

ARCHDIOCESE OF SAN JUAN AND
DIOCESES OF ARECIBO, CAGUAS AND FAJARDO-HUMACAO

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
FOR REPAIR, RECONSTRUCTION OR CONSTRUCTION
OF FACILITIES IMPACTED BY HURRICANE MARIA**

This **Agreement for Construction Management Services** (the “Agreement”), is hereby entered into by and between the Roman Catholic Church – Diocese of [insert] in Puerto Rico, whose administrative address is [insert], PR [zip code] (the “Church Entity”), represented herein by _____, as authorized by _____; and [Insert company name], a [insert] and organized under the laws of [insert] and authorized to do business in Puerto Rico, with corporate headquarters located at [insert] (the “Construction Manager”), represented herein by _____, of legal age, and a resident of [City, State], with the legal capacity to bind the Construction Manager hereunder.

The Church Entity and the Contractor shall be referred to collectively as the “Parties”.

RECITALS

WHEREAS, in September 2017, Hurricane Maria made landfall in Puerto Rico causing catastrophic damage, and knocking out power, water, and telecommunications for the entire island. As a result, more than 1,000 facilities owned and/or operated by the Catholic Church were affected by high winds, river surges, mudslides, storm surge and inland flooding. Current cost estimates to repair, replace and/or incorporate hazard mitigation measures into damaged schools, houses of worship and orphanages owned or operated by the Catholic Church exceed \$300 million.

WHEREAS, in response to the disaster, the U.S. Government authorized the Federal Emergency Management Agency (“FEMA”) to provide assistance under its Public Assistance (“FEMA-PA”) and Hazard Mitigation Grant (“FEMA-HMGP”) programs to non-profit organizations in Puerto Rico, including the Catholic Church.

WHEREAS, FEMA-PA and FEMA-HMGP funding is coordinated through Puerto Rico’s Central Office of Recovery, Reconstruction and Resiliency (“COR3”).

WHEREAS, the U.S. Congress also appropriated funds to the Community Development Block Grant Disaster Recovery (“CDBG-DR”) and Mitigation (“CDBG-MIT”) programs of the U.S. Department of Housing and Urban Development (“HUD”) to support recovery efforts across Puerto Rico. The Puerto Rico Department of Housing (“PR DOH”) administers CDBG-DR and CDBG-MIT funds.

WHEREAS, the Catholic Church was awarded funding from FEMA-PA and is finalizing approvals for assistance under FEMA-HMGP and HUD’s CDBG-DR and CDBG-MIT programs to help finance the restoration and protection of its damaged facilities (“Repair Facilities”).

WHEREAS, the number of Repair Facilities within the geographic area covered by the Church Entity is currently estimated at [updated number], and the estimated cost of repair and reconstruction work is estimated at [\$xxxxx]. The total number of Repair Facilities and the cost

and scope of work to be performed at each one is subject to change at any time during the term of this Agreement.

WHEREAS, on [date], 2023, the [Archdiocese/Church Entity] issued a Request for Proposals (“RFP”) to solicit competitive proposals (each, a “Proposal”) from qualified firms or entities interested in providing construction management services (each, a “Respondent”) in connection with the design, permitting, and construction phases of the repair, reconstruction and new construction of the Repair Facilities (the “Construction Work”).

WHEREAS, on [date], 2023, the Contractor presented a Proposal in response to the RFP.

WHEREAS, the CM represented to the Church Entity that it has the knowledge, experience and financial capability necessary to carry out the obligations set forth in this Agreement with respect to the Repair Facilities.

WHEREAS, the Church Entity selected the CM's Proposal and, pursuant thereto, has awarded it this Agreement for Construction Management Services, subject to the terms and conditions contained in this Agreement and applicable laws and regulations.

NOW THEREFORE, Upon review and evaluation of the Proposal, the Church Entity selected the CM for award of this Agreement, and the CM agrees to perform the services set forth in this Agreement pursuant to the following,

TERMS AND CONDITIONS

A. SCOPE OF SERVICES; TASK ORDERS.

1. **Scope of Services.** Contractor shall provide the professional services that are fully described in **Exhibit A** (the “Scope of Services”).

2. **Task Order Authorization.** During the term of this Agreement, the Church Entity may, at its sole discretion, assign specific tasks and services to the Contractor from time to time via written documents (each, a “Task Order”). Each Task Order will detail the scope of services, list of tasks, time schedule, list of deliverables, a not-to-exceed amount and other information or special conditions as may be necessary for the performance of the authorized services. Task Orders will be divided by phases of work assigned; such that the Contractor may not a new phase of the work without written approval of the prior phase, to provide the Church Entity control over the use of grant funds and work timeline. Task Orders will be assigned based on disclosed capacity, ability, availability of funds, and the Church Entity’s needs and objectives at the time. All Task Orders shall be in writing and signed by the corresponding Church Entity and the Contractor.

3. **Order of Precedence.** The following attachments are incorporated into and made a part of this. In the event of a conflict in terms or provisions of these attachments, the order of precedence for resolving such conflict shall be as follows with the first being the highest: (i) this Agreement and exhibits, as amended; (ii) Task Orders for services under this Agreement, as amended; (iii) Contractor’s Proposal.

B. EFFECTIVE DATE AND DURATION

1. **Effective Date.** This Agreement shall become effective upon signature of both parties. Unless earlier terminated or extended, this Agreement shall expire three (3) years from the effective date.

2. **Optional Extension.** The Church Entity shall have the option, at its sole discretion, to extend the Agreement for an additional two (2) years upon notification to Contractor.

3. **Time is of the Essence.** Contractor agrees that time is of the essence in the performance this Agreement.

4. **Availability of Future Funds.** The continuation or extension of this Agreement is contingent on the continuation or renewal of the appropriation that shall be used to fund the services in an amount sufficient to continue to make payments under this Agreement, as determined by the Church Entity in its sole administrative discretion.

C. COMPENSATION AND PAYMENT

1. This a time and materials contract with a Not to Exceed (NTE) cost of [insert], for the services outlined in Exhibit A. Contractor's hourly rates and costs set forth in Exhibit B, attached hereto, are incorporated herein by reference.

2. On a monthly basis, Contractor will submit invoices to the Church Entity detailing the time and material charges for the preceding month, in accordance with the rates and fees agreed herein. Charges will be detailed by Contractor with signed timesheets provided for support. Contractor may be eligible for reimbursement of reasonable expenses incurred in its performance pursuant to this Agreement and reasonableness to be determined by the Church Entity. Receipts or other charge detail will be provided to support travel and other direct costs. Each invoice shall be certified and supported in such detail as required by the Church Entity.

3. Invoices shall be emailed to: [INSERT] and shall include, at a minimum: name and address of contractor; Invoice date and number; Task Order Number; Description of services, quantity of services, and rate; Name and address of official to whom payment is to be sent; Name, title, and phone number of person to notify regarding invoice; and any additional information as reasonably required by the Church Entity.

