



## **PROFESSIONAL SERVICES AGREEMENT**

1. **PARTIES.** The parties to this Agreement are **Foundation for Puerto Rico, Inc. ("FPR")**, a charitable organization under Section 1101.01 (a) (2) (A) of the Puerto Rico Internal Revenue Code and public charity under Section 501 (c) (3) of the United States Internal Revenue Code, with principal offices at 1500 Calle Antonsanti, Suite K-Colaboratorio, San Juan, Puerto Rico, represented herein by its CFO, Damaris Ocasio, of legal age, married, and resident of Caguas, Puerto Rico, and the undersigned \_\_\_\_\_ ("**Contractor**"), a \_\_\_\_\_ organized and existing (or authorized to work) under the laws of Puerto Rico, with offices at \_\_\_\_\_ represented herein by its \_\_\_\_\_, \_\_\_\_\_, of legal age, \_\_\_\_\_, and a resident of \_\_\_\_\_ (collectively, the "Parties").

2. **FUNDING SOURCE.** Funding for this Agreement is made available by the U.S. Department of Housing and Urban Development ("HUD") via the Puerto Rico Department of Housing's ("PRDOH") Community Development Block Grant - Disaster Recovery ("CDBG-DR") Program, Grant or Subrecipient Agreement ("SRA") number 2019-000064, hereafter referred to as the "Funding Source". Accordingly, FPR has obtained written consent from the PRDOH prior to the execution of this Agreement and will cause all of the provisions of the above mentioned SRA to be included in their entirety and made part of the Agreement executed between the Parties. Notwithstanding the foregoing, neither HUD or the PRDOH are a party to this Agreement and, therefore, are not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from this Agreement. Nothing contained under this Agreement will create any contractual relation between the Contractor and HUD or the PRDOH. Nothing contained in this Agreement shall impair the rights of the PRDOH under CDBG-DR Program.

3. **TERM OF AGREEMENT.** This Agreement shall be in effect and enforceable between the Parties from the date of its execution until \_\_\_\_\_, (hereinafter, the "Term") unless otherwise modified or terminated in accordance with the provisions contained henceforth.

4. **ATTACHMENTS.** The following attachments are incorporated into this Agreement by reference and are hereby made an integral part of this Agreement:

<b>Attachment A</b>	Notice of Award
<b>Attachment B</b>	Proposal
<b>Attachment C</b>	Scope of Services/ Scope of Work
<b>Attachment D</b>	Budget and/or Payment Schedule
<b>Attachment E</b>	Additional Performance Requirements (if applicable)
<b>Attachment F</b>	Insurance Requirements (if applicable)
<b>Attachment G</b>	Federal Grant Provisions

5. **PURPOSE.** This Agreement sets forth the terms and conditions under which the Contractor will perform for FPR the services set forth in **Attachment C** (hereinafter, the "Services"). Contractor will work with and under the direction of FPR to satisfy the requirements outlined in **Attachment C**, subject to the terms and conditions of this Agreement and any applicable laws, regulations or policies pertaining to the above Funding Source. This Agreement for the performance of the Services before mentioned was awarded on a fair and open competition basis in accordance with applicable procurement requirements, as included in the current *CDBG-DR Procurement Manual and Contractual Requirements*.

6. **PAYMENTS.** During the Term of this Agreement, FPR agrees to pay the Contractor for allowable Services rendered under this Agreement in accordance with the rates and amounts set forth in **Attachment D**. FPR will pay the Contractor, for allowable Services performed during the Term of this Agreement a maximum amount not to exceed \$ \_\_\_\_\_ **DOLLARS AND** \_\_\_\_\_ **CENTS**

(\$\_\_\_\_\_). FPR will not pay for Services by the Contractor not included under this Agreement. Any additional funds to complete the Services requested by FPR to the Contractor will be subject to evaluation before acceptance, as well as funds availability, and will require an amendment to this Agreement. The Contractor may submit an invoice to FPR on a monthly basis or as established on **Attachment D**, as the services are rendered. Said invoice must be submitted to FPR including all required invoice supporting documents, including but not limited to performance reports, timesheets, work projections and all other related evidence of services performed. If FPR determines that the submitted invoice and supporting documents are acceptable, then the invoice will be approved for payment. FPR's obligation to pay Contractor shall not be contingent on the performance of any party other than Contractor. All expenses must be incurred within the Term of this Agreement.

