

**THIRD ADDENDUM TO
REQUEST FOR PROPOSALS**

seeking

**BROADBAND INFRASTRUCTURE
GRANT ADMINISTRATOR SERVICES**

for

**The Puerto Rico Fiscal Agency and Financial
Advisory Authority**

RFP Issue Date: October 21, 2020

www.aafaf.pr.gov

Addendum Date: November 10, 2020



GOVERNMENT OF PUERTO RICO
Puerto Rico Fiscal Agency and Financial
Advisory Authority

ADENDUM TO REQUEST FOR PROPOSALS

Reference is made to the October 21, 2020 Request for Proposal (“**RFP**”), issued by the Puerto Rico Fiscal Agency and Financial Advisory Authority (“**AAFAF**”), in light of its ministerial duties levied by Act No. 2-2017, on behalf of the Government of Puerto Rico (“**Government**”; together with **AAFAF**, the “**Government Parties**”).

The **Government Parties** are issuing this Third Addendum to the **RFP**, as per the terms and conditions set forth thereunder, including, but not limited to, **RFP** Section 2.1.

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2.1 Description of Proposed Contracting Opportunity

AAFAF intends, through this procurement, to enter into a Grant Administration Agreement (“**GAA**”) that will result in best-value completion of all the elements of the Project. Specimen of the GAA will be shared publicly through Addendum to this RFP before the RFP Deadline, specimen draft attached as Exhibit 1 to RFP’s Third Addendum.

In general, the GAA will set forth the terms of the Grant Administrator compensation, which will be subject to a maximum payment curve.

The Proponent understands and acknowledges that the GAA, or any amendment to the GAA shall be approved by FOMB.

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All other terms & conditions set forth in the **RFP** remain unaltered.

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THIRD ADDENDUM EXHIBIT 1

AGREEMENT SPECIMEN / DRAFT

for the

PROVISION OF GRANT ADMINISTRATION SERVICES

Between

the Puerto Rico Fiscal Agency and Financial Advisory Authority,

a public corporation of the Government of Puerto Rico

and

[INSERT NAME,

a[n] [INSERT ENTITY TYPE][entity type/state or commonwealth]

Dated as of [INSERT DATE]

AGREEMENT SPECIMEN / DRAFT

AS PARTY OF THE FIRST PART: The **PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY** (hereinafter, the “Authority”), a public corporation of the Government of Puerto Rico created by Act No. 2-2017 (“Act 2”), represented herein by [INSERT: NAME, POSITION, LEGAL AGE, MARITAL STATUS AND RESIDENCE], duly authorized and empowered to execute this Agreement pursuant to Resolution No. [INSERT NUMBER] of the Board of Directors of the Authority.

AS PARTY OF THE SECOND PART: [INSERT CONTRACTOR NAME], a [limited liability partnership] organized and existing under the laws of [INSERT JURISDICTION] and authorized to do business in Puerto Rico, with offices [INSERT ADDRESS], represented herein by its [INSERT: NAME, POSITION, LEGAL AGE, MARITAL STATUS AND RESIDENCE] (hereinafter, the “Grant Administrator” and, collectively with the Authority, the “Parties”).

WITNESSETH

WHEREAS, the Authority was created for the purpose of acting as fiscal agent, financial advisor, and reporting agent for all the entities comprising the Government of Puerto Rico and to assist them in facing the serious fiscal and economic crisis that Puerto Rico is currently undergoing; and

WHEREAS, the Authority was empowered to collaborate in conjunction with the Governor of Puerto Rico and his representatives in the creation, execution, supervision, and oversight of any Fiscal Plan and any Budget, as such terms are defined in the Puerto Rico Oversight, Management, and Economic Stability Act, known as PROMESA, Pub. L. 114–187, June 30, 2016, 130 Stat. 549; and

WHEREAS, PROMESA established the Financial Oversight and Management Board for Puerto Rico (the “FOMB”). FOMB is tasked with restructuring Puerto Rico’s debt burden and restoring sustained economic growth to Puerto Rico so that the Government can achieve fiscal balance and regain access to the capital markets.

WHEREAS, the Authority is the entity of the Government of Puerto Rico in charge of supervising, executing, and administering the Fiscal Plan certified in accordance with PROMESA, and shall ensure that all the entities comprising the Government of Puerto Rico comply with the duly certified Fiscal Plan and Budget; and

WHEREAS, the Authority is the only entity of the Government of Puerto Rico authorized to, on behalf of the Government of Puerto Rico or any component thereof, negotiate, restructure, or enter into agreements with creditors in connection with any debt of the Government of Puerto Rico, whether present or future debt; and

WHEREAS, the Authority was empowered to negotiate and execute any type of contract, including all those instruments and agreements necessary or convenient to exercise the powers and functions conferred to the Authority by Act 2; and

WHEREAS, FOMB formulated, certified and issued on May 27th, 2020 the 2020 Fiscal Plan for Puerto Rico; subsequently, on June 30, 2020, the corresponding budget for Fiscal Year 2020-2021 was certified (collectively referred to as the “Fiscal Plan”);

WHEREAS, section 7.1 of the Fiscal Plan outlines a measure that encourages the Government of Puerto Rico to accelerate growth in broadband access, expand resident adoption and use of online resources throughout Puerto Rico, incentivize private sector investments in broadband build-out and improve access to faster speed offerings (“Broadband Infrastructure Measure”).;

WHEREAS, the Fiscal Plan allocates certain monies (\$400 million) to be used over the course of three years; these monies (the “Broadband Infrastructure Fund” or the “Funds”) are intended to support expansion efforts in unserved and underserved areas through grants (“Grants”) that fund a portion of the deployment costs in these communities;

WHEREAS, the Funds for the Grant Program have been appropriated, and will be held until disbursed, by the *Departamento de Hacienda de Puerto Rico* in a restricted and separate bank account with the sole purpose to advance and fund the Grant Program’s payments to the Grant Administrator. Payments will be contingent on compliance with the Scope of Services set forth in this Agreement, with any modifications to be approved in writing by the Authority (with copy to the FOMB);

WHEREAS, the disbursement of Funds will be made only after FOMB approval of this Agreement;

WHEREAS, after the evaluations process of the procurement was completed by the Request for Proposals (“RFP”) Evaluation Committee, the Grant Administrator was recommended favorably, and such recommendation was subsequently approved by the Board of Directors of the Authority and the.

WHEREAS, the Grant Administrator will provide the Scope of Services, as detailed in Appendix I (the “Services”), including the following four key areas:

- Broadband Assessment Services and Project Structuring,
- Grant Administration Services,
- Technology and Policy Services, and
- Collaborating with Government Parties.

WHEREAS, in accordance with the results and selection made through the RFP process, the Authority wishes to engage the Grant Administrator to provide the services specified in the Scope of Services, and the Grant Administrator is willing to provide such services on and subject to the terms and conditions set forth below.

NOW, THEREFORE, the Parties enter into this Agreement for Professional Services (the “Agreement”) under the following:

TERMS AND CONDITIONS

1. FIRST - SERVICES

The Authority hereby engages the Grant Administrator, and the Grant Administrator hereby agrees, to deliver the Scope of Services (the “Services” attached hereto as Appendix I) as according to the timeline stipulated by the Grant Administrator’s Work Plan and Schedule (included in the Grant Administrator’s Technical Proposal, attached as Appendix II and attached hereto as Appendix IV, respectively). The Services will be provided on and subject to the terms and conditions set forth in this Agreement and in accordance with the scope of work detailed in the Request for Proposal Submission dated [INSERT DATE] (hereinafter referred to as, the “Proposal”), a copy of which is incorporated and made part hereof as an appendix to this Agreement. If any part of the Proposal is found to be inconsistent with the terms and conditions set forth herein, the terms and conditions set forth herein shall take precedence over the Proposal and govern the matter in question.

