary 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 Beneficiary's obligations under 24 C.F.R. Part 75.
 - 6) 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.
 - 7) 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).

- 8) The Beneficiary 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.

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30. FAIR HOUSING ACT

Beneficiary 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, handicap 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.

31. ENERGY POLICY AND CONSERVATION ACT

Beneficiary 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).

32. HATCH ACT

Beneficiary agrees to comply with mandatory standards and policies relating to Hatch Act, Public Law 76-252, as amended.

The Hatch Act applies to political activities of certain state and local employees. As a Puerto Rico Department of Housing Beneficiary, you may do 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 Beneficiary 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.

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33. HEALTH AND SAFETY STANDARDS

All parties participating in this project agree to comply with Sections 107 and 103 of the Contract Work Hours and Safety Standards Act. Section 107 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 the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

34. PERSONNEL

The Beneficiary 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 Beneficiary 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 Grant Agreement.

35. WITHHOLDING OF WAGES

If in the performance of this Agreement, there is any underpayment of wages by the Beneficiary or by any subcontractor thereunder, the PRDOH may withhold from the Beneficiary 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 such employees for the total number of hours worked. The amounts withheld may be disbursed by the PRDOH for and on account of the Beneficiary or subcontractor to the respective employees to whom they are due.

36. 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 Grant Agreement shall be promptly reported in writing by the Beneficiary to the PRDOH for the latter's decision, which shall be final with respect thereto.

37. 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.

38. INTEREST OF MEMBERS OF LOCAL PUBLIC AGENCY AND OTHERS

The Beneficiary 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 Beneficiary 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 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

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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 Beneficiary 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 year thereafter.

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39. 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.

40. INTEREST OF CONTRACTOR

The Beneficiary 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 Beneficiary further agrees that no person having any such interest shall be employed in the performance of this Agreement.

41. POLITICAL ACTIVITY

The Beneficiary will comply with the provisions of the Hatch Act (5 U.S.C. § 1501 et seq.), which limits the political activity of employees.

42. RELIGIOUS ACTIVITY

The Beneficiary agrees to abstain from using any funds related to this Agreement for inherently religious activities prohibited by 24 C.F.R. § 570.200(j), such as worship, religious instruction, or proselytization.

43. FLOOD DISASTER PROTECTION ACT OF 1973

The Beneficiary will ensure that procedures and mechanisms are put into place to monitor compliance with all flood insurance requirements as found in the Flood Disaster Protection Act of 1973, 24 C.F.R. § 570.605.

44. LEAD BASED PAINT

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

45. VALUE ENGINEERING

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

The Beneficiary 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 with 24 C.F.R. § 200.318(g).

46. 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. Beneficiary 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.

47. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (OSH ACT)

The Beneficiary shall comply with the Occupational Safety and Health Act of 1970 (OSH Act) as supplemented by the Department of Labor regulations. This Act created the Occupational Safety and Health Administration (OSHA). OSHA sets and enforces protective standards of safety and health in the workplace. Under the OSH Act, employers have a responsibility to provide a safe workplace.

Employers must comply with the 29 CFR 1910 General Obligations Clause of the OSH Act. This clause requires employers to maintain their workplaces free from serious recognized hazards. This includes the adoption of safety and health guidelines and the subsequent training of the employer's workforce in these.

Beneficiaries whose Scope of Work includes construction activities must comply with the General Clauses, and also with provisions of 29 CFR 1926 "Construction Health and Safety Regulations". It shall be a condition of any contract for construction, alteration and/or repair, including painting and decorating, that no contractor or subcontractor

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for any part of the contract work shall require any worker or mechanic employed in the performance of the contract to work in an environment or in unhealthy, hazardous or dangerous working conditions to their health or safety.

48.FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The Federal Funding Accountability and Transparency Act of 2006 (**FFATA**), as amended, was signed with the intent of reducing wasteful government spending and providing citizens with the ability to hold the government accountable for spending decisions. 2 C.F.R. § Part 170 outlines the requirements of recipients' in reporting information on subawards and executive total compensation under FFATA legislation. Any non-Federal entity that receives or administers Federal financial assistance in the form of grants, loans, loan guarantees, subsidies, insurance, food commodities, direct appropriations, assessed and voluntary contributions; and/or other financial assistance transactions that authorize the non-Federal entities' expenditure of Federal fund, is subject to these requirements. Prime contract beneficiaries and prime grant beneficiaries are required to report against subcontracts and subgrants awarded in the FFATA Subaward Reporting System (FSRS), the reporting tool for Federal prime beneficiaries. This information reported will then be displayed on a public and searchable website: www.USASpending.gov.