**7. CHANGES OR MODIFICATION OF AGREEMENT.** Except with respect to a change in address for notices, any changes or modifications to this Agreement, or additional obligation(s) assumed by either FPR or the Contractor in connection with this Agreement, shall be binding only by a written document signed by the authorized representatives of both Parties. These amendments shall make specific reference to this Agreement and the specific parts modified or changed, but shall not invalidate the rest of the Agreement nor relieve or release the Parties from their obligations under this Agreement. Changes or modifications in addresses for notices may be executed by written communication through electronic mail or letter by mail or hand delivered.

**8. TERMINATION OF AGREEMENT.** This Agreement terminates as established in the third Clause of this Agreement, unless: a) the Term of Agreement is extended following the foregoing provisions for changes or modifications to this Agreement; b) upon thirty (30) days prior written notice, if the Agreement is sooner terminated by Contractor or by FPR, with or without cause, for any reason or no reason; c) or without the above prior written notice, if a party sooner terminates this Agreement based on the other party's material breach of this Agreement or based on any other cause which the terminating party deems to be a reasonable exercise of discretion which is incompatible with a thirty-day continuation of the Agreement, including but not limited to: gross subcontracting services to be rendered under this Agreement, negligence, a deliberately wrongful act, theft of property, dishonesty, and/or the commission of a felony.

**9. NOTICE.** Notice from one party to another relating to this Agreement is effective if made in writing and delivered to the recipient's address by any of the following means: (a) hand delivery, (b) ordinary first class mail with postage prepaid, (c) registered or certified mail, postage prepaid, with return receipt requested, (d) first class or express mail, postage prepaid, (d) Federal Express, U.P.S., or like overnight courier service or (e) fax, e-mail, or other transmission with request for assurance of receipt in a manner typical with respect to communications of that type. A notice made in accordance with this section is deemed delivered upon receipt if delivered by hand or wire transmission, fax, e-mail, or electronic transmission; on the third business day after mailing if mailed by first class, registered or certified mail; or on the next business day after mailing or deposit with an overnight courier service if delivered by express mail or overnight courier. The following information shall be used for notices until it is changed by using the prior change or modification procedure established in this Agreement:

FPR: Foundation for Puerto Rico  
1500 Calle Antonsanti  
Suite K – Colaboratorio  
San Juan, Puerto Rico 00912  
Attn: Damaris Ocasio/ Soledad  
Gaztambide

Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**10. CONTRACTOR'S WORK FOR FPR.** Contractor will give time and attention to the Services to the extent necessary to perform them in a competent, non-negligent, thorough, and in a timely manner. The Contractor has no authority to act for or on behalf of FPR or to bind FPR without FPR's express written consent. The Contractor agrees that this is a professional services contract, and the rights and obligations hereunder may not be assigned or delegated without FPR's prior written consent. The Contractor shall not, under any circumstance, subcontract any of its responsibilities under this Agreement; doing so may warrant termination of service for cause, as specified in eighth Clause of this Agreement. The work or Services performed by the Contractor shall be in accordance with all the terms and conditions set forth in this Agreement, and must be in accordance with the applicable terms of the SRA between the PRDOH and FPR. Any additional performance requirements or conditions for this Agreement will be included in **Attachment E**.

**11. COMPLIANCE AND MONITORING.** FPR will be responsible for ensuring that all of the Contractor's work is performed in compliance and consistent with federal and state regulations and/or policies to be eligible for payment of the approved work. FPR will monitor all contracted services on a regular basis to assure contract compliance, and that results of monitoring efforts will be summarized in written reports to the PRDOH and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

**12. WARRANTY OF PERFORMANCE.** Contractor warrants that the Services will be performed in a workmanlike manner in conformance with generally accepted professional and industry standards, and that all materials and other products delivered and Services performed will materially comply with the requirements of this Agreement, any attached exhibits, attachments and schedules and all applicable federal, state, and local laws and regulations. Contractor represents and warrants that it has all of the necessary facilities and qualified resources to provide the Services in accordance with the terms of this Agreement. Contractor warrants that it will perform all work and provide all deliverables under this Contract in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Contractor warrants that all deliverables it completes under this Agreement shall: meet or exceed the standards of Contractor's trade, profession, or industry; meet or exceed the specifications set forth in the Attachments to this Agreement; and be fit for ordinary use, of good quality, and with no material defects. If Contractor submits deliverables that do not meet specifications, fails to complete deliverables in time, or fails to perform its obligation under this Agreement, FPR may require Contractor, at its sole expense, to: repair or replace deliverables that do not meet specifications; refund payment for deliverables that do not meet specifications and accept the return of such deliverables; pay liquidated damages for any past due deliverable in the amount as determined by agreement of both Parties; and take necessary action to ensure that future performance and deliverables meet specifications and conform to this Agreement.