The Grant Administrator will perform the Services remotely unless otherwise agreed to in writing; in such event, the Authority shall provide workspace for the Grant Administrator’s resources. The Authority shall cooperate with the Grant Administrator hereunder, including (i) providing the Grant Administrator with reasonable facilities and timely access to data, information and personnel of the Authority; (ii) providing experienced and qualified personnel having appropriate skills to perform their assigned tasks and duties in a competent and timely fashion; (iii) providing a stable, fully functional system infrastructure environment which will support the Services and allow the Grant Administrator and the Authority to work productively; and (iv) promptly notifying the Grant Administrator of any issues, concerns or disputes with respect to the Services. With respect to the data and information provided by the

Authority to the Grant Administrator or its subcontractors for the performance of the Services, the Authority shall have the rights required to provide such data and information, and shall do so only in accordance with applicable law and with any procedures agreed upon in writing. The Authority shall be solely responsible for, among other things, (a) the performance of its personnel and agents; (b) the accuracy and completeness of data and information provided to the Grant Administrator for purposes of the performance of the Services; (c) making all management decisions, performing all management functions and assuming all management responsibilities; (d) designating a competent management member to oversee the Services; (e) evaluating the adequacy and results of the Services; and (f) establishing and maintaining internal controls, including monitoring ongoing activities. The Grant Administrator's performance is dependent upon the timely and effective satisfaction of the Authority's responsibilities hereunder and timely decisions and approvals of the Authority in connection with the Services. The Grant Administrator shall be entitled to rely on all decisions and approvals of the Authority.

2. SECOND - TERM OF AGREEMENT

This Agreement shall be in effect for three years from the date of the Execution Date, unless earlier terminated as provided herein or extended by amendment executed in writing by both Parties.

3. THIRD – SCHEDULE

The Grant Administrator shall execute and provide the Scope of Services as stipulated in the Grant Administrator's Schedule, included in Appendix IV of this Agreement.

4. FOURTH – PROGRESS REPORTS AND PERFORMANCE EVALUATION

The Grant Administrator shall submit in writing semiannually, by every 15th of the 6th and 12th month of each Fiscal Year during the Term of this agreement, ("Progress Reports") as set forth below. Additionally, the Grant Administrator shall submit in writing on a quarterly basis, by every 15th of the 3rd, 6th, 9th, and 12th month of each Fiscal Year during the Term of this agreement, ("Summary Reports") consisting of updated percentage-complete estimates for the Key Milestones Performance Table.

Progress Reports shall (i) provide a summary of overall progress to date, including on tasks not included in the Key Performance Milestones Table to follow (ii) detail all key deliverables completed and delivered to the Authority over the relevant period, including whether the deliverable was satisfactorily received (iii) detail all key tasks completed over the relevant period, (iv) describe any delays or challenges faced during the relevant period, and (v) describe any risks for future phases and detail intended mitigation measures.

Summary Reports shall be structured according to the Key Milestones Performance Table, attached as Appendix V, with modifications as necessary and as approved by the Authority, in order to compare progress against scheduled deadlines.

The Grant Administrator shall not invoice to the Authority the time spent to prepare Progress Reports and Summary Reports not included as a deliverable pursuant to the Agreement and the Proposal submitted by the Grant Administrator, or communications reasonably requested by the Authority, as it is understood that this is an administrative obligation complementary to the Services hereunder.

Quality

Only tasks and deliverables that the Authority has deemed to be satisfactorily completed shall be marked as completed in the Progress Reports and Summary Reports – deliverables and tasks that the Authority has directed the Grant Administrator to revise or improve shall not be marked as completed in either report, unless the corresponding item has been corrected and deemed satisfactorily received. The Authority shall not unduly consider progress to be unsatisfactory without cause. If the Authority has not directed the Grant Administrator to revise or improve a task or deliverable within 30 days of receipt, it shall be deemed to have been satisfactorily received.

5. Performance Evaluation

The Grant Administrator shall support the establishment of a committee, including the development of its rules, bylaws and procedures, which will oversee and provide guidance related to the Grant Administration Services and ultimately approval of any Grants to be awarded by the Grant Administrator (the “Grant Committee”). The Grant Committee shall have five (5) members, including: two (2) Authority representatives, one (1) Puerto Rico Innovation and Technology Service (PRITS) representative, and two (2) Government representatives from other relevant agencies or offices. The Evaluation Committee shall also have one (1) ex-officio and non-voting member from the FOMB.

The Grant Committee shall evaluate the Grant Administrator’s performance semiannually upon receipt of the Grant Administrator’s Semiannual Report (prior to the establishment of the Grant Committee, the Authority shall directly evaluate the Grant Administrator’s performance). An (“Approved”) report indicates the Grant Administrator is in compliance with its duties and responsibilities to perform the Services under this Agreement as they relate to achieving Key Milestones as per the Schedule. A (“Failed”) report indicates the Grant Administrator is noncompliant with its duties and responsibilities to perform the Services under this Agreement as they relate to achieving Key Milestones as per Schedule. The Authority shall categorize each report, in writing either by registered mail, return receipt requested, overnight express mail, hand delivery or to the electronic mail address provided by the Grant Administrator, as

Approved or Failed, based on the Grant Administrator's progress toward meeting Key Milestones as expressed in the Schedule, ("Certify" or the "Certification").

If the Grant Administrator's Semiannual Report shows the Grant Administrator is on or ahead of anticipated progress as stipulated by the Schedule, then the Authority must certify the Semiannual Report as Approved. If the Grant Administrator's Semiannual Report shows delays deviating [50%] or greater from anticipated progress as stipulated by the Schedule, ("Substantial Delay"), then the Authority shall have the right to Certify the Semiannual Report as Failed indicating the Grant Administrator is noncompliant. If the Authority Certifies the Grant Administrator's Semiannual Report as Failed, then the Grant Administrator is on "Notice of Noncompliance".

6. Cure Period

The Authority will provide the Grant Administrator a period of one hundred eighty (180) days to cure noncompliance beginning the day of Notice of Noncompliance, (the "Cure Period"). During the Cure Period, the Authority, through the Grant Committee, shall meet with the Grant Administrator monthly to support and assess the Grant Administrator's progress. During the Cure Period, Summary Reports detailing the Grant Administrator's progress relative to the Key Milestones shall be submitted prior to each monthly meeting. At any time during the Cure Period, the Authority has the right to re-certify the Semiannual Report's as Approved. If, on the business day following the final day of the Cure Period, the Authority, through the Grant Committee, determines the Grant Administrator has not satisfactorily resolved its noncompliance, the Authority shall have the right to confirm the Certification as Failed, in writing either by registered mail, return receipt requested, overnight express mail, hand delivery or to the electronic mail address provided by the Grant Administrator, (issuing a "Failed Performance Report").

7. FIFTH - TERMINATION

8. Termination for Convenience

9. Abandonment

The Grant Administrator's intentional abandonment of its duties hereunder or its negligence or unlawful behavior (including, without limitation, conviction in a Puerto Rico or United States Federal court under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, as amended, known as the "Enabling Act of the Office of Government Ethics of Puerto Rico", of any of the crimes listed in Articles 250 through 266 of Act No. 146-2012, as amended, known as the "Puerto Rico Penal Code", any of the crimes typified in Act No. 2-2018, as amended, known as the "Anti-Corruption Code for a New Puerto Rico" or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act No. 8-2017, as amended, known as the "Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico"), shall entitle the Authority to terminate this Agreement

immediately and shall, without limitations as to any other rights, release and discharge the Authority from any further obligations and liabilities hereunder for payment for any work performed after the effective date of such termination, and without having to comply with the notice requirements set forth in the first paragraph of this FIFTH Clause.