4. Church Entity will pay Contractor's certified invoices within 30 days of receipt of payment from COR3 and upon internal certification of an invoice for Contractor's services.

5. Contractor shall work with the Church Entity to establish a system to track and submit costs for allowable reimbursement from FEMA, HUD, and/or the Commonwealth of Puerto Rico. The Church Entity represents and understands that FEMA, HUD, and similar recovery programs are "reimbursement" programs and that the Church Entity is required to pay Contractor prior to seeking reimbursement for any allowable portion of these costs and will follow the request for advance payments procedures established by COR3 and all applicable regulations established by FEMA, HUD, or the Commonwealth of Puerto Rico.

6. The Church Entity will review the invoices and ascertain if the Services have been properly provided and if the expenses incurred by the Contractor during the invoiced month are allowable. If the Church Entity determines that additional information, documents or revisions are necessary, it will so notify the Contractor for appropriate action.

7. The Church Entity reserves the right to require the Contractor's participation and assistance to complete any audits it deems necessary or mandated under applicable regulations.

8. The Church Entity shall not pay any amount in excess of the limits stated herein, even if the Contractor exceeds the same, regardless of the reasons for said excess.

D. REPRESENTATIONS AND WARRANTIES

1. **Warranties of the Contractor.** By execution hereof, the Contractor represents and warrants that:

a. Contractor is currently in compliance with applicable laws and regulations and during the term of this Agreement, Contractor shall remain in compliance therewith;

b. Contractor has all necessary licenses and consent required to enter into and fully perform the Scope of Services set forth in this Agreement;

c. Contractor has all required insurance in the amounts mandated in Section H and will maintain these policies and limits for the entire Term; and

d. No conflict of interest with any other contract with a third party that might cause a claim to arise against the Church Entity by the entry into or performance of this Agreement by Contractor.

2. **Warranties of the Church Entity.** By execution hereof, the Church Entity represents and warrants that:

a. The Church Entity has the lawful authority to enter into and perform this Agreement; and

b. The Church Entity shall not offer employment to any employee of Contractor for a period of two (2) years after the termination, except for cause or default, of this Agreement.

3. **Contractor's Performance Warranty.** In the performance of the contracted services, the Contractor warrants that:

a. Contractor will perform all work and provide all Deliverables under this Agreement in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances;

b. All Deliverables completed under this Agreement shall meet or exceed the standards of Contractor's trade, profession, or industry; and meet or exceed the requirements set forth in this Agreement; and

c. If Contractor submits Deliverables that do not meet contractual or legal requirements, fails to complete Deliverables in a timely manner, or fails to perform its obligations under this Agreement, the Church Entity may require Contractor, at its sole expense, to: (i) repair or replace Deliverables that do not meet requirements; (ii) refund payment for Deliverables that do not meet specifications and accept the return of such Deliverables; (iii) pay liquidated damages for any past due Deliverable; and (iv) take

necessary action to ensure that future performance and Deliverables meet specifications and conform to the Agreement. Application of one of the stated remedies will not bar the Church Entity from applying any other remedy as it determines to be necessary and convenient to the Project.

E. RECOUPMENT OF GRANT FUNDS

1. **Availability of Funds.** The fulfillment of this Agreement is based on those funds being made available to the Church Entity in accordance with the corresponding grant. All expenditures under this Agreement must be in accordance with this Agreement, the policies and procedures promulgated by FEMA and/or HUD, and any other applicable laws.

2. **Recapture of Funds.** The Church Entity may recapture funds disbursed to the Contactor that: (i) exceed the maximum allowable rates; (ii) are not allowed under applicable laws, rules, or regulations; or (iii) are otherwise inconsistent with this Agreement, including any unapproved expenditures. Contractor must refund such recaptured payments within thirty (30) days after the Church Entity issues written notice of recapture to Contractor.

3. **Overpayment.** Contractor shall be liable to the Church Entity for any costs disallowed pursuant to financial and/or compliance audits. Contractor shall reimburse such disallowed costs from funds other than those it received under this Agreement.

F. COMPLIANCE WITH APPLICABLE FEDERAL REGULATIONS.

1. Contractor agrees that the following regulations are required pursuant to Appendix II to the Uniform Rules under 2 C.F.R. § 200.326. The required contract provisions for remedies is addressed in Section G and the termination provisions are contained in Section J within this Agreement.

2. Equal Employment Opportunity.

a. **Standard.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II(C).

b. **Key Definitions.**

i. **Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60- 1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government

for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

ii. Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. Regulations at 41 C.F.R. § 60-1.4(b) requires, except as otherwise provided or exempted in 41 C.F.R. Part 60, the insertion of the following contract clause in all subcontracts as well: “During the performance of this contract, the contractor agrees as follows:

- (i) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (ii) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (iii) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (iv) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this

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

- (v) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

d. The contractor will include the preceding section 1(a), including subsections (i) to (vii), above, in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry

out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

3. Davis Bacon Act. (40 U.S.C. §§ 3141-3144 and 3146-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

4. Copeland Anti-Kickback Act (40 U.S.C. 3145), if applicable. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

a. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

b. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

5. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708) In accordance with 40 U.S.C. 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

6. Rights to Inventions Made Under a Contract or Agreement (37 C.F.R. Part 401). If the federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of

experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

7. Compliance with Air and Water Acts: For each Contractor Agreement over \$100,000, Contractor and all of its Subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended. In addition to the foregoing requirements, all nonexempt Contractors and Subcontractors shall furnish to Church Entity, the following:

a. A stipulation by Contractor or its Subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.

b. Agreement by Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

c. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Contract, is under consideration to be listed on the EPA List of Violating Facilities.

d. Agreement by Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

8. Debarment and Suspension: This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

a. The Contractor and any subcontractors must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into with another party.

b. This certification is a material representation of fact relied upon by the Division. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

c. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the

period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient.

10. Procurement of Recovered Materials: If applicable, in the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: (a) competitively within a timeframe providing for compliance with the contract performance schedule; (b) meeting contract performance requirements; or (c) at a reasonable price.

11. Procurement Regulations. (Appendix II to 2 C.F.R. Part 200) The Contractor shall comply with or include in its subcontracts all of the following provisions: (a) a. C.F.R. Sec. 200.216 Prohibition on certain telecommunication and video surveillance services or equipment; (b) 2 C.F.R. § 200.322 Domestic preferences for procurements; and (c) 2 C.F.R. § 200.323 Procurement of recovered materials.

12. FEMA and HUD Seals. The Contractor shall not use the FEMA or HUD seal(s), logos, crests, or reproductions of flags or likenesses of FEMA or HUD agency officials without specific FEMA or HUD pre-approval. The contractor shall include this provision in any subcontracts.