49.PROCUREMENT

The Uniform Guidance procurement requirements (2 C.F.R. § Part 200, Subpart D) went into effect on July 1, 2018. These requirements are applicable to CDBG-DR funded projects, or as provided by 83 Federal Register 5844 VI A(1)(b)(2) permits a state grantee to elect to follow its own procurement policy. These policies and procedures ensure that Federal dollars are spent fairly and encourage open competition at the best level of service and price.

50.CHANGE ORDERS TO CONTRACTS

Change orders are issued when the initial agreed-upon pricing or work to be completed requires modification. First, the Beneficiary must complete a Change Order Request Form. This form and supporting documentation must be delivered to the

PRDOH for review. Each change order must have a cost analysis. Once the Project Manager approves the change order, it is returned to the contractor for execution. Change orders are only invoiced on the final draw and categorized as "change orders." The amount listed on the invoice must match the previously approved amount and must be cost-reasonable. The PRDOH is responsible for verifying cost reasonableness. Verification documentation for cost reasonableness becomes an attachment to the change order.

51. LANGUAGE ACCESS PLAN

Executive Order No. 13166, signed on August 11, 2000, requires programs, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (**LEP**) and/or deaf/hard of hearing. Fair access is ensured through the implementation of a Language Assistance Plan (**LAP**), which includes non-English-based outreach, translation services of vital documents, free language assistance services, and staff training. Vital documents are defined as depending on the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

The Fair Housing and Equal Opportunity Language Access Plan for all CDBG-DR/MIT Programs states that Subrecipient Agreements will include requirements for the provisions of LEP and Limited Spanish Proficient (**LSP**) resources by subrecipients for all public participatory activities, including marketing, outreach, applications, vital document translations as well as monitoring requirements. Subrecipients and contractors have to comply with the following LEP/LSP requirements:

- a. Provide Spanish translations for all outreach, marketing, application materials, and vital documents, and advertise the availability of language assistance services.

- b. Requirements will also be added for subrecipients, contractors, and other administering entities that interact with LEP/LSP individuals as part of the implementation of the CDBG-DR/MIT Programs to:
- i. Develop and maintain operating procedures that address LEP/LSP assistance;
 - ii. Maintain inquiry and application logs that specify language of choice;
 - iii. Submit documentation to PRDOH supporting subrecipient efforts to further LEP access;
 - iv. Submit translated documentation to PRDOH for maintenance in PRDOH's project files; and
- Require periodic monitoring by PRDOH for compliance with LEP/LSP requirements.

CDBG-DR/MIT subrecipients and contractors, as well as any other administering entities that interact with LEP/LSP individuals as part of the implementation of the programs, will be required to maintain inquiry and application logs that document the language preference of persons seeking to apply or participate in CDBG-DR/MIT funded activities.

52. PERSONALLY IDENTIFIABLE INFORMATION

In accordance with 2 C.F.R. § 200.303, regarding internal controls of a non-Federal entity, a grantee must guarantee the protection of all Personally Identifiable Information (PII) obtained. The program will enact necessary measures to ensure PII of all applicants is safeguarded as to avoid release of private information. If a contractor or employee should experience any loss or potential loss of PII, the program shall be notified immediately of the breach or potential breach.

53. PROCUREMENT OF RECOVERED MATERIALS

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the

Environmental Protection Agency (**EPA**) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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ATTACHMENT F

SUBROGATION AND ASSIGNMENT PROVISIONS

ELECTRICAL POWER RELIABILITY AND RESILIENCE (ER2) PROGRAM

BARD SHANNON LTD

1. General Provisions.

- a) The Parties acknowledge that the following provisions of this Attachment are hereto incorporated by reference and made an integral part of the aforementioned Grant Agreement as **Attachment F**.
- b) Changes in the provisions of this Attachment will require an amendment to the Grant Agreement. Such amendment would result in the incorporation by reference of a modified **Attachment F** to the Grant Agreement.