**13. LICENSES.** Contractor will maintain applicable federal, state, and local licenses, certifications, and permits, without restriction, required to render the Services. Contractor will notify FPR in writing within five (5) days of any suspension, revocation, condition, limitation, qualification, or other restriction on Contractor's licenses, certifications, or permits that in any way affect the provision of Services described in this Agreement. Upon FPR's request, Contractor will provide FPR copies and evidence of all applicable licenses and required documentation that enables the operation of the business.

**14. REQUIRED COVERAGE.** During the term of this Agreement, the Contractor shall keep in force and effect all insurance policies in compliance with FPR's requirements as set forth in **Attachment F** of this Agreement.

**15. INDEPENDENT CONTRACTOR.** The Contractor's relationship to FPR is strictly as an independent contractor and not as an employee. The independent contractor relationship adheres to and is in conformance with the required criteria established under Act No. 4, of January 26, 2017. As an independent contractor, the Contractor is

not eligible for, and will not participate in, any benefit, program, plan, or compensation arrangement designed for FPR employees. For example, but without limitation, Contractor is not eligible for any FPR pension, bonus, profit sharing, retirement plan, deferred compensation plan, vacation, sick pay, paid leave of absence or insurance coverage. In keeping with Contractor's status as an independent contractor, FPR will not: (a) withhold any portion of Contractor's compensation beyond that required by law for contractors for any taxing authority; (b) carry worker's compensation insurance for Contractor's benefit; (c) withhold the social security or medicare tax (FICA) from amounts paid to Contractor; or (d) pay federal or state unemployment taxes (FUTA or SUTA) with regard to Contractor payable fee for service.

**16. TAXES.** The Contractor acknowledges and agrees that it has sole responsibility and liability for any and all taxes (including any applicable sales and use taxes), contributions, penalties, interest, levies, duties, assessments or other sums arising out of the fees and/or expenses paid pursuant to this Agreement and applicable by law in connection with the Services, and hereby indemnifies and hold harmless FPR from any liability or obligation that may become due on account of any non-payment of all such taxes, levies, duties and assessments. Notwithstanding the foregoing, the Parties hereby agree that FPR shall retain and submit to the Puerto Rico Department of the Treasury all amounts required to be retained pursuant to the Puerto Rico Internal Revenue Code of 2011, as amended. The FPR will also notify the Secretary of the Treasury of all payments and reimbursements to Contractor hereunder and the applicable withholdings.

**17. INTELLECTUAL PROPERTY AND RIGHTS TO WORK PRODUCT.** The following provisions govern the rights and duties of the Parties with regard to intellectual property and work product resulting from this Agreement:

- a) FPR may copyright any work that is subject to copyright and was developed by Contractor under the terms of this Agreement. FPR reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for purposes consistent with this Agreement, and to authorize others to do so.
- b) FPR will have the right to edit, revise and adapt the materials, work product, and deliverables outlined in **Attachment C** and to cause others to edit, revise and adapt the work products and deliverables developed under this Agreement as FPR may deem appropriate.
- c) FPR may, but is not required to, identify and credit Contractor as author or presenter resulting from the work products developed under this Agreement. FPR may film, videotape, photograph, and record Contractor in connection with delivery and presentation of the work products, and use or authorize the use of Contractor's name, likeness and/or pertinent biographical material in connection with the promotion and/or delivery of any work containing all or part of the work products developed under this Agreement.
- d) The Contractor hereby warrants and represents to FPR that the work products are original, and will not infringe any copyright, right of privacy or right of publicity, contain any libelous or scandalous material, or infringe or violate any other right of any third party. Contractor will indemnify, defend, and hold harmless FPR against any and all claims, suits, damages, losses or expenses (including attorneys' fees) arising out of a breach or any alleged breach of these warranties and representations.