10. Termination for Failure to Perform

The Authority shall have the right to terminate this Agreement, for the Grant Administrator's failure to perform, at any time after issuing a Failed Performance Report, by providing the Grant Administrator sixty (60) days' prior notice either by registered mail, return receipt requested, overnight express mail, hand delivery or to the electronic mail address provided by the Grant Administrator. This Agreement shall terminate on the date indicated in the notice, which shall be at least sixty (60) days following the date of such notice.

The rights, duties, and responsibilities of the Authority and the Grant Administrator shall continue in full force and effect during the applicable notice period. The Authority shall be obligated to pay all fees incurred up to the date of termination, in accordance with the terms of this Agreement. The Grant Administrator shall have no further right to compensation except for amounts accrued for Services rendered under this Agreement until said date.

11. Assignment

The assignment of this Agreement by either Party shall be sufficient cause to terminate it immediately, unless the assignment is made by the Authority to a successor entity of the Authority that is a governmental entity of the Government of Puerto Rico, in which case, such assignment shall be considered effective with only a written notice to the Grant Administrator. Upon such occurrence, this Agreement shall be binding and inure to the benefit of the Authority's successors and assigns.

12. SIXTH – INVOICES

The Grant Administrator will submit monthly invoices to the Authority that shall identify and include itemized details for each expense, not to exceed the allowable amount available in the current year, complying with the Authority's billing guidelines, attached hereto as Appendix VII of this Agreement. The invoices must be duly certified by an authorized representative of the Grant Administrator as provided below. The Authority shall review the invoices, and if they are in compliance with the requirements set forth in this Agreement, will proceed with payment.

The Authority will not accept invoices for Services rendered that are submitted more than one hundred twenty (120) days after the Services covered thereby have been rendered. The Grant Administrator agrees and waives all right to payment for Services rendered that are not invoiced within one hundred twenty (120) days.

Invoices must also include a written certification stating that no officer or employee of the Authority will derive or obtain any benefit or profit of any kind from this Agreement. Invoices that do not include this certification will not be accepted. This certification must read as follows:

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

All invoices shall be signed in original and mailed to the following address or personally delivered to the attention of:

MAILING ADDRESS

Puerto Rico Fiscal Agency and Financial
Advisory Authority
PREINTERVENTION
PO Box 42001
San Juan, PR 00940-2001

PHYSICAL ADDRESS

Puerto Rico Fiscal Agency and
Financial Advisory Authority
PREINTERVENTION
De Diego Avenue No. 100
Roberto Sánchez Vilella
Government Center – Central Building Floor P
Santurce, PR 00907-2345

The Grant Administrator shall also email a copy of all signed invoices to the following address: **invoice@aafaf.pr.gov**.

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

The Authority certifies that funds for the payment of Services rendered under this Agreement come from the Certified Fiscal Plan & Budget FY2020 - 2021. All disbursements for payments required under this Agreement shall be made from account number [INSERT NUMBER].

13. SEVENTH - PAYMENT

The Authority shall pay the Grant Administrator for the Services rendered through reimbursement of Eligible Expenses (defined herein) at cost, paid

monthly, as stipulated in the Proposal, attached hereto as Appendix II, within twenty-one (21) days of receipt of a properly submitted Invoice. Excluding, a one-time payment the Authority shall provide to the Grant Administrator in advance of work to be expensed, if needed, for start-up costs of [an agreed amount] based on the Grant Administrator's Financial Proposal, that shall be justified upon receipt of a properly submitted invoice detailing actual costs incurred during the same start-up period. The Grant Administrator shall repay any overage of actual costs received or the overage will be deducted from the following period's reimbursement amount.

("Eligible Expenses") shall be defined as time and material fees based on actual cost of resources and expenses, as described in the Grant Administrator's Financial Proposal, attached hereto as Appendix III, and may include salaries, necessary office space, reasonable working capital and specific expenses reasonably incurred to perform the Services.

The total amount payable by the Authority to the Grant Administrator under this Agreement, shall not exceed \$2,000,000.00 per Fiscal Year, unless additional consideration is proposed by the Grant Administrator and approved by the Authority based on the Scope of Services (the "Maximum Amount"), and the Grant Administrator shall not be obligated to perform Services beyond such amount.

Should the Grant Administrator assign additional resources not included in the Financial Proposal, to facilitate performance of the Scope of Services, the Grant Administrator shall promptly send the Authority an amended Financial Proposal- Budget to include such resources' level and salary, and request written approval from the Authority for such amendment.

The Grant Administrator agrees to notify the Authority within twenty-one (21) business days after having invoiced three-fourths (3/4) of the Maximum Amount. The written notification shall include a detailed report of projected Services for the duration of the Agreement, and indicate if an increase in the Maximum Amount is expected. The Grant Administrator understands and accepts that it may not exceed the Maximum Amount without a prior written amendment to this Agreement executed by the Parties.

14. EIGHTH – SUBCONTRACTING

The Grant Administrator shall not subcontract the Services under this Agreement, or contract third-party experts or other persons to render the Services under this Agreement, without prior written authorization from the Authority, except certain services ("Technical Services") as specified in this section. A request to hire a subcontractor shall specify the issues in which such subcontractor would take part. The professional fees earned by these persons will be deducted from the Maximum Amount that the Grant Administrator can receive under this Agreement.

Technical Services that may be subcontracted without prior authorization by the Authority are limited to (i) broadband mapping services, including georeferencing of information, ground-truthing, and development of a digital map, (ii) technical review of broadband technology portions or grant applications, (iii) evaluation of broadband deployment economics, (iv) supply-side evaluation, (v) broadband service planning, and (vi) grant structuring services.

From time to time, the Grant Administrator may utilize the Services of personnel from its affiliates, if any, in providing Services under this Agreement, at its own cost, without the need to seek the consent of the Authority. However, the Grant Administrator shall remain primarily responsible for providing the Services hereunder. The Authority agrees that none of the Grant Administrator's affiliates, or their respective partners, principals or employees, who perform work under this Agreement, will have any liability to the Authority in connection with the Services or this Agreement. Nevertheless, the Grant Administrator assumes all liability as to the work performed by its affiliates, their respective partners, principals or employees under this Agreement, subject to the limitation on liability contained in the FIFTEENTH Clause of this Agreement.

The confidentiality covenants set forth in the TENTH Clause of this Agreement and the other requirements established in the THIRTEENTH Clause of this Agreement shall apply to these persons.

15. NINTH - OWNERSHIP OF DATA

All rights, title and interest in and to any data, information and other materials furnished to the Grant Administrator by the Authority hereunder (the "Authority Information") are and shall remain the Authority's sole and exclusive property. The Authority hereby grants to the Grant Administrator a revocable, limited and non-exclusive license to use such Authority Information to the extent required to provide the Services described herein. Except as provided below, upon full and final payment to the Grant Administrator hereunder, all Grant Administrator's work product created in connection with the Services (the "Deliverables") shall become the property of the Authority.

The Authority acknowledges the proprietary and confidential nature of Grant Administrator's ideas, methods, methodologies, procedures, processes, know-how, and techniques (including, without limitation, function, process, system and data models), templates, software systems, user interfaces and screen designs, general purpose consulting and software tools, websites, benefit administration systems, and data, documentation, and proprietary information that the Authority may have access to or receive under this Agreement (collectively, "Grant Administrator Information"). To the extent that any Grant Administrator Information is contained in any of the Deliverables, subject to the terms of this Agreement, the Grant Administrator hereby grants to the Authority a paid-up, perpetual, royalty-free, nonexclusive license to use such Grant Administrator Information for the Authority's use in connection with the

Deliverables. To the extent that the Grant Administrator utilizes any of its intellectual property or know-how, including, without limitation, the Grant Administrator Information, in connection with the performance of Services, such property shall remain the property of the Grant Administrator and, except for the limited license expressly granted in the preceding paragraph, the Authority shall acquire no right or interest in such property. The Authority will honor the Grant Administrator's copyrights, patents, and trademarks relating to Services, Deliverables and Grant Administrator Information, and will not use the Grant Administrator's name or other intellectual property without the Grant Administrator's prior written consent.