13. No Obligation by Federal Government. The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the Agreement.

14. Program Fraud and False Statements. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this Agreement.

15. Conflicts of Interest. The Contractor has disclosed to the Church Entity: (i) all actual, apparent and potential conflicts of interest; (ii) all related ownership interests; (iii) identification of all officers and directors of Contractor entities; and (iv) overlapping ownership interests or directorships in other companies. Specifically, Contractor may not have any ownership interest in any design, construction, permitting or management entity or organization that performs any portion of the CM Services.

16. Organizational Conflict of Interests.

a. 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 interest are such that: (a) award of the Agreement may result in an unfair competitive advantage; or (b) the Contractor's objectivity in performing the contract work may be impaired.

b. The Contractor agrees that if after award he or she 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 the Contracting Officer, which shall include a description of the action, which 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. The Church Entity may, however, terminate the Agreement for convenience if it would be in its best interest.

c. 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 the Contracting Officer, the Contractor may terminate the Agreement for default.

d. The provisions of this clause shall be included in all subcontracts and/or consulting agreements wherein the work to be performed is similar to the services provided by the Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provision to eliminate or neutralize conflicts of interest.

17. Affirmative Steps. If subcontracts are to be let, the contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible and make efforts to ensure that these groups participate in contracting. The Church Entity has a commitment, and all contracting entities must make a commitment to use good faith efforts to meet the Church Entity's goals of subcontracting with M/WBE firms for 5% of the entire contract value.

18. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the Church Entity, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Agreement to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Agreement but not first produced in the performance of this Agreement, the Contractor will identify such data and grant to the Church Entity or acquires on its behalf a license of the same scope as for data first produced in the performance of this Agreement. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures, or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Agreement, the Contractor will deliver to the Church Entity data first produced in the performance of this Agreement and data required by the Agreement but not first produced in the performance of this Agreement in formats acceptable by the Church Entity.

19. Drug Free Workplace. Contractor hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 24 CFR Part 21.

20. Interest of Members of Congress: No member of the Congress, delegate or Congressional resident commissioner shall be admitted to any share or part of this Agreement or any benefit arising from it.

21. Covenant against Contingent Fees: The Contractor warrants that he has no employee or any person to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warrantee shall give the Church Entity the right to terminate this Agreement or, at its discretion, to deduct from the Contractor's fee the amount of such commission, brokerage, or contingent fee.

22. Access to Records. The Contractor agrees to provide the Church Entity, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement. Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Agreement. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the Church Entity and the Contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller of the United States.

23. Prohibition on Contracting for Covered Telecommunications Equipment or Services. (a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause— (b) Prohibitions. (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons. (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to: (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment

or services as a substantial or essential component of any system, or as critical technology as part of any system. (c) Exceptions. (1) This clause does not prohibit contractors from providing— (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28 (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles. (2) By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services. (d) Reporting requirement. (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information. (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

24. Domestic Preference for Procurements. If applicable, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

25. Record Retention and Transmission of Records to the Church Entity. Prior to close out of this Agreement, the Contractor must transmit to the Church Entity records sufficient for the PRDOH to demonstrate that all costs under this Agreement met the requirements of the Federal award.

26. List Not Exhaustive. The above list notwithstanding, the Contractor also agrees to comply with all applicable Federal and the Government of Puerto Rico laws and regulations in connection with this Agreement. Specifically, the Contractor shall comply with all the provisions and requirements of applicable FEMA requirements contained in 2 CFR 200 and applicable

federal regulations stated in Section F above and **Exhibit C – HUD CDBG-DR Rules and Regulations**.

G. REMEDIES; LIQUIDATED DAMAGES

1. Remedies

a. In the event the Contractor fails to satisfactorily perform, within the cure period of 15 calendar days, or is determined to have engaged in any proscribed conduct or otherwise is in default as to any applicable term, condition, or requirement of this Agreement, at any time following the Effective Date of the Agreement, the Contractor agrees that, Church Entity may utilize remedies listed below against the Contractor for any default in accordance with **Exhibit C** and this Section.

b. If the Contractor fails to comply with federal statutes, regulations or the terms and conditions of the Agreement, the Church Entity may take one or more of the following actions:

- i. Temporarily withhold cash payments pending correction of the deficiency by the Contractor;
- ii. Disallow all or part of the cost of the activity or action not in compliance;
- iii. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. part 180;
- iv. Withhold further Federal awards for the project or program; and .
- v. Take other remedies that may be legally available.

2. Liquidated damages

a. Contractor will be subject to liquidated damages as relates to the timeframes of performance set forth in each Task Order. Contractor shall pay the Church Entity, as liquidated damages, one hundred dollars (\$100.00) for each calendar day that any task deliverable required is late until deemed in compliance, in accordance with the task order schedule issued for the project. Said sum, in view of the difficulty of accurately ascertaining the loss which the Church Entity will suffer by reason of delay in the completion of the Work hereunder, is hereby fixed and agreed as the liquidated damages that the Church Entity will suffer by reason of such delay. Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the Church Entity's right to indemnification, or the Contractor's obligation to indemnify the Church Entity pursuant to this Agreement, or to any other remedy provided in contract or law. Liquidated damages may be assessed at the sole discretion of the Church Entity.

b. For the purpose of applying and calculating such liquidated damages, the Church Entity shall grant the Contractor a grace period of **fifteen (15) days** after the due date set forth in a task order. The Parties will work together on an amended due date in the task order if the delay is not caused by Contractor's actions, including but not limited

to Acts of God, delays due to permit approval, and material delay for the project. The Church Entity may deduct and retain out of the monies which may become due hereunder, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages due to the Church Entity per the per diem amount above, the Contractor shall be liable for the difference. The Church Entity may deduct the liquidated damages from the next invoice due to the Contractor.

3. **Damages in the Event of Contractor Default.** Contractor is liable to the Church Entity for all actual and direct damages caused by Contractor’s default. The Church Entity may procure substitute services from a third party, for those that were provided by the Contractor. The Church Entity may recover the costs associated with acquiring substitute services, less any expenses or costs saved by Contractor’s default, from Contractor. The Church Entity may deduct all or any part of the damages resulting from Contractor’s default from any part of the price still due on the Agreement, upon prior written notice being issued to the Contractor by the Church Entity.

4. **Attorney’s fees.** Contractor will pay the Church Entity legal fees and expenses associated with defending any claims from a third party and for any claims that arise under provisions of this Agreement against Contractor.

H. INDEMNIFICATION; INSURANCE

1. **Indemnification.** The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the Church Entity, officers, agents, and employees from suits, actions, damages, and costs of every name and description, including attorneys’ fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Church Entity.

2. **Insurance.** During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits that are listed below. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Prior to commencing work, the Contractor, and subcontractors, shall furnish a copy of its certificate of insurance, naming the Church Entity as an additional insured on its commercial general liability policy.