2. Subrogation and Assignment Relating to Funds Received from the Puerto Rico Department of Housing – ER2

- a) These provisions are incorporated into the Grant Agreement in consideration of the commitment by PRDOH to evaluate the Beneficiary's application for the award of disaster assistance funds (the "**Application**") or the Beneficiary's receipt of CDBG-DR funds (the "**Grant Proceeds**") under the Program being administered by PRDOH.
- b) Beneficiary 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 Beneficiary may only receive assistance to the extent that the Beneficiary has a disaster recovery need that is not fully met by insurance or other forms of disaster assistance. Beneficiary further acknowledges that these provisions are intended to ensure that Beneficiary does not receive duplicate benefits

available to the Beneficiary 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 Beneficiary's total need before awarding assistance.

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- c) Beneficiary hereby subrogates and assigns to PRDOH any and all of Beneficiary's future rights to, and any interest Beneficiary 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**"; any Proceeds that are determined to be a DOB shall be referred to herein as "**DOB Proceeds**".
- d) Beneficiary agrees that in the event that Beneficiary receives additional Proceeds related to disaster recovery that are not listed on the Duplication of Benefits Certification submitted in connection with the Application, Beneficiary will notify the PRDOH within **ten (10) working days** of receipt of the funds by sending a written notification to energycdbg@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 Beneficiary 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 Beneficiary has or may have under any Policies, Beneficiary agrees to assist and cooperate with PRDOH.

Beneficiary's assistance and cooperation shall include, but shall not be limited to, allowing the suit to be brought in Beneficiary's name(s) and providing any additional documentation concerning 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. Beneficiary also agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Beneficiary would be entitled to under any applicable Disaster Assistance Program.

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- b) If requested by PRDOH, Beneficiary 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 Beneficiary under the Program) the Policies, any amounts received under the Disaster Assistance Programs that are determined to be DOB Proceeds and/or any rights thereunder. Beneficiary 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 these provisions.
 - c) Beneficiary expressly allows and authorizes PRDOH to request information from any company with which Beneficiary holds or held any insurance policy or policies of any type, any other company or entity -public or private- from which the Beneficiary 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 Beneficiary (or, to the extent permitted by superior loan documents, any lender to which DOB Proceeds are payable) hereafter receives any DOB Proceeds, Beneficiary agrees to promptly pay such amounts to PRDOH, if Beneficiary received Grant Proceeds under the Program in an amount greater

than the amount Beneficiary would have received if such DOB Proceeds had been considered in the calculation of Beneficiary's award.

- b) In the event that Beneficiary receives or is scheduled to receive any Proceeds not listed on its Duplication of Benefits Certification ("**Subsequent Proceeds**"), Beneficiary 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 Beneficiary has received full payment of the Grant Proceeds, Beneficiary shall remit any Subsequent DOB Proceeds to PRDOH. PRDOH shall return to the Beneficiary any Subsequent Proceeds in excess of the Subsequent DOB Proceeds.
 - (ii) If Beneficiary has received no payment of the Grant Proceeds, PRDOH shall reduce the payment of the Grant Proceeds to Beneficiary by the amount of the Subsequent DOB Proceeds and shall return all Subsequent Proceeds in excess of the Subsequent DOB Proceeds to Beneficiary.
 - (iii) If Beneficiary 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 Beneficiary, and (B) Beneficiary shall remit any remaining Subsequent DOB Proceeds to PRDOH. PRDOH shall also return to the Beneficiary any Subsequent Proceeds in excess of the Subsequent DOB Proceeds.
 - (iv) If the PRDOH determines that Beneficiary does not qualify to participate in the Program or the Beneficiary decides not to participate in the Program, PRDOH shall return the Subsequent Proceeds to Beneficiary, and the Agreement shall terminate.
- c) Once PRDOH has recovered an amount equal to the Grant Proceeds paid to Beneficiary, PRDOH will reassign to Beneficiary any rights given to PRDOH under these provisions.

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5. Miscellaneous.

- a) Beneficiary hereby represents that all statements and representations made by Beneficiary regarding any Proceeds are true and correct, as of the date 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 these provisions, 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) These provisions, and the rights and obligations of the parties shall be governed and construed by 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 and Assignment provisions shall be brought within the Government of Puerto Rico.
- f) The captions of the various sections of this Subrogation and Assignment provisions 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) Beneficiary acknowledges that making a false, fictitious, or fraudulent statement or representation in this agreement is punishable under State and Federal law (18 U.S.C. 287, 1001, and 31 U.S.C. 3729), and shall constitute a separate criminal offense each time a public benefit is fraudulently received.
- h) Beneficiary 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.