The Authority will use reasonable efforts to cause its employees to minimize distribution and duplication and prevent unauthorized disclosure of the Grant Administrator Information. Subject to applicable freedom of information act requirements, the Authority will not disclose Grant Administrator Information to a third party without the prior written consent of the Grant Administrator.

16. TENTH - CONFIDENTIAL INFORMATION

The Grant Administrator acknowledges the proprietary and confidential nature of all internal, non-public, information systems, financial, and business information now or hereafter provided to the Grant Administrator relating to the Authority, the Government of Puerto Rico, its agencies, corporations and municipalities, (collectively, "Confidential Information"). The term "Confidential Information," however, shall not include information within the public domain or that is furnished to the Grant Administrator by a third party who is under no obligation to keep the information confidential.

The Grant Administrator and its employees, affiliates and authorized subcontractors agree to keep in confidence all Confidential Information provided by the Authority, its personnel, subsidiary corporations and affiliates and their personnel, the Government of Puerto Rico, its municipalities, agencies, and corporations, in connection with the execution of this Agreement. The Grant Administrator further agrees, in connection with all Confidential Information, that, it (i) shall not make public or disclose any Confidential Information without the previous written consent of the Authority, (ii) shall use such Confidential Information only to perform its obligations under this Agreement; and (iii) will reproduce the Confidential Information only as required to perform its obligations under this Agreement.

In addition, the provisions of this Clause shall not prohibit the Grant Administrator from making any disclosure pursuant to any subpoena or order of a court, or a governmental, administrative tribunal or authority which may assert jurisdiction over the Grant Administrator or pursuant to applicable professional standards; provided that the Grant Administrator shall promptly notify the Authority of any such disclosure obligations if legally permitted and reasonably

cooperate with the Authority's efforts to lawfully avoid and/or minimize the extent of such disclosure.

The Grant Administrator may divulge Confidential Information to the persons who need to know such Confidential Information to fulfill the purposes of this engagement, provided that such persons (i) shall have been advised of the confidential nature of the information and the Grant Administrator shall direct them, and they shall agree in writing, to treat such information as Confidential Information and to return all divulged materials to the Grant Administrator upon request but for one copy for record purposes only; and (ii) in each case, such persons shall be bound by obligations of confidentiality and non-use consistent with and at least as stringent as those set forth in this Agreement.

In connection with the Services, the Grant Administrator will furnish the Authority copies of any necessary reports, analyses or other such supporting materials as the Authority may request if applicable in accordance with the Proposal and the Services to be provided hereunder. The Authority acknowledges that the Grant Administrator may develop for itself, or for others, problem solving approaches, frameworks or other tools and processes developed in performing the Services, and nothing contained herein precludes the Grant Administrator from developing or disclosing such materials and information provided that the same do not contain or reflect Confidential Information.

Furthermore, the Grant Administrator shall return all Confidential Information to the Authority within thirty (30) days following the date of termination of this Agreement or, at the Authority's election, destroy such information, certifying that all the information has been returned to the Authority or destroyed, but for one copy for record purposes only and other than electronic information held in archive and/or backup files to the extent such files cannot be deleted without unreasonable effort or expense and created in the ordinary course pursuant to established data backup/archive procedures. The Grant Administrator shall not invoice the time spent to gather and deliver such information, as it is understood that this is an administrative obligation complementary to the Services rendered hereunder. During this thirty (30) day period, these documents shall be available for inspection by the Office of the Comptroller of Puerto Rico.

This provision shall survive the expiration or earlier termination of this Agreement.

17. ELEVENTH - CONFLICT OF INTERESTS

The Grant Administrator acknowledges that, in performing the Services pursuant to this Agreement, it has the obligation to exhibit complete loyalty towards the Authority, including having no adverse interest to this government entity.

The Grant Administrator certifies that is not currently aware of any relationship that would create a conflict of interest with the Authority or those parties-in-interest of which the Authority has made the Grant Administrator

aware. The Parties acknowledge that no public officer or employee of the Authority with the power to execute or authorize this Agreement has knowledge that the Grant Administrator represents particular interests in cases or issues involving conflict of interest or public policy between the Authority and the particular interests represented by the Grant Administrator.

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

The Grant Administrator certifies that at the time of the execution of this Agreement, it does not have nor does it represent particular interests in cases or matters that imply a conflict of interests, as defined above or of public policy, between the Authority and the particular interests it represents. If such conflicting interests arise after the execution of this Agreement, the Grant Administrator shall notify the Authority immediately.

Both Parties hereby declare that, to the best of their knowledge, no public officer or employee of the Authority, the Government of Puerto Rico, or any of its agencies, instrumentalities, public corporations or municipalities, or employee of the Legislative or Judicial branches of the Government has any direct or indirect interest in the present Agreement. The Parties further acknowledge that, to the best of their knowledge, no public officer or employee is a party to or has any interest in any profits or benefits produced by this Agreement and that no public officer or employee of the Authority with the power to approve or authorize this Agreement on behalf of the Authority, or any member of his or her family unit, has or has had any direct or indirect economic interests with the Grant Administrator during the last four (4) years prior to said public officer or employee holding office.

The Grant Administrator certifies that neither it, nor any of its directors, executives, officers or employees, offered or paid, directly or indirectly, any commissions, referrals, contracts, or any other consideration having an economic value, to a third party as a condition for obtaining this Agreement or to influence in any way its execution. In addition, the Grant Administrator certifies that it shall not pay any commissions, make any referrals, execute any contracts, or provide any other consideration having an economic value, to a third party for the Services to be rendered under this Agreement, except for any subcontracts authorized by the Authority in accordance with the provisions established herein.

The Grant Administrator also certifies that none of its partners, directors, executives, officers and employees involved in this Agreement receives salary or any kind of direct employment compensation for the rendering of regular services by appointment (or otherwise) in any agency, instrumentality, public corporation, or municipality of the Government of Puerto Rico. The Parties acknowledge that this Agreement is not executed with or for the benefit of persons who have been public officers or employees of the Authority.

18. TWELFTH - INDEPENDENT CONTRACTOR STATUS

The Authority and the Grant Administrator agree that the Grant Administrator's status hereunder, and the status of any agents, employees, affiliates and approved subcontractors engaged by the Grant Administrator, shall be that of an independent contractor only and not that of an employee or agent of the Authority or any entity of the Executive Branch. The Grant Administrator shall not have any power or right to enter into agreements on behalf of the Authority.

19. THIRTEENTH - CONTRACTING REQUIREMENTS OF THE GOVERNMENT OF PUERTO RICO

The Grant Administrator will comply will all applicable laws, regulations and executive orders that regulate the contracting process and requirements of the Government of Puerto Rico. Particularly, *Act No. 237-2004*, as amended, which establishes uniform contracting requirements for professional and consultant services for the agencies and governmental entities of the Commonwealth of Puerto Rico (3 L.P.R.A. § 8611 et seq.), and the Puerto Rico Department of Treasury Circular Letter Number 1300-16-16 issued on January 22, 2016, which is available at:

<http://www.hacienda.pr.gov/publicaciones/carta-circular-num-1300-16-16>.