**18. CONFIDENTIAL BUSINESS INFORMATION.** Both Parties acknowledge that, in the course of performing under this Agreement, each party may learn of or receive confidential, trade secret, or other proprietary information concerning the other party or third parties to whom the other party has an obligation of confidentiality ("Confidential Business Information"). Each party agrees to protect the confidentiality of the other party's Confidential Business Information. Each party agrees to take at least such precautions to protect the other party's Confidential Business Information as it takes to

protect its own Confidential Business Information. The Parties agree not to utilize or to disclose to any third party any Confidential Business Information belonging to the other party other than as expressly permitted by this Agreement or otherwise expressly permitted in writing. Each party retains sole ownership of its own Confidential Business Information. For the purposes of this Agreement, Confidential Business Information does not include (i) information known to the receiving party prior to receipt from the disclosing party; (ii) information that is or lawfully becomes generally available to the public; (iii) information that is lawfully acquired from a third party who has a right to disclose such information; (iv) information released from a confidential status by written agreement of the Parties; (v) information that the receiving party is required by law to release, provided if legally permissible, the disclosing party is given prior written notice of such requirement; and/or (vi) information that is independently developed by the receiving party without use of the other party's Confidential Business Information. This Clause survives any termination of this Agreement. Notwithstanding anything in this Agreement to the contrary, Contractor will be permitted to retain one (1) copy of all materials received from FPR, subject to continued compliance with the foregoing confidentiality obligations, allowing Contractor to comply with its professional recordkeeping requirements.

**19. PERSONAL IDENTIFIABLE INFORMATION.** The Contractor agrees to be bound by the confidentiality provisions regarding Personal Identifiable Information (PII) as set forth in the Subrecipient Agreement between PRDOH and FPR, and thus shall take reasonable measures to safeguard protected personal identifiable information, as defined in 2 CFR 200.82, and other information FPR, PRDOH or HUD designates as sensitive, consistent with applicable federal, state, and local laws regarding privacy and obligations of confidentiality.

**20. CONFLICT OF INTEREST.** The Contractor shall comply with the ethics requirements set forth herein and warrant that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest, which is defined as a situation in which the nature of the work under this Agreement and Contractor's organizational, financial, contractual or other interests are such that: (a) award of the Agreement may result in an unfair competitive advantage; or (b) the Contractor's objectivity in performing the work under this Agreement may be impaired. The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this Agreement, it shall make an immediate [within the next seventy-two (72) hours] and full disclosure in writing to FPR, which shall include a description of the action that the Contractor has taken or intends to take to eliminate or neutralize the conflict. The Contractor will disclose the details of any existing or future contract to provide services to third parties participating or for the purpose to participate in disaster recovery programs or projects in Puerto Rico. FPR may, however, terminate the Agreement for convenience if it would be in its best interest. In the event the Contractor was aware of an organizational conflict of interest before the award of this Agreement and did not disclose the conflict to FPR, FPR may terminate the Agreement for default.

**21. EMPLOYEE SOLICITATION.** Without the prior written consent of the other party, during the period beginning on the effective date of this Agreement and ending one year after the termination of this Agreement, FPR will not directly or indirectly hire, attempt to hire, enter into a contract with, employ, retain, or otherwise engage the services of any person or entity known by the hiring party to be an employee of the other party or its representatives. Notwithstanding the foregoing, this provision shall not apply if such person has been dismissed or resigned, or such person initiates contact without prior solicitation or such person responds to general solicitations of employment, such as general advertisements.

**22. INDEMNIFICATION.** FPR is responsible to Contractor for FPR's own negligent, grossly negligent, or deliberately wrongful acts or omissions, and FPR holds Contractor harmless from the consequences of FPR's negligent, grossly negligent, or deliberately wrongful acts or omissions, including damages, special damages, consequential damages, and liabilities. Similarly, Contractor is responsible to FPR for Contractor's own negligent, grossly negligent, or deliberately wrongful acts or

omissions, and Contractor holds FPR harmless from the consequences of Contractor's negligent, grossly negligent, or deliberately wrongful acts or omissions, including damages, special damages, incidental damages, consequential damages, and liabilities.

**23. GOVERNING LAW AND JURISDICTION; DISPUTES.** This Agreement is negotiated and executed in Puerto Rico and shall be governed by and constructed in accordance with the laws of the Commonwealth of Puerto Rico, subject to all applicable federal laws and regulations. The Parties hereby consent and agree that in the unlikely event that any of the parties has to file suit in connection with any part of this Agreement, such action will only be filed and pursued at the Court of First Instance of Puerto Rico or the United States District Court for the District of Puerto Rico.

