

PUERTO RICO ELECTRIC POWER AUTHORITY

**FIFTH AMENDMENT
PROFESSIONAL SERVICES AGREEMENT
2018-P00091 E**

APPEAR

AS FIRST PARTY: The Puerto Rico Electric Power Authority ("PREPA"), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, represented in this act by its Chief Executive Officer/Executive Director mister José F. Ortiz Vázquez, of legal age, married, engineer, and resident of San Juan, Puerto Rico.-----

AS SECOND PARTY: Filsinger Energy Partners, Inc. ("FEP"), a corporation formed and existing under the laws of the State of Colorado, United States of America, with a principal place of business in 90 Madison Street, Suite 600, Denver, CO 80206, herein represented by its Senior Managing Director, mister Todd W. Filsinger, of legal age, married and resident of Denver, Colorado, who authority to enter into this Amendment by virtue of Corporate Resolution, dated April 17, 2018.-----

PREPA and FEP are individually referred to herein as a "Party" and together as the "Parties".-----

WITNESSETH

In consideration of the mutual covenants hereinafter stated, the Parties agree themselves, their personal representatives, and successors as follows:-----

STATE


WHEREAS: PREPA, by virtue of its enabling Act No. 83, has the authority to engage those professional, technical and consulting services necessary and convenient to the activities, programs, and operations of PREPA;-----

WHEREAS: Pursuant Section 205 (2) (d) of Act No. 83 competitive bidding shall not be necessary when professional or expert services or work are required and PREPA deems it in the best interests of good administration for such works or services to be contracted without such announcements.-----

WHEREAS: The appearing Parties executed Professional Services Agreement number 2018-P00091 (“Agreement”) on December 7, 2017 (“Effective Date”), to designate Mr. Todd W. Filsinger as the Chief Financial Advisor (“CFA”) of PREPA.----

WHEREAS: The appearing Parties amended the Agreement on February 2, 2018 (the “First Amendment”) to supersede the Schedule of Professionals of Appendix A of the Agreement, and replace it with a new Schedule of Professionals, and included a new language in compliance with Act No. 2-1018.-----

WHEREAS: The appearing Parties executed a Side Letter Agreement on February 16, 2018 to include an Appendix for Reimbursement of Travel Expenses and to clarify the authorization process for travel and lodging expenses.-----



WHEREAS: On June 18, 2018 the Parties executed the Second Amendment to the Agreement to expand the scope of work, increase the maximum amount of the Agreement and update the Schedule of Professionals, and extend the Agreement for an additional 31 days, until July 31, 2018, among others.-----

WHEREAS: On July 31, 2018, the Parties executed the Third Amendment to the Agreement to extend its term from August 1 to August 15, 2018.-----

WHEREAS: On August 15, 2018, the Parties executed the Fourth Amendment to the Agreement. By this Amendment, the Parties stated that FEP and Mr. Todd Filsinger in the role of Chief Financial Adviser report to PREPA's Chief Executive Officer (CEO), in accordance with PREPA's revised Fiscal Plan. Also, the Parties amended the Scope in accordance with PREPA's Fiscal Plan, extended the term until June 30, 2019 and increased the amount of the Agreement to twenty one million six hundred thirty thousand dollars (\$21,630,000).-----

WHEREAS: By Resolution 4612, the PREPA's Governing Board and by letter of August 1, 2018 the Financial Oversight and Management Board for Puerto Rico authorized the Chief Executive Officer to amend the Agreement to increase its maximum amount by \$22,250,000, among others. Although the approved increment was for \$22,250,000 for Fiscal Year 2018-2019, the Parties agreed to execute the Fourth Amendment to the Agreement only for the additional amount of \$11,130,000 and extended its term until June 30, 2019.-----

WHEREAS: FEP provides the CEO with general financial and managerial support on matters such as budgeting, financial and cash management, expenses approval, advice on the implementation of the fiscal and operational reforms and initiatives outlined in the Certified Fiscal Plan, implementation of the Certified Budget, as well as assistance and support on any other matters, as such shall be requested by the CEO.-----

WHEREAS: The Agreement 2018-P00091 is about to reach its maximum amount. In order to continue receiving FEP's services, it is necessary to increase its maximum



amount by three million dollars (\$3,000,000), for the payment of FEP's services until June 30, 2019. This additional amount is included in the Governing Board and FOMB approved amount for the Fiscal Year 2018-2019 (\$22,500,000).-----