The Grant Administrator accepts and acknowledges its responsibility for requiring and obtaining similar warranties and certifications required under this Clause from each and every approved subcontractor whose service the Grant Administrator has secured in connection with the Services and shall forward such evidence to the Authority as to its compliance with this requirement.

If available, the certifications issued by the Department of Treasury of Puerto Rico, the Department of Labor and Human Resources of Puerto Rico, the Municipal Revenue Collection Center, and the Child Support Administration may also be provided through the Single Debt Certification ("*Certificación Única de Deuda*") established in Act 85-2009, as amended, known in Spanish as "*Ley de Certificados y Comprobantes Electrónicos*", in order to evidence the Grant Administrator's compliance with the concerned government agencies.

Any person engaged by the Grant Administrator other than its principals, partners and employees in accordance with the conditions herein established who

dedicates twenty-five percent (25%) or more of his or her time to provide Services related to the Agreement shall be considered subcontractors for the purposes of this Clause. Notwithstanding anything herein to the contrary, the Grant Administrator shall have the right to rely conclusively on the aforementioned certifications from government agencies in making the representations in this Clause.

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

A. **Department of Treasury of Puerto Rico:** Pursuant to Executive Order Number OE-1991-24 of June 18, 1991 (“EO-1991-24”) and Act No. 237-2004, as amended, the Grant Administrator hereby certifies and guarantees that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. The Grant Administrator, further certifies that it has complied and is current with the payment of any and all income taxes that are or were due to the Government of Puerto Rico. In compliance with this Clause, the Grant Administrator certifies that at the execution of this Agreement it has presented to the Authority the corresponding certifications issued by the Department of Treasury of Puerto Rico (the “Department of Treasury”). The Grant Administrator shall also provide, and whenever requested by the Authority during the term of this Agreement, any other documentation necessary to support its compliance with this Clause. The Grant Administrator will be given a specific amount of time by the Authority to produce said documents. During the term of this Agreement, the Grant Administrator agrees to pay and/or to remain current with any repayment plan agreed to by the Grant Administrator with the Government of Puerto Rico. *Executive Order 1991OE24.*

B. **Department of Labor and Human Resources of Puerto Rico:** Pursuant to Executive Order Number 1992-52 of August 28, 1992, which amends EO-1991-24, the Grant Administrator hereby certifies and warrants that it has made and will continue to make all payments required for unemployment benefits, workmen’s compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. In compliance with this Clause, the

Grant Administrator certifies that at the execution of this Agreement it has presented to the Authority the corresponding certifications issued by the Department of Labor and Human Resources of Puerto Rico. *Executive Order 1992OE52*.

- C. **Department of State of Puerto Rico**: The Grant Administrator shall provide to the Authority a certificate of incorporation and a Good Standing Certificate issued by the Department of State of Puerto Rico as proof that it is duly authorized to do business in Puerto Rico and has complied with its annual filing obligations.
- D. **Municipal Revenue Collection Center**: (known in Spanish as “*Centro de Recaudación de Ingresos Municipales*”, and hereinafter referred to by its acronym “CRIM”): The Grant Administrator hereby certifies and guarantees that it does not have any current debt with regards to real and personal property taxes that may be registered with CRIM. The Grant Administrator further certifies that it is current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico or any instrumentality thereof. In compliance with this Clause, the Grant Administrator certifies that at the execution of this Agreement it has presented to the Authority the corresponding certifications issued by CRIM. The Grant Administrator shall also provide, whenever requested by the Authority during the term of this Agreement, any other documentation necessary to support its compliance with this Clause. The Grant Administrator agrees to pay and/or to remain current with any payment plan agreed to by the Grant Administrator with the Government of Puerto Rico with regards to its property taxes. 3 L.P.R.A. § 8611 et seq.; 21 L.P.R.A. § 5001 et seq.
- E. **Child Support Administration** (known in Spanish as “*Administración para el Sustento de Menores*”, and hereinafter referred to by its acronym, “ASUME”): The Grant Administrator certifies that neither the Grant Administrator nor any of its owners, affiliates or subsidiaries, if applicable, have any debt or legal procedures to collect child support payments registered with ASUME. In compliance with this Clause, the Grant Administrator certifies that at the execution of this Agreement it has presented to the Authority the corresponding certification issued by ASUME. 3 L.P.R.A. § 8611 et seq.
- F. **Social Security and Income Tax Withholdings**: In compliance with EO-1991-24 and C.F.R. Part 404 et. seq., the Grant Administrator will be responsible for paying the Federal Social Security and Income Tax Contributions for any amount owed as a result of the income from this Agreement. *Executive Order 1991OE24*; C.F.R. Part 404 et. seq.
- G. **Income Tax Withholdings Law**: The Grant Administrator is an independent contractor and, as such, agrees and acknowledges that it has sole responsibility and liability for any and all taxes, contributions,

penalties, interest, licenses, fees or other sums payable in connection with the fees and expenses paid pursuant to this Agreement, including, without limitation, any Commonwealth, federal and local income taxes, tax withholdings, excise taxes, sales and use taxes, payroll taxes, municipal taxes and any other taxes applicable under the tax laws of Puerto Rico, the United States, or any other jurisdiction, as such laws may be amended from time to time. Notwithstanding the foregoing, unless the Grant Administrator provides to the Authority a waiver or exemption certificate issued by the Department of the Treasury, the Parties hereby agree that the Authority shall withhold and submit to the Department of the Treasury all amounts required to be withheld pursuant to the Puerto Rico Internal Revenue Code of 2011, as amended from time to time, and any other taxes required to be withheld under any applicable laws, as amended from time to time. In addition to the foregoing, if applicable, the Authority shall also withhold the special contribution of one point five percent (1.5%) of the gross amounts paid under this Agreement as required by Act No. 48-2013, as amended, and shall forward such withholdings to the Department of Treasury. The Authority will also notify the Department of Treasury of all payments and reimbursements made to the Grant Administrator. 2011 L.P.R. 232; 3 L.P.R.A. §8611.

- H. **Enabling Act of the Office of Government Ethics of Puerto Rico, Act No. 1-2012, as amended:** The Grant Administrator certifies that it is in compliance with Act No. 1 of January 3, 2012, as amended, known as the Enabling Act of the Office of Government Ethics of Puerto Rico (“Act No. 1-2012”).
- I. **Act for the Improvement of Family Assistance and for the Support of the Elderly, Act. No. 168-2000, as amended:** The Grant Administrator hereby certifies that if there is any judicial or administrative order demanding payment or any economic support under the Act for the Improvement of Family Assistance and for the Support of the Elderly (known in Spanish as “*Ley de Mejoras al Sustento de Personas de Edad Avanzada de Puerto Rico*”), Act. No. 168-2000, as amended, the same is current and in all aspects in compliance. 8 L.P.R.A. §711 et seq.
- J. **Agreement Registration in the Office of the Comptroller of Puerto Rico, Act No. 18 of October 30, 1975, as amended:** Payment for Services rendered under this Agreement will not be made until this Agreement is properly registered in the Office of the Comptroller of Puerto Rico pursuant to Act No. 18 of October 30, 1975, as amended.
- K. Code of Ethics for Contractors, Suppliers, and Applicants for Economic Incentives of the Government of Puerto Rico, Chapter III of Act No. 2-2018: The Grant Administrator hereby recognizes and agrees that it shall be bound by and comply with all applicable provisions of the Code of Ethics for Contractors, Suppliers, and Applicants for Economic Incentives

of the Government of Puerto Rico (known in Spanish as “*Código de Ética para Contratistas, Suplidores y Solicitantes de Incentivos Económicos del Gobierno de Puerto Rico*”), Chapter III of Act No. 2-2018. The Grant Administrator acknowledges that it has received a copy of Act 2-2018, and agrees to abide and comply with its dispositions.