Insurance Type	Minimum Limits
Worker’s Compensation	Statutory
Employers Liability (Coverage B)	\$500,000.00 – each accident \$500,000.00 – disease policy limit \$500,000.00 – disease each employee
Commercial General Liability	\$1,000,000.00 – each occurrence \$2,000,000.00 – annual aggregate

Insurance Type	Minimum Limits
Automobile Liability	\$1,000,000.00 – per occurrence \$2,000,000.00 – annual aggregate

3. **No Payment of Deductibles.** In no event shall the Church Entity be liable for any indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, data or use, incurred by either party or any third party, whether in an action in contract or tort, even if the other party or any person has been advised of the possibility of such damages.

4. **Additional Insured.** Each insurance policy maintained by the Contractor must add the Church Entity as an additional insured (except Worker’s Compensation).

5. **Notice of Cancellation:** Each insurer shall be required to give the Church Entity written notice at least thirty (30) days in advance of any cancellation or material change in any such policies.

I. SUBCONTRACTS

1. **General.** The Contractor shall ensure that all subcontractors comply with 2 C.F.R. part 200 and other applicable federal and state rules and regulations. All subcontracts shall contain the applicable provisions set forth in Appendix II to Part 200 "Agreement Provisions for non-Federal Entity Agreements Under Federal Awards", as well as applicable of 2 C.F.R. § 200.101.

2. **Monitoring.** The Church Entity shall review subcontracts as part of its compliance, monitoring, and oversight process that all subcontracts shall contain, at a minimum, provisions specifying that:

- a. the work performed by the subcontractor shall be in accordance with the applicable terms of this Agreement;
- b. nothing contained in such subcontract agreement shall impair the rights of the PRDOH;
- c. nothing contained herein, or under this Agreement will create any contractual relation between the subcontractor and the PRDOH;
- d. the subcontractor specifically agrees to be bound by the confidentiality provision regarding Personal Identifiable Information set forth in this Agreement;
- e. Contractor will be responsible for ensuring all subcontract work is performed consistent with federal and state regulations and/or policies to be eligible for reimbursement of the approved work; and
- f. All Federal flow down provisions are included in the subcontract agreement per Federal guidelines.

3. **Monitoring:** Contractor shall diligently monitor all subcontracted services. If Contractor discovers any areas of noncompliance, Contractor shall provide the Church Entity

summarized written reports supported with documented evidence of the proposed corrective action.

4. **Content:** Contractor shall cause all the applicable provisions of this Agreement to be included in, and made a part of, any subcontract executed in the performance of this Agreement.

5. **Notification:** Contractor shall notify and provide a copy of any and all subcontracts related to this Agreement to: [INSERT] within **three (3) days** of its execution.

J. TERMINATION; SUSPENSION

1. **Termination for Convenience.** This Agreement may be terminated by the Church Entity in whole or in part at any time in the best interest of the Church Entity. The Church Entity must provide at least ten (10) business days' notice in writing to the Contractor. The Contractor will be paid for the services performed and expenses incurred prior to the termination date. The Contractor shall be compensated for all services performed up to the effective date of termination.

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

3. **Immediate Termination.** In the event the Contractor is subjected to a criminal or civil action, suit, proceeding, inquiry or court of applicable jurisdiction, or any governmental agency, or the Contractor shall be subject to an order, judgment, or opinion, issued by any federal or local authority, a court of applicable jurisdiction, or any governmental agency, in connection with the execution, delivery, and performance by the Contractor of this Agreement or the Contractor of this Agreement has been noncompliant, breach, inaccuracy of any representation, warranties, covenants, or the certifications provided herein, whether the noncompliance, breach or inaccuracy takes place before or after the execution of this Agreement, the Church Entity shall have the right to the immediate termination of this Agreement notwithstanding, any provisions to the contrary herein.

4. **Suspension.** The Church Entity may suspend this Agreement in whole or in part at any time for the Church Entity's convenience. The Church Entity shall give the Contractor five (5) days' written notice of such suspension. Upon receipt of said notice the Contractor shall immediately discontinue all Services affected by the suspension.

5. **Obligation to Cooperate.** Upon termination of this Agreement, the Contractor, at no additional cost, shall: (a) cooperate fully at the direction of the Church Entity in the orderly transition of the Services to its successor; and (b) undertake the orderly cessation of the Services.

K. STANDARD CONTRACT TERMS AND CONDITIONS

1. Confidentiality.

a. Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Agreement, be exposed to or acquire information that the Church Entity desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Agreement, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11), shall be deemed to be confidential information of the Church Entity ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

b. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Agreement), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

c. Contractor agrees that, except as directed by the Church Entity, Contractor will not at any time during or after the term of this Agreement, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Agreement or the Church Entity's request, Contractor will turn over to the Church Entity all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Agreement, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable damages.

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

e. Return Documents: Upon receipt of a written request from the Church Entity, the Contractor will return to the Church Entity all copies or samples of Confidential Information which, at the time of the notice are in the Contractor's or its agent's possession. The Contractor reserves the right to retain a set of its work papers.

2. Ownership of Work Product. All work product of Contractor that results from this Agreement (the "Work Product") is and shall remain the exclusive property of Church Entity. Church Entity and Contractor intend that such Work Product be deemed "work made for hire" of

which Church Entity shall be deemed the author. If for any reason the Work Product is not deemed “work made for hire,” Contractor hereby irrevocably assigns to Church Entity all its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as the Church Entity may reasonably request to fully vest such rights in Church Entity. Contractor forever waives all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, Church Entity shall have no rights in any pre-existing Contractor intellectual property provided to Church Entity by Contractor in the performance of this Agreement except to copy, use and re-use any such Contractor intellectual property for Church Entity use only.

3. **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, government lockdown, epidemics, pandemics, any act of God including inclement weather (collectively, “Force Majeure Events”) during the term of this Agreement, neither the Church Entity nor the Contractor shall be liable to the other party for nonperformance during the conditions created by such event. The Contractor shall notify the Church Entity, as soon as possible, of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event and its anticipated impact on the performance of the services hereunder.

4. **Dispute Resolution.**

a. **Commitment to Cooperate.** The Parties are fully committed to working with each other throughout the Agreement and agree to always communicate regularly with each other to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Church Entity and Contractor each commit to resolving disputes or disagreements in an amicable professional and expeditious manner to avoid unnecessary losses, delays and disruptions to the services.

b. **Good Faith Negotiation and Right to Cure.** The Parties will attempt in good faith to resolve through negotiation any claim, dispute, controversy, or counterclaim arising out of or relating to this Agreement (each, a “Dispute”). Either party may initiate negotiations by providing written notice to the other party, setting forth the subject of the Dispute and the relief requested. The recipient of this notice shall respond within ten (10) business days with a written statement of its position on, and recommended solution to, the Dispute. If the Dispute is not resolved by this exchange of correspondence, then representatives of each party with full settlement authority will meet at a mutually agreeable time and place within fifteen (15) business days of the determination that recommended solution was not agreeable, in order to exchange relevant information and perspectives, and to attempt to resolve the Dispute. The party receiving the notice of said Dispute shall be given reasonable time to correct and cure the problems or failings identified by the other party. In no event will the cure period be less than fifteen (15) business days.

c. **Litigation.** If the parties hereto cannot settle any difference arising between them pursuant to this Section without litigation, any such litigation shall be governed by the laws of Puerto Rico and shall take place in the courts located in Puerto Rico.

d. **Obligation to Continue to Perform.** Neither the existence of a Dispute nor threatened or ongoing litigation shall relieve the Contractor from continuing to perform under this Agreement.