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ATTACHMENT G
NON-CONFLICT OF INTEREST CERTIFICATION
ELECTRICAL POWER RELIABILITY AND RESILIENCE (ER2)
PROGRAM
BARD SHANNON LTD

The Beneficiary certifies that to the best of its knowledge:

1. No public servant of this executive agency has a pecuniary interest in this agreement, contract, purchase, or commercial transaction.
2. No public servant of this executive agency has requested me or accepted from me, directly or indirectly, for him (her), for any member of his family unit or for any person, gifts, bonuses, favors, services, donations, loans or anything else of monetary value.
3. No public servant (s) requested or accepted any good of economic value, linked to this transaction, from any person of my entity as payment for performing the duties and responsibilities of their employment.
4. No public servant has requested from me, directly or indirectly, for him (her), for any member of his or her family unit, or for any other person, business, or entity, something of economic value, including gifts, loans, promises, favors or services in exchange for the performance of said public servant is influenced in my favor or of my entity.
5. I have no kinship relationship, within the fourth degree of consanguinity and second of affinity, with any public servant who has the power to influence and participate in the institutional decisions of this executive agency.

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


Kelvin Ruiz (Sep 5, 2025 10:00:35 EDT)

Signature

Kelvin O. Ruiz Modesto

Printed Name

09/05/2025

Date

Bard Puerto Rico Plant Controller

Position



ATTACHMENT H

**INSURANCE REQUIREMENTS AND BONDING SPECIFICATIONS
BARD SHANNON LTD.
BD HUMACAO MICROGRID ENERGY SYSTEM PROJECT
INFRASTRUCTURE ELECTRICAL POWER RELIABILITY AND RESILIENCE (ER-2) PROGRAM
COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY ENERGY
PUERTO RICO DEPARTMENT OF HOUSING**

A. In General

Bard Shannon LTD. (BENEFICIARY) shall obtain and maintain, at its own expense and for the duration of the contract including any warranty periods under the Contract are satisfied, the insurance coverages set forth below.

These insurance requirements are minimum requirements for the Contract and in no way limit any indemnity covenants in the Contract. Puerto Rico Department of Housing (**PRDOH**) does not warrant that these minimum limits are sufficient to protect the **BENEFICIARY** from liabilities that might arise out of the performance of the work under the Contract by the **BENEFICIARY**, its agents, representatives, employees, or subcontractors.

The insurance required hereunder shall not be interpreted to relieve the **BENEFICIARY** of any obligations under the Contract. The **BENEFICIARY** shall remain fully liable for all deductibles and amounts in excess of the coverage actually realized.

B. Minimum scope and limit of insurance:

Coverage should be at least as broad as to be requested in applicable acquisition processes:

1. **Surety Bonds:** The **BENEFICIARY** must provide or cause those conducting the work to provide and maintain bonds covering the faithful performance of the contract and payment of all obligations in the following amounts:
 - a) Bid Bond: 5% of the contract value.
 - b) Performance Bond: 100% of the contract value, including change orders.
 - c) Payment Bond: 100% of the contract value, including change orders.

2. Commercial General Liability Insurance

The **BENEFICIARY** must provide or cause those conducting the work to provide and maintain Commercial General Liability Insurance (broad form coverage) insuring against claims for bodily injury, property damage, personal injury and advertising injury that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (**ISO**) form for Commercial General (**CG 00-01**). By its terms or appropriate endorsements such insurance shall include the following coverage, to wit: Bodily Injury, Property Damage, Fire Legal Liability, Personal Injury, Blanket Contractual, Independent Contractors, Premises Operations, Products and Completed Operations. The policy cannot be endorsed to exclude the perils of explosion (**x**), collapse (**c**) and underground (**u**) exposures without the specific written approval of the Owner.

If Commercial General Liability Insurance or other form with a general aggregate limit and products and completed operations aggregate limit is used, then the aggregate limits shall apply separately to the Project, or the **BENEFICIARY** may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of the **BENEFICIARY**

Type of Coverage:

Occurrence Basis

Amount of Coverage

• General Aggregate	\$2,000,000
• Each Occurrence	\$1,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Contractual Liability	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Medical Expense	\$ 5,000

- a) Policy will include the following additional insured language: Puerto Rico Department of Housing (**PRDOH**), Puerto Rico Government, US Department of Housing and Urban Development (**HUD**), its officers, officials, agents, and employees, will be named as additional insureds

with respect to liability arising out of the activities performed by or on behalf of the **BENEFICIARY**.