L. **Certification of other government agreements:** The Grant Administrator hereby certifies that, at the time of execution of this Agreement, it does not have any other agreement with any agency, public corporation, municipality, or instrumentality of the Government of Puerto Rico, except for:

1. [INSERT NAME]

The Grant Administrator certifies that said agreements are not in conflict with the Services provided hereunder.

M. **Negative Certification of Criminal Procedures:** The Grant Administrator certifies and guarantees that, at the execution of this Agreement and to the best of its knowledge, neither the Grant Administrator, nor any of its partners, associates, officers, directors, employees, agents or subcontractors have been convicted or have been found guilty in any Puerto Rico or United States Federal court for any of the crimes included under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, any of the crimes listed in Articles 250 through 266 of Act No. 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes under Act No. 2-2018 or any other felony that involves misuse of public funds or property, including, but not limited to the crimes mentioned in Article 6.8 of Act No. 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico (“Act No. 8-2017”). The Authority shall have the right to terminate this Agreement in the event the Grant Administrator is convicted in a Puerto Rico or United States federal court for any of the aforementioned crimes.

Furthermore, neither the Grant Administrator, nor any of the aforementioned persons, has knowledge of any of the foregoing being the subject of any investigation in either a civil or a criminal procedure in a state or federal court, for criminal or civil charges related to the public treasury, the public trust, a public function, or a fault that involves public funds or property. If the status of the Grant Administrator or any of its partners, associates, officers, directors, employees, agents or subcontractors, with regards to the charges previously mentioned should change at any time during the term of the Agreement, the Grant Administrator shall notify the Authority immediately. The failure to comply with this responsibility constitutes a violation of this Clause.

In addition to the foregoing, Act No. 2-2018 requires that any person or entity who wishes to be granted a contract with any municipality,

agency, instrumentality or public corporation of the Government of Puerto Rico for the rendering of services must submit a sworn statement signed before a notary public stating neither the Grant Administrator nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for the Grant Administrator, has been convicted or has plead guilty to any of the crimes listed under Article 6.8 of Act No. 8-2017 or any of the crime included in Act No. 2-2018.

- N. **Investment Act for the Puerto Rican Industry, Act No. 14-2004, as amended:** In compliance with the dispositions of Act No. 14-2004, known as the Investment Act for the Puerto Rican Industry, the Grant Administrator shall use articles extracted, produced, assembled, packaged or distributed by companies with operations in Puerto Rico or distributed by agents established in Puerto Rico while rendering the Services, provided such articles are available.
- O. **Consequences of Non-Compliance:** The Grant Administrator expressly agrees that the conditions outlined throughout this THIRTEENTH Clause are essential requirements of this Agreement. Consequently, should any one of these representations, warranties, and certifications be incorrect, inaccurate or misleading, in whole or in part, there shall be sufficient cause for the Authority to render this Agreement null and void and to seek via remedies available at law to require that the Grant Administrator reimburse to the Authority all moneys received under this Agreement.

20. FOURTEENTH - INSURANCE

The Grant Administrator represents that as of the date of execution of this Agreement, it maintains professional liability insurance coverage for errors, omissions and negligent acts that may arise from the Services rendered under this Agreement in the minimum amount of [TBD].

The Grant Administrator also represents that as of the date of execution of this Agreement, it maintains Commercial General Liability insurance in the minimum amount of [TBD].

With respect to the Commercial General Liability insurance policy, the certification to be provided by the Grant Administrator must include an endorsement identifying the Authority as Additional Insured as respects to the Grant Administrator's activities hereunder and provide Hold Harmless Agreement Clause as respects to the Grant Administrator's indemnity obligations under the first paragraph of Clause FIFTEENTH below, pursuant to all policy terms and conditions. Also, the certificates should include the following or similar cancellation notice:

“CANCELLATION CLAUSE: It is understood and agreed that in the event of cancellation of this policy at the request of the insurance company, thirty (30) days written notice shall be given to the above mentioned additional insured,

PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY. However, it is agreed that if cancellation is due to non-payment of premium, ten (10) days written notice will be given”.

In any case, notice shall not be required if replacement insurance meeting all requirements and specifications herein is obtained without lapse and the corresponding insurance certificate is timely provided by the Grant Administrator to the Authority.

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

21. FIFTEENTH - LIABILITY FOR LOSSES OF THE AUTHORITY

If the Authority suffers any damages, losses, liabilities, and expenses (including reasonable attorneys’ fees and expenses) (collectively, a “Loss” or “Losses”) arising from a third party claim brought against the Authority for bodily injury, including death, or damage to real or tangible personal property to the extend directly and proximately caused by the Grant Administrator’s breach of its obligations hereunder or negligence or intentional misconduct while engaged in performing its obligations hereunder, the Grant Administrator shall defend, indemnify and hold harmless the Authority and any entity of the Executive Branch from and against such Losses.

In no event will either Party be liable to the other Party for incidental, consequential, special, or punitive damages (including loss of profits, data, business or goodwill, or government fines, penalties, taxes, or filing fees), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose, statutory liability or otherwise, and even if advised of the likelihood of such damages. The Grant Administrator and Authority and any applicable entity of the Executive Branch hereby agree to use reasonable efforts to mitigate any and all damages and other Losses to the Authority and any entity of the Executive Branch. To the extent permitted by law, all claims and Losses relating to, directly or indirectly, or arising from this Agreement (including the Services), however caused, regardless of the form of action and on any theory of liability, including contract, strict liability, negligence or other tort, shall be brought under and shall be subject to the terms of this Agreement, and the Grant Administrator’s aggregate liability for the same shall in no event exceed the total amounts paid to the Grant Administrator under this Agreement.

22. SIXTEENTH - INFORMATION PROVIDED BY THE AUTHORITY

The Authority will submit to the Grant Administrator all information in Authority's control necessary for the Grant Administrator to perform the Services covered by this Agreement. The Services are not of a legal nature, and the Grant Administrator will in no event give, or be required to give, any legal opinion or provide legal representation to the Authority. The Authority is responsible for the accuracy and completeness of the information submitted to the Grant Administrator in order to perform the Services and agrees to notify the Grant Administrator, as soon as possible, of any problems or errors in such information that the Authority becomes aware of.

23. SEVENTEENTH - GRANT ADMINISTRATOR NOT ENTITLED TO RIGHTS

The execution of this Agreement shall not generate any rights for the Grant Administrator, its employees, officers, directors, agents, successors, assignees or subcontractors to receive any benefits that the officers or employees of the Authority, the Government of Puerto Rico or of any agency, instrumentality or municipality may be entitled as officers or employees of the Authority and the Government of Puerto Rico pursuant to law or regulation including, but not limited to, vacation and sick leave, workmen's compensation, or any other such benefits.

24. EIGHTEENTH - WAIVERS

The Grant Administrator certifies that it is not required to obtain a waiver from any Puerto Rico government entity prior to or in connection with the execution of this Agreement or that, to the extent any such waiver is required, the same has been obtained by the Grant Administrator prior to the execution of this Agreement.

25. NINETEENTH - SEVERABILITY

Both Parties agree that the illegality of any of the provisions of this Agreement shall not invalidate it as a whole. In such case, if any clause or condition of this Agreement is declared null and void by a competent court of law, the remaining parts of this Agreement shall remain in full force and effect.

26. TWENTIETH - GOVERNING LAW AND VENUE

This Agreement and any dispute relating to the Services will be governed by and construed, interpreted and enforced in accordance with the laws of Puerto Rico. The court and authorities of Puerto Rico shall have exclusive jurisdiction over all controversies that may arise with respect to this Agreement. The Parties hereby waive any other venue to which they might be entitled by virtue of domicile or otherwise. Should either Party initiate or bring suit or action before any other court, it is agreed that upon application, any such suit or action shall be dismissed, without prejudice, and may be filed in accordance with this provision.