5. **Independent Contractor Status.** The services to be rendered under this Agreement are those of an independent contractor. Although the Church Entity reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, Church Entity cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of Church Entity for any purpose, including, but not limited to:

a. The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Agreement; and

b. This Agreement is not intended to entitle and does not entitle the Contractor to any benefits generally granted to Church Entity employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.

6. **Notices.** All notices to each party to this Agreement, except routine notices of performance of the Scope of Work during the Agreement term, shall be in writing, and sent to the following:

For Church Entity:	For Contractor:

All notices required or permitted under this Agreement shall be effective:

a. On the third (3rd) business day after mailing by depositing the notice in the United States mail, certified mail, return receipt requested, postage prepaid, addressed as set forth above; or on the day of receipt of such notice (whether by mail, courier, hand delivery, or otherwise), whichever is the earlier date of receipt; or

b. On the first day after receipt of an electronic mail message, provided that such notice is also sent via first class mail, whichever ours first.

L. MISCELLANEOUS

1. **Compliance with Applicable Law.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.

2. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the Church Entity and the Contractor and supersedes all prior negotiations, representations, agreements and/or understandings of any kind.

3. **Governing Law.** This Agreement, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the Commonwealth of Puerto Rico without regard to principles of conflicts of law. Any claim, action, or suit between Church Entity and Contractor that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Commonwealth of Puerto Rico; provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Puerto Rico. In no event shall this section be construed as a waiver by the Church Entity of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Agreement, hereby consents to the personal jurisdiction of the courts referenced in this section.

4. **Assignment.** Contractor may not assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the Church Entity, which shall not be unreasonably withheld.

5. **Tax Compliance Certification.** Contractor shall comply with all federal, Puerto Rico, local laws, regulations, executive orders and ordinances applicable to this Agreement. Contractor represents and warrants that it has complied and will continue to comply throughout the duration of this Agreement and any extensions, with all tax laws of this state or any political subdivision of this state. Any violation of this section shall constitute a material breach of this Agreement and shall entitle Church Entity to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement or applicable law.

6. **No Third-Party beneficiaries.** Church Entity and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

7. **Merger, Amendment, and Waiver.** This Agreement contains all the terms of all agreements, oral or written, between the parties, and is only document containing all such terms. This Agreement merges all prior contracts, agreements, and understandings between the Parties concerning the scope of services described in Exhibit A, which shall not be amended except by a written instrument signed by a duly authorized signatory of the Church Entity and Contractor. Forbearance by the Church Entity from enforcing the strict terms of this Agreement shall not be a waiver of any other term of this Agreement, nor shall such forbearance entitle Contractor to rely upon such forbearance in the event of another similar breach by Contractor of the terms of this Agreement.

8. **Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if written and signed by both parties, and its authorized representatives.

9. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Church Entity and the Contractor, their successors and assigns.

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

11. **Headings.** The titles to the paragraphs of this Agreement are solely for reference purposes and the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

12. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

13. **Survival.** All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations Church Entity's right to enforce this Agreement with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

14. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

IN WITNESS WHEREOF, by their signatures below, the parties to this Agreement agree to the terms, conditions, and content expressed herein.

DIOCESE OF [INSERT]

CONTRACTOR

By: _____

By:_____

Print: _____

Print:_____

Its: _____

Its:_____

EXHIBIT A
SCOPE OF SERVICES

A. Introduction

This document defines the construction management (“CM”) services that the Selected Respondent(s) will perform to support the corresponding Church Entity in the administration of the grant funds provided by the following federal programs: (a) Federal Emergency Management Agency Public Assistance (“FEMA PA”); (b) Federal Emergency Management Agency Hazard Mitigation Grant Program (“FEMA HMGP”); and (c) potentially the Community Development Block Grant for Disaster Recovery program (“CDBG–DR”) and for Mitigation (“CDBG-MIT”).

The Archdiocese of San Juan, and the Dioceses of Arecibo, Caguas and Fajardo-Humacao (collectively, the “Church Entities”) are issuing this RFP to procure qualified and skilled companies to provide CM Services for the Church Entities during the pre-construction and construction phases of their disaster recovery program, including procurement, management of design firms, contractors, suppliers and other vendors performing work or services in connection with the rehabilitation, reconstruction, mitigation, and new construction of damaged facilities.

Each Church Entity reserves the right to retain construction management services for some of the smaller Repair Facilities directly through the Diocese.

The Selected Respondent(s) will be integral to implementing grant requirements and will be required to work in harmony with other stakeholders, such as the municipalities where the Repair Facilities are located and facility staff members. The Selected Respondent(s) will be directly responsible for ensuring the accuracy, timeliness, quality, and completion of all tasks assigned under the CM Agreement.

B. Construction Management Firm Responsibilities

The Selected Respondent(s) shall have no vested financial interest in the project, the design or the construction, and shall at all times on behalf of the Church Entity and provide impartial counsel in connection with the assigned portfolio. The responsibilities of the Selected Respondent(s) will include, without limitation, the following tasks and services:

- Manage the procurement and contracting process for designers and general contractors that will design and/or perform the repair and reconstruction work for each Church Entity (the “Repair Work”).
- Ensure that all contracted parties and vendors are familiar with local and regional permitting requirements, building codes, and other applicable laws and regulations.
- Work with the Diocese, designers, contractors, and other stakeholders to clearly define roles and responsibilities in order to develop construction management plans for each Repair Facility within the repair portfolio.
- Conduct pre-construction activities, including coordination, site visits, and development of scopes of work in compliance with grant requirements, including ensuring all eligible

work has been identified, and all costs for disaster related damages have been submitted to FEMA and/or HUD for funding.

- Gather and prepare information required by FEMA, COR3, and/or HUD to complete and amend project worksheets and represent the Diocese's interests in dealing with FEMA, COR3, and/or HUD.
- Identify improved or alternate projects where the Diocese may use FEMA and/or HUD funds to restore facilities in a manner that is different to their pre-disaster condition.
- Budget review and approval for the overall project and milestones with consultation and approval from the Diocese;
- Overall management of the design process, and construction planning;
- Review design documents for constructability, permitting strategy and approvals with contractors;
- Manage general contractors and other project management responsibilities from start to finish on Repair Facilities
- Coordination of relocations (temporary and permanent) for people, functions, services, utilities, fixtures, and equipment necessary to complete the project;
- Reporting and document management;
- Collection, review, and approval of drawings, as-built drawings, and project warranties;
- Preparing reconciliations and assisting with Grant Close-out reports;
- Ensure Project expenditure of funds are related to the corresponding objectives of the aforementioned federally funded programs;
- Ensure applicable federal program compliance requirements are being met including performance, payment, procurement requirements contained in 2 CFR 200.318, and bid bonding requirements for contractors;
- Review and formally recommend payment of invoices and payment applications from contractors and designers to Church Entities; and
- Perform all supplementary services necessary to comply with the terms of the CM Services Agreement.