- b) Policy will contain a waiver of subrogation against Puerto Rico Department of Housing (**PRDOH**), Puerto Rico Government, US Department of Housing and Urban Development (**HUD**), its officers, officials, agents, and employees, for losses arising from work performed by or on behalf of the **BENEFICIARY**.
- c) Duration of Coverage: liability policies shall continue coverage for a minimum of five (5) years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

3. Automobile Liability Insurance

The **BENEFICIARY** must provide or cause those conducting the work to provide and maintain Comprehensive Automobile Liability Insurance insuring against claims for bodily injury and property damage and covering the ownership, maintenance or use of any auto or all owned/leased and non-owned and hired vehicles (Symbols 2, 8 and 9) used in the performance of the Work, both on and off the Project Site, including loading and unloading. The coverage be provided by Insurance Services Office form for Commercial Auto Coverage (**CA-00-01**) or equivalent.

Type of Coverage:	Occurrence Basis
Amount of Coverage:	\$1,000,000 combined single limit

- a) Policy will include the following additional insured language: Puerto Rico Department of Housing (**PRDOH**), Puerto Rico Government, US Department of Housing and Urban Development (**HUD**), its officers, officials, agents, and employees, will be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the **BENEFICIARY**.

- b) Policy will contain a waiver of subrogation against: Puerto Rico Department of Housing (**PRDOH**), Puerto Rico Government, US Department of Housing and Urban Development (**HUD**), its officers, officials, agents, and employees, for losses arising from work performed by or on behalf of the **BENEFICIARY**.

4. Workers' Compensation and Employer's Liability Insurance

The **BENEFICIARY** must provide or cause those conducting the work to provide Worker's Compensation Insurance with "Statutory Limits" as required by Act 45 of April 18, 1935, as amended, known as "The Workmen's Accident Compensation Act" (*Ley del Sistema de Compensaciones por Accidentes del Trabajo*).

The **BENEFICIARY** must provide or cause those conducting the work to provide Employer Liability Insurance covering its legal obligation to pay damages because of bodily injury or occupational disease (including resulting death) sustained by an employee.

Amount of Coverage:	\$1,000,000 bodily injury by accident
	\$1,000,000 bodily injury by disease
	\$1,000,000 policy limit

5. Umbrella/Excess Liability

The **BENEFICIARY** must provide or cause those conducting the work to provide Umbrella/Excess Liability insurance limits as follows:

Coverage: Written on a following form basis over the primary policies: Commercial General Liability, Employers' Liability and Automobile Liability Insurance.

Limits	Each occurrence	\$20,000,000
	General Aggregate	\$20,000,000
	SIR	\$10,000

- a) Any such excess insurance shall be at least as broad as the **BENEFICIARY's** primary insurance.

- b) Policy will include the following additional insured language: Puerto Rico Department of Housing (**PRDOH**), Puerto Rico Government, US Department of Housing and Urban Development (**HUD**), its officers, officials, agents, and employees, will be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the **BENEFICIARY**.
- c) Duration of Coverage: umbrella/excess liability policies shall continue coverage for a minimum of five (5) years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

6. **Contractors Pollution Liability** to indemnify for bodily injury, property damage, or amounts which the **BENEFICIARY**, its employees, its agents, or its Contractors are legally obligated to pay for cleanup/remediation work arising out of or related to the services to be provided under this "Agreement". Pollution Liability policy must include contractual liability coverage.

Amount of Coverage:	Per Loss	\$3,000,000
	Aggregate	\$3,000,000

- a) Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). Policy shall cover the **BENEFICIARY** completed operations.
- b) If the coverage is written on a **claims-made basis**, the **BENEFICIARY** warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period will be exercised for a period of five (5) years beginning from the time that work under this contract is completed.

- c) The policy shall be endorsed to include the following as Additional Insureds: Puerto Rico Department of Housing (**PRDOH**), Puerto Rico Government, US Department of Housing and Urban Development (**HUD**), its officers, agents, and employees named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the **BENEFICIARY**, including completed operations.
- d) Endorsements CA9948 and MCS-90 are required on the Automobile Liability Coverage if the **BENEFICIARY** or its Contractors transports any type of hazardous materials.