The Party bringing the suit or action before a court not agreed to herein shall pay to the other Party all the costs of seeking dismissal including reasonable attorney's fees.

27. TWENTY-FIRST - SOLE AGREEMENT; NO THIRD PARTY BENEFICIARIES

It is understood that this Agreement is the sole agreement between the Parties with regard to the Services covered hereby and supersedes any prior agreements, written or verbal. The Agreement may not be changed orally, but may be amended in writing by mutual agreement of the Parties. There shall be no third party beneficiaries to this Agreement, provided however, that the Parties may agree to otherwise through a written amendment to this Agreement in the event that it is necessary to provide services for the benefit of any other entity of the Executive Branch in accordance with the provisions of the FIRST Clause above.

28. TWENTY-SECOND - COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original instrument, but all of which taken together shall constitute one instrument.

[SIGNATURES ON THE NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto set their hands in San Juan, Puerto Rico, as of this [INSERT DATE].

PUERTO RICO FISCAL AGENCY AND
FINANCIAL ADVISORY AUTHORITY

[INSERT NAME]

[CONTRACT NUMBER]

[FIRM NAME]

APPENDIX INDEX

- I. Scope of Services
- II. Technical Proposal
- III. Financial Proposal
- IV. Schedule
- V. Key Milestones Performance Table
- VI. [Budget]
- VII. AAFAF billing guidelines

29. APPENDIX I – Scope of Services

1. Scope of Services

The Government Parties are seeking proposals from firms to provide Grant Administrator Services. Specifically, the Grant Administrator Services will include, but are not limited, to the following four key areas:

- Broadband Assessment Services and Project Structuring
- Grant Administration Services
- Technology and Policy Services
- Collaborating with Government Parties

The Proponent must demonstrate that it possesses all grant administration, technology and policy capabilities to successfully execute the Services. The Proponent can be composed of a Lead Team Member (as defined in 5.1.1) and one or more Team Members (as defined herein). In areas where the Lead Team Member does not currently have the in-house capacity to carry out the Scope of Work as detailed in the following sub-sections, it is understood that the Lead Team Member, will either team with other firms, subcontract other firms or persons, and/or retain professional services (e.g. legal, technical, or financial advisors; collectively the “Team Members”) as required to fulfill the Scope of Work.

1.1 Broadband Assessment Services

The Grant Administrator will be responsible for conducting a baseline assessment of broadband availability in Puerto Rico as well as coordinating ongoing monitoring of changes in broadband coverage due to Grant projects as well as outside infrastructure investments. The Grant Administrator will also be responsible for publishing and updating the assessment results in the form of a publicly-accessible Puerto Rico broadband access map. AAFAF currently anticipates that the Grant Administrator’s Broadband Assessment Services will include, but are not limited to, the following:

29.1.1 Update the 2015 Puerto Rico Broadband Strategic Assessment, including assessment of current levels of broadband service provision across Puerto Rico (including outreach to service providers, ground-truthing of results, and georeferencing of information).

- 29.1.2 Publish a publicly-available, user-friendly digital map of the results of the baseline assessment, including establishing protocols and agreements for continual updating of data to reflect up-to-date coverage and establishing procedures for data provision from Grant projects.
- 29.1.3 Identify and prioritize key broadband needs across Puerto Rico based on the results of the baseline assessment, particularly related to unserved or under-served (i) K-12 schools, (ii) anchor institutions (including hospitals, schools, and government buildings), (iii) socio-economically disadvantaged areas, and (iv) rural areas.
- 29.1.4 Assess potential environmental challenges and/or vulnerability of the current and potential broadband network in order to determine key goals for the sustainability and resiliency of the network.
- 29.1.5 Analyze and incorporate data collected from Grant projects pursuant to grant monitoring and data sharing agreements.
- 29.1.6 Establish and record standard operating procedures to ensure continuity of Broadband Assessment Services.
- 29.1.7 Based on the results of the Assessment, identify and map coverage provided by existing broadband suppliers in Puerto Rico, identifying providers by technology type provided, business model, and operating structure.
- 29.1.8 Identify existing backbone and right of way infrastructure that can be leveraged to expand services (e.g. State or municipal ROW, utility poles, existing public or private conduit or fiber).
- 29.1.9 Identify key regional gaps in service provision to identify target areas for network expansion.
- 29.1.10 Based on industry expertise and the results of the Assessment, identify preferred solutions to bring connectivity to target service areas, providing geographically-specific recommendations for technology type, discussing feasible operating models, and identifying key constraints/phasing required (i.e. fiber backbone installation as a prerequisite to last-mile connectivity).
- 29.1.11 Identify logical regional groupings for potential Grant projects, identifying preferred project scope, size, and phasing (e.g. phasing for

separate backbone, middle-mile, and last-mile projects; likely service boundaries for individual providers; feasible technology types, etc.). What are the boundaries of these areas? What technologies are being targeted? What is the expected scope of the project?).

1.2 Grant Administration Services

The Grant Administrator will be directly responsible for administering a grant program to support the build-out of infrastructure to improve broadband access in unserved and underserved areas of Puerto Rico. AAFAF currently anticipates that the Grant Administrator's Grant Administration Services will include, but are not limited to, the following:

- 1.2.1 Develop high-level goals and strategic criteria for the Grant program based on the updated Broadband Assessment, existing strategic plans and service levels. Goals should identify key target areas, key anchor institutions, permitted/preferred technology types, permitted/preferred operating and business models, minimum and maximum grant sizes, disbursement schedules, and desired level of service.
- 1.2.2 Support the Government Parties in the establishment of a committee, including the development of its rules, bylaws and procedures, which will oversee and provide guidance to the Grant Administrator as it relates to the Grant Administration Services and ultimately approval of any Grants to be awarded by the Grant Administrator (the "Grant Committee"). The Grant Committee members shall be designated following the same parameters as those for the Evaluation Committee, as further defined in Section 7.1 below.
- 1.2.3 Develop and revise (as needed) a standardized, transparent, and user-friendly Grant application process, including development of the Grant application. The application process should include both financial (e.g. amount of subsidy required) and socio-economic (e.g. number of anchor institutions served, number of people or businesses served, income level or serviced region) metrics, and should include procurement and contracting mechanisms to encourage competition and incentivize grantees/providers to leverage additional public and private funds.

- 1.2.4 Formulate and establish clear, standardized Grant management procedures to ensure ongoing regulatory compliance, monitoring and performance management in accordance with the Government Parties' specific regulations and FOMB review and approval. Procedures should include a robust monitoring and evaluation plan based on key performance indicators as well as a damages regime for non-compliance, and should be appropriately structured to allow for milestone and/or service level-based disbursement.
- 1.2.5 Develop a template contract for selected Grantees, specifying (as applicable) key terms including contract length, performance standards, construction and service rollout schedules, permitted ownership structure(s), competitive access requirements, regulatory compliance requirements, environmental controls, grant reporting and data sharing requirements, monitoring and oversight procedures, and hand-back provisions. Given that the finalized template contract will require FOMB approval, review and revision from the FOMB should be incorporated at this stage.
- 1.2.6 Lead marketing and outreach to attract eligible Grant applicants, in partnership with the Government Parties and/or the Grant Committee.
- 1.2.7 Establish a process for receipt and evaluation of Grant applications, including both financial evaluation of proposed projects as well as non-financial evaluation based on alignment with established goals and evaluation criteria.
- 1.2.8 Administer the Grant application process, including but not limited to: (i) registration procedures, (ii) establishment and administration of a centralized electronic data room of all applications, (iii) assistance in eligibility determinations and approval process, (iv) evaluation of Grant applications based on determined qualitative and quantitative metrics; (v) ensuring that Grant applicants are fully capable and qualified to perform the described work and have obtained all requisite licenses and permits to perform such obligations, and (vi) ensuring regulatory, legal, and environmental compliance of proposed Grant projects.
- 1.2.9 Develop a performance-based disbursement plan and support the Government Parties in disbursing funds to selected Grantees pursuant to the Grant Committee's established guidelines and regulations applicable to the Grant Program, as well as any

disbursement guidelines established by the Grant Administrator. Disbursement of Grant Funds will be made only after FOMB approval of the GAA. Any work performed by the Grantees or any subcontractor in connection with the Grant program prior to FOMB's approval of the Contract will be at the Grantee's risk.