C. Overview of Scope of Services

The Selected Respondent(s) will manage multiple Repair Facilities simultaneously. It is anticipated that most Repair Facilities will be schools, churches, or park equipment within each Church Entity's control. The scope of work for general contractors will vary greatly depending on each Repair Facility. The Selected Respondent(s) will administer the procedures and manage the procurement process and determine the scope of work appropriate for each Repair Facility. Each Church Entity will enter into contracts with the

selected designers, contractors, and other vendors. The Church Entities anticipate that the selected contractors will perform, at a minimum, the following at all or some of the Repair Facilities:

1. Rehabilitation:

- Obtaining permits and approvals prior to commencement of the work for each structure
- Demolition of damaged interior and exterior materials
- Foundation leveling and repair
- Structural damage repair
- Mechanical, electrical, and plumbing systems repair or replacement
- Wind mitigation and retrofitting measures

2. Reconstruction and New Construction:

- Obtaining permits and approvals prior to commencement of the work for each structure
- Utility disconnection and deactivation
- Demolition of existing structure
- Debris removal in accordance with all federal, state, and local requirements, including the disposal of potential asbestos-containing materials. Selected Respondent(s) shall ensure that any debris removal documentation requested by FEMA and/or the Puerto Rico Environmental Quality Board is acquired, retained and provided to the Church Entities upon request.
- Accessibility and design of Repair Facilities
- Construct new facilities

3. Hazard Mitigation:

- Obtaining permits and approvals prior to commencement of the work for each structure
- Conduct a risk assessment to identify all hazards in the Diocese (natural and man-made) to assess risk.
- Vulnerability Assessment
- Formulate plans to address hazards for approval by the corresponding Church Entity

D. Task Order Authorization

During the term of the CM Agreement awarded under the RFP, if any, the Church Entity will assign specific tasks and to the Selected Respondent(s) from time to time via written documents (each, a "Task Order"). Each Task Order will detail the scope of services, list of tasks, time schedule, list of deliverables, a not-to-exceed amount and other information or special conditions as may be necessary for the performance of the authorized services.

The Task Orders will be assigned to the Selected Respondent(s) based on disclosed capacity, ability, availability of funds, and the Church Entity's needs and objectives at the time. All Task Orders shall be in writing and signed by the corresponding Church Entity and the Selected Respondent(s).

E. Key Staff Requirements

1. Overview

The Key Staff and quantity of hours to be provided by the Selected Respondent(s) at any given time will be specified in the corresponding Task Order(s). The Key Staff identified in **Exhibit J** will be available from the first day of the CM Agreement and throughout the performance of the corresponding Task Order(s). Key Staff may be performing services simultaneously in connection with multiple Task Orders. The Church Entities may authorize the Selected Respondent(s) to engage additional staff based on the size and complexity of the projects assigned.

Any changes to the Key Staff must receive prior approval from the corresponding Church Entity. Any changes to Key Staff must receive prior written approval of the Church Entity. Key Staff shall be replaced within ten (10) calendar days with a person with the same or similar qualifications. If any vacant Key Staff position is not adequately filled within the corresponding period, a penalty of five hundred dollars (\$500.00) per day will be assessed against the Selected Respondent(s), for each day of delay in filling the position.

The Selected Respondent(s) shall ensure that all staff are experienced in their field and meet or exceed all minimum qualifications described herein.

2. Project Manager

The Project Manager shall be a licensed Professional Engineer, in Good Standing with the Puerto Rico College of Engineers and Land Surveyors or a licensed Architect in Good Standing with Puerto Rico College of Architects and Landscaping Architects. The Project Manager must have no less than ten (10) years of experience as a Project Manager performing services similar to those required in this Solicitation. The Project Manager must have general knowledge of the Scope of Services and responsibilities set forth in this RFP. This individual will be responsible for oversight and goals compliance at all assigned projects and will supervise administrative and field staff. The Project Manager shall have knowledge of all applicable federal regulations and requirements.

3. Procurement Manager

The Procurement Manager shall have a bachelor's degree from an accredited college or university with a minimum of five (5) years of experience performing services similar to those requested in this Solicitation. The Procurement Manager shall, at a minimum: (i) identify the procurement needs; (ii) develop all procurement processes; (iii) prepare all procurement

documents, including without limitation, bidding documents, Requests for Qualifications, Requests for Proposals, and Task Orders; (iv) prepare award recommendations to the Church Entities; and (v) negotiate contracts. This individual shall have knowledge of all applicable regulations, including without limitation, 2 CFR Part 200 and other federal procurement guidelines, Section 3 Employment Opportunity, Davis Bacon Related Acts, construction codes, and FEMA and HUD regulations.

4. Design/Construction Manager

The Design/Construction Manager shall be a licensed Professional Engineer in Good Standing with the Puerto Rico College of Engineers and Land Surveyors or a licensed Architect in Good Standing with Puerto Rico College of Architects and Landscaping Architects, with at least ten (10) years of experience in the construction industry, preferably in federally funded projects, including monitoring of design and/or construction contracts, developing cost estimates, and project scheduling. This individual shall, at a minimum, (i) coordinate all technical input related to planning, scheduling, estimating feasibility and procurement; (ii) ensure that assigned projects comply with the objectives of the Church Entity; (iii) coordinate with the appropriate resources to ensure optimal delivery by designers and contractors and that all issues are resolved in a timely and effective manner; (iv) make recommendations to the Church Entities on design proposals and construction claims or disputes; (v) work with contracted design firms to review Project schedules; (vi) conduct constructability reviews, (vii) participate in value engineering discussions, anticipate procurement problems and review all schedules; (viii) oversee construction inspection services; (ix) establish and implement non-compliance procedures for vendors and contractors; (x) establish and implement warranty claim system; (xi) supervise the work of Professional Engineers or Architects, as authorized by Task Order, and (xii) prepare related reports as requested. This individual shall have knowledge of all applicable regulations, including without limitation, Section 3 Employment Opportunity, Davis Bacon Related Acts, construction codes, and FEMA and HUD regulatory guidelines compliance.

5. Compliance Officer

The Compliance Officer shall, among other services: (i) monitor compliance with applicable regulations, including Davis-Bacon wage rates, Section 3 employment opportunities, and Labor Standards enforcement; (ii) ensure that all required documentation is maintained in project files and that all required reports are prepared in a timely manner; (iii) provide technical assistance to designers and contractors; (iv) conduct routine labor standard compliance review; (v) investigate complaints; and (vi) deliver notice to contractors of violations, investigations and/or findings as required by regulation. This individual must have a bachelor's degree from an accredited college or university with at least three (3) years of experience performing compliance-monitoring services similar to those requested in this Solicitation.