7. Professional Liability Insurance

The **BENEFICIARY** must provide or cause those conducting the work to provide Professional Liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with the professional services to be provided under this "Agreement". This insurance shall protect against claims arising from professional services of the insured, or by its employees, agents, or contractors, and includes coverage (or no exclusion) for contractual liability.

Amount of Coverage:	Per Claim	\$5,000,000
	Aggregate	\$5,000,000

- a) If the coverage is written on a **claims-made basis**, the **BENEFICIARY** warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period will be exercised for a period of five (**5**) years beginning from the time that work under this contract is completed.

8. Builders' Risk Insurance

Unless otherwise provided, **BENEFICIARY** will procure, pay for, and maintain, builder's risk (and/or Installation Floater) in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at

the site on a value-at-risk-at-time-of-loss (**VARTOL**) valuation clause (as defined in the builders' risk policy).

- a) Such builders risk insurance shall end when the first of the following occurs:
 - i. The **PRDOH** interest in the Work ceases;
 - ii. the policy expires or is cancelled; or
 - iii. the Work is accepted by **PRDOH**.
- b) **BENEFICIARY** is responsible for the deductible for any claim made against the policy. A separate certificate of insurance evidencing the coverage required herein shall be provided to **PRDOH**.
- c) The **PRDOH** shall be added as Additional Named Insured and Loss Payee.
- d) Policy must provide coverage from the time any covered property becomes the responsibility of the **BENEFICIARY**, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
- e) Builders' Risk Coverage shall be on a Special Covered Cause of Loss Form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition, increased cost of construction, architect's fees and expenses, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, piling including the ground on which the structure rests and excavation, backfilling, filling, and grading. Equipment Breakdown Coverage (a.k.a. Boiler & Machinery) shall be included as required by the Contract Documents or by law, which shall specifically cover insured

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equipment during installation and testing (including hot testing, where applicable).

- f) The Builders' Risk shall be written for 100% of the completed value (replacement cost basis) of the work being performed. The Builders' Risk shall include the following provisions:
- i. Replacement Cost Basis - including modification of the valuation clause to cover all costs needed to repair the structure or work (including overhead and profits) and will pay based on the values figured at the time of rebuilding or repairing, not at the time of loss.
- g) If the project does not involve new or major reconstruction, at the option of Puerto Rico Department of Housing (**PRDOH**), the **SUBRECIPEINT** may provide an Installation Floater Policy in lieu of a Builders Risk policy, with the similar coverage as the Builder's Risk policy. For such projects, an Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the **SUBRECIPEINT's** site.

9. Other Coverages:

The **PRDOH** reserves the right to require **BENEFICIARY** to obtain and maintain additional insurance coverages, provided that such requests are reasonable and consistent with industry standards. The **BENEFICIARY** shall secure these additional coverages within a reasonable time frame following the Department's request, ensuring continuous compliance with contractual obligations.

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C. Other Provisions

1. Acceptability of Insurers

The insurance company providing any of the insurance coverage required herein shall be an Insurance Company duly authorized to do business in Puerto Rico and approved by the Office of the Commissioner Insurance of Puerto Rico and classified by A.M. Best Co. with a rating of no less than financial strength of A or have a financial size of IV or better.

If at any time an insurer issuing any such policy does not meet the minimum A. M. Best rating, the **BENEFICIARY** shall obtain a policy with an insurer that meets the A. M. Best rating and shall submit another certificate of insurance as required in the contract.

2. Premiums, Deductibles and Self-Insured Retentions

The **BENEFICIARY** shall be responsible for payment of premiums for all of the insurance coverages required under this Section. The **BENEFICIARY** further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the **BENEFICIARY** is responsible hereunder, the **BENEFICIARY** shall be solely responsible for all deductibles and self-insured retentions. Any deductible or self-insured retentions over **\$50,000.00** in the **BENEFICIARY** insurance must be declared and approved in writing by **PRDOH**.

3. Claims Made Policies

If any coverage required is written on a claims-made coverage form:

- a) The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
- b) Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract work.
- c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

- d) A copy of the claims reporting requirements must be submitted to the Entity for review.