- 1.2.10 Lead the contracting process for selected Grantees based on the established template contract, including (i) finalizing technically sound and enforceable performance standards, (ii) finalizing realistic schedules for required rollout of Grantee projects, including, as applicable, timing of construction milestone payments and binding performance targets for each phase, (iii) finalizing an integrated monitoring and disbursement regime to incentivize Grantees to meet performance standards in accordance with the established schedule, (iv) acting as counterpart to Grantee contracts, (v) leading contract negotiations, and (vi) establishing training and hand-off procedures for oversight, monitoring, and disbursement roles at the close of the Grant Administrator contract term.
- 1.2.11 Support the Government and/or the Grant Committee in providing advisory and permitting support services to grant recipients throughout the design, implementation and operations of their broadband build-outs.
- 1.2.12 Conduct and coordinate ongoing monitoring of Grantee projects to ensure contract and regulatory compliance, including levying of established penalties for non-compliance with construction and service milestones. Conduct handoff procedures for performance-based disbursement agreements as established in Grant contracts, including, as necessary, technical training and legal transfer of oversight responsibility to the successor entity.
- 1.2.13 Monitor ongoing Grants reporting, data collection and other accountability measures to ensure that funded projects deliver the promised services (key performance indicators) as well as evaluate overall progress towards identified goals. The Grant Administrator, and any successor entities, shall advise FOMB as to the status of funded projects at least one (1) time per year after Grantee selection is completed and for a period of at least three (3) years after completion of the Grantee selection.
- 1.2.14 Develop dashboards and/or reports illustrating key results and progress towards identified goals.

1.2.15 Retain all records, documents, and communications of any kind (including electronic disk or print form) that relates in any manner to grant awards and project procurement and performance.

1.2.16 Support the Government Parties in the establishment of Grant Administration closeout procedures and execute Grant Administration closeout.

1.3 Technology and Policy Services

1.3.1 Work with a Broadband Infrastructure Taskforce composed of Puerto Rico industry experts to develop recommendations regarding streamlining of construction permitting and planning; sustainable leveraging of existing public assets, such as poles, ducts, conduits, and rights-of-ways; and incentivizing of private broadband investments. In the case that the Broadband Infrastructure Taskforce is not reconstituted, the Grant Administrator can create a Broadband Infrastructure Advisory Committee of Puerto Rico industry experts that will provide recommendations as described herein.

1.3.2 Based on the Broadband Assessment, industry standards and Proponent experience, develop technology-specific inputs to (i) Grant program goals and criteria (i.e. standards for capacity and speeds, preferred/permitted technology types) and (ii) the template Grant contract, (i.e. contract lifetimes based on useful life/technology refreshment periods, right-of-way allocations).

1.3.3 Based on the defined goals, determine an approach to support expanded broadband coverage and adequate capacity and speeds in K-12 Schools and other community anchor institutions, such as higher education and healthcare institutions.

1.3.4 Provide technology-specific inputs to the Grant management procedures, including development of quality control standards and required insurance regime.

1.3.5 Develop industry-based performance standards for service rollout and support in establishment of a realistic construction and service rollout schedule for incorporation into the Grantee template contract.

- 1.3.6 Maintain technical capabilities that allow the Grant Administrator to evaluate and assess grant applications based on technology drivers including, but not limited to: (i) technology selection (Broadband Assessment data indicators, cost comparisons, practicality of adoption, connection points, user needs, technology refresh, innovation specific to deployment environment, resiliency); (ii) review of technical designs; (iii) review of operating structure and business model proposals, (iv) flexibility and resiliency of proposed models.
- 1.3.7 Lead services related to supporting permitting, securing right-of-way and environmental controls.
- 1.3.8 Lead technical aspects of ongoing monitoring and evaluation, including monitoring installation and testing service provision.
- 1.3.9 Provide advisory services to the Government Parties and/or the Grant Committee regarding different types of procurement models, permitting and securing of right-of-way, main business models currently in place or proposed, key gaps in the current state of broadband service provision, advantages and disadvantages of proposed operating and infrastructure models for broadband service expansion, technology innovation, and implementation of fiber regional backbone or last-mile connectivity infrastructure.

1.4 Collaboration with Government Parties and other Third Parties

- 1.4.1 In collaboration with the Government Parties and broadband and telecommunications stakeholders, work to streamline constructing permitting and planning and to leverage existing public assets (e.g. poles, ducts, conduits, and right-of-way) for broadband provision.
- 1.4.2 In partnership with the Government Parties, Federal Government and public and private stakeholders, collaborate to assess and map current coverage and prioritize various opportunities for broadband expansion in unserved and underserved areas.
- 1.4.3 Collaborate with the Government Parties to develop hand-off procedures or assist in establishment of a permanent institution to continue and maintain Broadband Assessment Services.

1.4.4 Leverage Federal resources and support for broadband expansion, including but not limited to those identified in Section 1.4 above, by working to provide timely information and strategic planning support to broadband providers that can leverage funding opportunities provided by the FCC, USDA, NTIA and others.

30. APPENDIX II – Technical Proposal

[Grant Administrator's Proposal]

31. APPENDIX III – Financial Proposal

[Grant Administrator's Financial Proposal]

[CONTRACT NUMBER]

[FIRM NAME]

32. APPENDIX IV – Schedule

[from Grant Administrator's Technical Proposal]

[CONTRACT NUMBER]

[FIRM NAME]

33. APPENDIX V – Key Milestones Performance Table

Summary Report: Key Milestones Performance Table

Year:								
Scope of Services Ref.	Key Milestones	Scheduled Completion Date	Anticipated % Complete Q4 end	Report Qtr 1	Report Qtr2	Report Qtr3	Report Qtr4	On Track?
				[Date]	[Date]	[Date]	[Date]	
		Per Schedule	Only applies to current year activities	Percent Complete				Y/N
Broadband Assessment Services								
1.1.1	Complete Broadband Assessment							
1.1.2	Publish online digital map							
1.1.10 - 1.1.11	Identify preferred solutions and regional groupings							
Grant Administration Services								
1.2.1	Develop high-level goals and strategic criteria for the Grant program							
1.2.2	Establish Grant Committee							
1.2.3	Finalize Grant application							
1.2.4	Finalize Grant management procedures							

1.2.5	Finalize template contract							
1.2.8	Open Grant application process							
1.2.8	Conclude selection process							
1.2.9	Finalize disbursement plan							
1.2.10	Finalize all Grant contracts with selected Grantees							
1.2.12	Develop monitoring and compliance plan							
	Technology and Policy Services							
1.3.1	Develop Broadband Taskforce recommendations							
1.3.3	Finalize anchor coverage plan							
1.3.5	Finalize Grantee project performance standards							
	Collaboration with Government Parties and other Third Parties							
1.4.3	Finalize hand-off procedures							

34. APPENDIX VI – Budget

[From Grant Administrator's Financial Proposal]

35. APPENDIX VII – AAFAF Billing Guidelines

[INSERT BILLING GUIDELINES]