6. Scheduler

The person designated by the Selected Respondent(s) to interact with the project team to develop and update schedules and cost information, and to identify variances from original plan. The Scheduler will conduct periodic evaluation of project schedules vs. performance to identify developing problem areas. The Scheduler shall have a bachelor's degree in engineering or architecture from an accredited university and no less than five (5) years of experience in performing services similar to those requested in this solicitation.

7. Additional Staff: As authorized by the Church Entity and provided in each Task Order, the following Additional Staff may be assigned to perform services under the Agreement. The work performed by the Additional Staff shall be billed to the Church Entity as provided in **Exhibit J**.
 - a. Professional Engineers or Architects – will work under the supervision of the Design/Construction Manager in the performance of assigned tasks, including project management, documentation, and oversight; shall be licensed and in good standing to perform the corresponding professional services; and shall have at least three (3) years of experience in the construction industry.
 - b. Engineers or Architects in Training – will work under the supervision of the Professional Engineers or Architects in project oversight and management tasks; shall have a bachelor's degree in engineering or architecture.
 - c. Toxic Monitors – shall be certified Hazardous Materials Abatement Technicians who will provide services where hazardous materials (lead and/or asbestos) abatement will occur as part of the repair work.
8. Any labor costs other than designated Key Staff and Additional Staff (if authorized under the corresponding Task Order) shall be part of the Selected Respondent(s)' overhead costs.

- F. **Construction Management Plan:** Following execution of a Task Order, the Contractor will develop a detailed budget and timeline for the authorized services, including a procurement and construction management plan. The Selected Respondent(s) will not be a party to the contracts awarded to the suppliers, contractors and vendors engaged by the Church Entities; provided, however, that the Selected Respondent(s) will manage all such contracts and agreements to ensure adherence to applicable regulations and contractual terms and conditions.

G. Initial Milestones and Deliverables

The Church Entity will issue one or more Task Orders to the Selected Respondent(s) per Repair Facility or group of smaller Repair Facilities.

Upon project assignment, the Selected Respondent(s) will assess the property accessibility, availability (or lack) of electrical, potable, and sanitary water infrastructure, lot potential, restrictions, limitations, proximity to bodies of water, natural resources, geological formations, or any other relevant information that may limit the proposed activity, including but not limited to evidence of soil erosion, landslide, flood, extreme slopes, and others.

The Selected Respondent(s) will develop scopes of work for the pre-design phase of the Repair Work, and, for Repair Work that does not require the preparation of design documents, which will be subject to the review, revision and approval of the Church Entity.

The Selected Respondent(s) will manage and oversee the procurement process for all vendors, contractors and suppliers, which shall comply with the requirements of 2 C.F.R. 200 and the Procurement Disaster Assistance Team (PDAT) Field Manual (FM-207-21-0002), https://www.fema.gov/sites/default/files/documents/fema_PDAT-field-manual_102021.pdf.

Selected Respondent(s) will ensure all required procurement documentation is retained and provided to the Church Entities upon request.

Under certain circumstances as defined in 2 C.F.R. 200, the Selected Respondent(s) will be required to perform cost and price analyses for contract prices.

H. Additional Services

For all services not contemplated above, the CM Agreement will include an Additional Services Allowance. These services may or may not be necessary to be provided by the Selected Respondent(s). In order to perform services under the Allowance, the Selected Respondent(s) must first obtain written authorization from the Church Entity or its designee, by means of a Request for Authorization (RFA) to be submitted to the Church Entity for each additional service, which shall include the justification for the additional services, name of potential resource or subcontractor, resume or professional information and rate per hour or task, as applicable.

The costs for specialized services on an as-needed basis will be covered by the contract's allowance, after the RFA is approved by the Church Entity. Therefore, Respondents shall not include any amount for specialized services in its Cost Proposal in response to this RFP. The Selected Respondent(s) will not be reimbursed for any Allowance-related task that was not authorized in advance by the Church Entity.

At this time, the Church Entities have identified the following potential additional services:

1. Professional Support

If during the performance of the CM Services, the Selected Respondent(s) understands that in order to adequately comply with the objectives of the Church Entities, it requires the expertise or support of another specialist, the Respondent(s) may work in collaboration with other professionals as long as it obtains prior written approval from the Church Entity. Subject to the Church Entity's written approval, the Selected Respondent(s) may work together with other specialists, such as: Electrical Engineers; Mechanical Engineers, Civil Engineers, Geotechnical Engineers, Structural Engineers, Environmental Engineers, and/or Architects.

2. Historical and Archaeological Studies

Such services may include, but are not limited to, conducting on-site research and preparing detailed forms and mapping that assess the National Register of Historic Places eligibility for both architectural resources and archaeological resource potential, and performing architectural and archaeological surveys necessary to assure compliance with Sections 106 and 110(k) of the National Historic Policy Act and implementing regulations at 36 CFR 800, as needed. The personnel that perform Architectural and/or Archaeological studies must meet the National Park Service's Professional Qualifications Standards, which may be found at <https://www.nps.gov/articles/sec-standards-prof-quals.htm>.

EXHIBIT B

CONTRACTOR RATES AND COSTS

Services will be provided and invoiced by Contractor based on the time incurred at the labor categories and hourly rates defined below, plus reimbursement for travel costs and other direct costs as more fully described below.

Travel and Other Direct Costs – Contractor will invoice Church Entity for travel costs in alignment with the FTR at cost, without markup. Other direct costs may include reproduction or postage. Other direct costs will be invoiced to Church Entity at cost, without markup.

Labor Categories and Hourly Rates – Labor categories and associated hourly rates for services performed under this Agreement are detailed below. These rates will be held constant for the first two years of the contract term. At the end of the two-year period, and annually thereafter, the Provider’s hourly rates will increase by the cumulative rate of inflation over that period as measured by the Consumer Price Index. For all labor categories, additional years of experience may be substituted for educational requirements.

Labor Category	Staff Qualifications	Hourly Rate

EXHIBIT C

HUD CDBG-DR Requirements

Section F of this Agreement provides the general Federal Regulations that are applied by FEMA and HUD; these terms are for CDBG-DR regulations. The following terms and conditions apply to any contract, and must be inserted into every subcontract, for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development ("HUD"). In addition, Contractor and any of its subcontractors (each a "Subcontractor") shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at <https://www.hud.gov/sites/documents/4010.PDF>.

1. Regulatory Compliance. Contractor shall comply with all laws and regulations applicable to the Community Development Block Grant - Disaster Recovery funds appropriated by the Additional Supplemental Appropriations for Disaster Relief Act 2019 (Pub. L. 116-20), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

2. Reporting Requirements. Contractor/Subcontractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Church Entity. The Contractor/Subcontractor shall cooperate with all Church Entity efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 2 C.F.R. part 200.328-.330 and 24 C.F.R. § 570.507.