4. Proof of Insurance

The **BENEFICIARY** shall submit proof of the Comprehensive General Liability (**CGL**) insurance and Workers' Compensation insurance policies to the **PRDOH** before the execution of the Grant Agreement. The **BENEFICIARY** shall also ensure that all other insurance policies and bonds required under this Agreement are secured by its subcontractors. The **BENEFICIARY** is responsible for providing to the **PRDOH** evidence of these additional insurance policies and bonds within five (5) days after the execution of each individual subcontract agreement.

5. Verification of Coverage

The **BENEFICIARY** shall provide a Certificate or Certificates of Insurance, in a form satisfactory to Puerto Rico Department of Housing (**PRDOH**) (i.e., an ACORD Certificate), before commencing any work under the contract or agreement.

Certificates of Insurance shall:

- a) Be in the form acceptable to **PRDOH** (i.e.: an ACORD Certificate);
- b) Disclose any Deductible, Self-Insured Retention, Aggregate Limit or any exclusion to the policy that materially changes the coverage required by the contract;
- c) Project/contract number and project description shall be noted on the certificate of insurance;
- d) Be signed by an authorized representative of the Insurance carriers; and
- e) Contain the following language in the Description of Operations/Locations/Vehicles section:

"Additional Insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the Additional Insureds."

Only original documents (Certificate(s) and any Endorsements or other attachments) or electronic versions of the same that can be directly traced

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back to the Insurer, Agent or Broker via e-mail distribution or similar means will be accepted.

The **PRDOH** reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

All certificates required by this Agreement shall be sent directly to:

Sonia Damaris Rodríguez

Especialista en Seguros | CDBG-DR/MIT

Oficina de Recuperación de Desastres

Tel. (787)274-2527 ext. 4081

srodriguez@vivienda.pr.gov

6. Renewal Policies

The **BENEFICIARY** shall promptly deliver **PRDOH** a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to **PRDOH** not less than 30 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof.

7. Cancellation and Modification of Insurance Coverages

The **BENEFICIARY** shall be responsible for immediately notifying the **PRDOH** in writing of any changes or cancelations of its insurance or may be found in breach of the contract and the contract could be terminated. This notice requirement does not waive the insurance requirements contained herein.

8. Policies Primary and Non-Contributory

All policies required above are to be primary and noncontributory with any insurance programs carried by the **PRDOH**.

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9. Waiver of Subrogation

BENEFICIARY hereby grants to **PRDOH** a waiver of any right to subrogation which any insurer of said **BENEFICIARY** may acquire against **PRDOH** by virtue of the payment of any loss under such insurance. **BENEFICIARY** agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not **PRDOH** has received a waiver of subrogation endorsement from the insurer.

10. Special Risks or Circumstances

The **PRDOH** reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

11. Subcontractors

The **BENEFICIARY** and its Contractors shall include all subcontractors as insureds under its policies or shall be responsible for verifying and maintaining the certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The agency reserves the right to request copies of subcontractor's certificates at any time.

12. No Recourse

There shall be no recourse against **PRDOH** for the payment of premiums or other amounts with respect to the insurance required from the **BENEFICIARY** under this Section.

13. Limits of Coverage

If the **BENEFICIARY** maintains higher limits than the minimums shown below, **PRDOH** requires and shall be entitled to coverage for the higher limits maintained by the **BENEFICIARY**. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to **PRDOH**.

14. Indemnification/Hold Harmless Agreement

BENEFICIARY agrees to protect, defend, indemnify, save, and hold harmless, Puerto Rico Department of Housing (**PRDOH**), Puerto Rico Government, US

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Department of Housing and Urban Development (**HUD**), its officers, officials, agents, employees, and volunteers, from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss, or destruction of any property which may occur, or in any way grow out of, any act or omission of **BENEFICIARY**, its contractors, agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by **BENEFICIARY** as a result of any claims, demands, suits or causes of action, except those claims, demands, suits, or causes of action arising out of the negligence of , Puerto Rico Department of Housing (**PRDOH**), Puerto Rico Government, US Department of Housing and Urban Development (**HUD**), its officers, officials, agents, employees, and volunteers. **BENEFICIARY** agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits, or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent.

15. Conflict or Difference between the Specifications of the Tendering, Procedure and Special Insurance Conditions and Bonds

In the event of any conflict or difference in the description of coverage or in amounts or limits, etc., with respect to insurance requirements, the conditions of insurance and bonds established in these Insurance Requirements and Bonding Specifications shall prevail over any other insurance specifications.

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