**24. THIRD PARTY DISPUTES.** If a party becomes involved (whether or not as a litigant or named party) in a dispute (including audits or investigations) between the other party and a third party (including a governmental entity), or if a party is asked by the other party to preserve records relating to the Services or this Agreement (including where a party is asked to preserve documents, electronically stored information, back-up or other media beyond its standard recycling or retention protocol) beyond any requirement stated in this Agreement, these additional services will be documented in a statement of work. However, if no statement of work or other agreement is reached on these additional services, the requesting party agrees to pay the other party at the other party's then current standard rates for all the other party's time spent and will reimburse the other party for all reasonable expenses incurred by the other party, in connection with such dispute or such documentation preservation request, up to an aggregate limit of \$10,000. The other party will reimburse such payments in the event and to the extent such request or dispute is finally determined by a court to have resulted primarily from the other party's gross negligence, conduct in bad faith, or fraud.

**25. FEDERAL PROVISIONS.** Contractor acknowledges that FPR shall pay for the Services in part with federal funds made available through the Funding Source of this Agreement. Accordingly, Contractor agrees to abide by all applicable provisions set forth in **Attachment G**, compliance with which, to the extent applicable to the Services, is required in connection with contracts paid for in whole or in part with federal funding. All federal flow down provisions are hereby included in this Agreement per federal guidelines. This Agreement also contains and complies with the applicable provisions set forth in 2 CFR § 200.101. While providing the Services under this Agreement, the Contractor must adhere to applicable requirements of the CDBG-DR Program. If the Contractor performs ineligible activities under the CDBG-DR Program, the Contractor cannot include them in the invoice. The Contractor shall be liable to FPR for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Agreement. Contractor shall reimburse such disallowed costs from funds other than those Contractor received under this Agreement. The Contractor acknowledges and agrees to repay any CDBG-DR funds used for ineligible costs.

**26. DOCUMENT PRESERVATION AND ACCESS TO RECORDS.** Contractor shall maintain records related to this Agreement, including supporting documentation, records necessary to demonstrate compliance with this agreement, any other applicable federal statutes and regulations, which shall be retained for the greater of five (5) years from closeout of this Agreement. The Contractor agrees to provide the Funding Source, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor that are directly pertinent to this Agreement for the purposes of audits, examinations, excerpts, and transcriptions, and agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

**27. FORCE MAJEURE.** In the event of a fire, flood, earthquake, natural disaster, hurricane, riot, act of governmental authority in its sovereign capacity, strike, labor dispute or unrest, embargo, war, insurrection or civil unrest, any Force Majeure including inclement weather, herein collectively referred to as Force Majeure during the term of this Agreement, neither FPR nor the Contractor shall be liable to the other party for nonperformance during the conditions created by such event. The Contractor shall

notify FPR, as soon as possible, of the occurrence of the Force Majeure event and describe in reasonable detail the nature of the event.

**28. ASSIGNMENT.** Neither party may assign this Agreement without the prior written consent of the other party. If a party's name and/or ownership changes as the result of sale, merger, or acquisition, such a change will not constitute an assignment for purposes of this Agreement.

**29. SEVERABILITY.** If a provision, term, word, phrase, clause or sentence of this Agreement is found to be illegal or unenforceable for any reason, such provision, term, word, phrase, clause or sentence shall be modified, deleted or interpreted in such a manner as to afford the party for whose benefit it was intended the fullest benefit that is commensurate with making the modified Agreement enforceable, and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent. Notwithstanding, if any provision of this Agreement shall operate or would prospectively operate to invalidate the Agreement in whole or in part, then such provision only shall be deemed severed and the remainder of the Agreement shall remain operative and in full effect.

**30. ENTIRE AGREEMENT.** This Agreement, including any exhibits, attachments or schedules attached, constitute the entire and integrated agreement between the Parties and supersedes, extinguishes, and replaces all prior or contemporaneous understandings, agreements, undertakings, negotiations and discussions, whether verbal or written, between them. The Parties agree that, except for the obligations under this Agreement, they have no obligations to one another and have not relied upon any promises, representations, warranties, agreements, covenants or undertakings, other than those expressly set forth in this Agreement.

**IN WITNESS THEREOF**, the Parties hereto execute this Agreement in the place and on the date first written below.

**FOUNDATION FOR PUERTO RICO, INC.**  
Tax ID. No. 660-77-6227

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and position

**CONTRACTOR NAME**  
Tax ID. No. \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and position