3. The Small and Minority Firms, Women's Business Enterprises, and Labor Surplus Area Firms. Contractor/Subcontractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration and the Puerto Rico Minority Business Development Agency of the U.S. Department of Commerce.

4. Energy Efficiency. Contractor/Subcontractor shall comply with mandatory standards and policies relating to energy efficiency issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

5. Title VI of the Civil Rights Act of 1964. Contractor/Subcontractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

6. Section 109 of the Housing and Community Development Act of 1974. Contractor/Subcontractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

7. Section 504 of the Rehabilitation Act of 1973. Contractor/Subcontractor shall comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 94), as amended, and any applicable regulations. The Contractor/Subcontractor agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

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

9. Debarment, Suspension, and Ineligibility. Contractor/Subcontractor represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. part 2424.

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

- a. Placing unreasonable requirements on firms in order for them to qualify to do business,
- b. Requiring unnecessary experience and excessive bonding,
- c. Noncompetitive pricing practices between firms or between affiliated companies,
- d. Noncompetitive awards to consultants that are on retainer contracts,

- e. Organizational conflicts of interest,
- f. Specifying only a *brand name* product instead of allowing an *equal* product to be offered and describing the performance of other relevant requirements of the procurement, and
- g. The Contractor/Subcontractor represents to the Church Entity that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this Contract.

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

11. **Assignability.** Contractor/Subcontractor shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of Church Entity.

12. **Contract Work Hours and Safety Standards Act.** Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$2,500 that involve the employment of mechanics or laborers). The Contractor/Subcontractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*) as supplemented by Department of Labor regulations (29 C.F.R. part 5). All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

13. **Section 503 of the Rehabilitation Act of 1973.** Applicable to contracts exceeding \$10,000. The Contractor/Subcontractor shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers With Disabilities

a. The Contractor/Subcontractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor/Subcontractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the contractor including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

b. The Contractor/Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

c. In the event of the Contractor/Subcontractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

d. The Contractor/Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's/Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor/Subcontractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor/Subcontractor may have the notice read to a visually disabled individual or may lower the posted notice so that it might be read by a person in a wheelchair).

e. The Contractor/Subcontractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor/Subcontractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

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

14. Certification of Nonsegregated Facilities. Applicable to construction contracts exceeding \$10,000). The Contractor/Subcontractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will

not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor/Subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

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

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

The Contractor/Subcontractor certifies, to the best of their knowledge and belief, that:

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

h. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor/Subcontractor shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying," in accordance with its instructions.

i. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

14. Bonding Requirements. Contractor should obtain a performance bond from its subcontractors on any projects over \$100,000. Below are the minimum bonding requirements:

a. *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or

other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of bid, execute such contractual documents that may be required within the time.

b. *A performance bond for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's/Subcontractor's obligations under such contract.

c. *A payment bond for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

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

a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD assistance or HUD-assisted projects covered by section 3, shall be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing or residents of the community in which the federal funds are spent.

b. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

c. The Contractor/Subcontractor agrees to send to each labor organization or representative of workers with which the Contractor/Subcontractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 75. The Contractor will not subcontract with any subcontractor where the subcontractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 75.

e. The Contractor/Subcontractor will certify that any vacant employment positions, including training positions, that are filled: (1) after the contractor/subcontractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor/Subcontractor's obligations under 24 C.F.R. part 75.

f. Noncompliance with HUD's regulations in 24 C.F.R. part 75 may result in

sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

16. **Fair Housing Act.** Contractor shall comply with the provisions of the Fair Housing Act of 1968 as amended. The act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. The Equal Opportunity in Housing Act prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds. Please visit <http://portal.hud.gov/hudportal/documents/huddoc?id=DOC11868> for more information.

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

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

19. **Change Orders.** Change orders are issued when the initial agreed upon pricing or work to be completed requires modification. First, the contractor must complete a Change Order Request Form. This form and supporting documentation must be delivered to the project manager for review. Each change order must have a cost analysis. Once the project manager approves the change order, it is returned to the contractor for execution. Change orders are only invoiced on the final draw and categorized as "change

order." The amount listed on the invoice must match the previously approved amount and must be cost reasonable. The project manager is responsible for verifying cost reasonableness. Verification documentation for cost reasonableness becomes an attachment to the change order.

20. **Environmental Review.** Every project undertaken with Federal funds, and all activities related to that project, is subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), as well as to the HUD environmental review regulations at 24 C.F.R. Part 58- ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES. The primary purpose of this Act is to protect and enhance the quality of our natural environment. The HUD environmental review process must be completed before any Federal funds can be accessed for program-eligible activities. The primary objectives of the HUD environmental review are to identify specific environmental factors that may be encountered at potential project sites, and to develop procedures to ensure compliance with regulations pertaining to these factors. The HUD environmental review is designed to produce program specific environmental review procedures in a program that can vary greatly in terms of scope of work.

21. **Lead Based Paint.** (if applicable) All housing units assisted using CDBG-DR funds must comply with the regulations regarding lead-based paint found at 24 C.F.R. part 35- LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES.

22. **Environmental Review Record.** The environmental officer is responsible for maintaining a written record of the environmental review process. The ERR for all programs contains all the governmental review documents, public notices and written determinations or environmental findings required by 24 C.F.R. part 58- ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES as evidence of review, decision making and actions pertaining to a project of a recipient.

23. **Anti-Fraud, Waste and Abuse (AFWA) Check.** Contractor understands that the Church Entity has the authority to conduct an anti-fraud, waste, and abuse check which is designed to identify discrepancies and risk-relevant issues in Applicant-provided information that may be indicative of fraud, waste, and/or abuse.

24. **Property Management and Distribution.** Regulations governing property management and distribution of real property, equipment, financial obligations and return of un-obligated cash post program closeout can be found in 24 C.F.R. § 570.506, 2 C.F.R. § 200.310, 2 C.F.R. §200.344 and 2 C.F.R. § 200.345(b). The standards of 24 C.F.R. § 570.506 apply to any real property under a CDBG award recipient's control acquired in whole or in part with CDBG funds in excess of \$25,000.00. The recipient may not change the use or planned use of the property without proper notification to affected citizens and allowable time for comment by them. If the property is not a building for general government conduct, the use of the property may be changed with citizen approval if it either meets one of the national objectives as defined in 24 C.F.R. § 570.208 or if not, the recipient may either retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. Following such reimbursement, the property will no longer be subject to any CDBG requirements.

25. **Monitoring.** As per CDBG regulation, 24 C.F.R. § 570.501(b), grantees of CDBG-DR funds are responsible for carrying out their programs to meet compliance with CDBG

Program, statutory and regulatory requirements, including monitoring their project administrators, contractors and subcontractors. The Church Entity will conduct internal monitoring of processes, procedures, policy, applications, planning, design, construction, and other applicable phases.