WHEREAS: The maximum amount of the Agreement after the execution of the proposed Fifth Amendment will be \$24,630,000 (\$10,500,000 budgeted for Fiscal Year 2017-2018 and \$14,130,000 budgeted for Fiscal Year 2018-2019).-----

WHEREFORE: In order to continue receiving the services of FEP and Mr. Todd Filsinger, both Parties hereby agree to the following:-----

Terms and Conditions

1. Amend Article 1, BILLING AND PAYMENT, to increase the Agreement amount by three million dollars (\$3,000,000), including reimbursable expenses, from twenty-one millions six hundred thirty thousand dollars (\$21,630,000) to twenty-four millions six hundred thirty thousand dollars (\$24,630,000).-----

2. COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO CONTRACTING REQUIREMENTS-----

FEP will comply will all applicable State Law, Regulations or Executive Orders that regulate the contracting process and requirements of the Commonwealth of Puerto Rico. Particularly: Law Num. 237-2004, as amended, which establishes uniform contracting requirements for professional and consultant services for the agencies and governmental entities of the Commonwealth of Puerto Rico.



3 L.P.R.A. §8611 et seq., and the Puerto Rico Department of Treasury Circular Letter Number 1300- 16-16. CC No. 1300-16-16 (22/01/2016).-----

A. **Executive Order Num. OE-1991-24 of June 18, 1991 to require certification of compliance with the Internal Revenue Services of the Commonwealth of Puerto Rico:**

Pursuant to Executive Order Number OE-1991-24 of June 18, 1991, FEP will certify and guarantee that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. FEP, further will certify that it has complied and is current with the payment of any and all income taxes that are, or were due, to the Government of Puerto Rico. FEP shall provide, to the satisfaction of PREPA, and whenever requested by PREPA during the term of this Contract, the necessary documentation to support its compliance with this clause. FEP will be given a specific amount of time to produce said documents. During the term of this Contract, FEP agrees to pay and/or to remain current with any repayment plan agreed to by the FEP with the Government of Puerto Rico.-----

B. **Executive Order Num. OE-1992-52 of August 28, 1992 to require certification of compliance with the Department of Labor of the Commonwealth of Puerto Rico.**

Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, FEP will certify and warrant that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever



is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. FEP accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every Contractor and Sub Contractor whose service FEP has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement.-----

- C. **Government of Puerto Rico Municipal Tax Collection Center:** FEP will certify and guarantee that it does not have any current debt with regards to property taxes that may be registered with the Government of Puerto Rico’s Municipal Tax Collection Center (known in Spanish as *Centro de Recaudación de Ingresos Municipales* (“CRIM”). FEP further will certify to be current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. FEP shall provide, to the satisfaction of PREPA and whenever requested by PREPA during the term of this Contract, Certification issued by the Municipal Revenues Collection Center (MRCC), assuring that FEP does not owe any tax accruing to such governmental agency. To request such Certification, FEP will use the form issued by the MRCC (called “CRIM-Certificados, Radicación, Estado de Cuenta y Todos los Conceptos” in the website). FEP will deliver upon request any documentation requested by PREPA. During the Term of this Contract, FEP agrees to pay and/or to remain



current with any repayment plan agreed to by FEP with the Government of Puerto Rico with regards to its property taxes.-----

FEP shall provide a Personal Property Tax Filing Certification, issued by the MRCC which indicates that FEP has filed its Personal Property Tax Return for the last five (5) contributory terms or Negative Debt certification issued by the MRCC with respect to real and property taxes and a sworn statement executed by FEP indicating that: (i) its revenues are derived from the rendering of professional services, (ii) during the last five (5) years (or the time in which it has been providing professional services) it has had no taxable business or personal property on the 1st of January of each year, (iii) that for such reasons it has not been required to file personal property tax returns, as required under Article 6.03 of Act 83-1991, as amended and (iv) that for such reason it does not have an electronic tax file in the MRCC's electronic system.-----

D. FEP shall furnish a Certification issued by the Treasury Department of Puerto Rico which indicates that FEP does not owe Puerto Rico Sales and Use taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan and is in full compliance with its terms.-----

E. FEP shall provide a Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that FEP has filed his Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods.-----



- F. FEP shall provide a copy of FEP's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.-----
- G. **Puerto Rico Child Support Administration (ASUME)**: FEP shall present, to the satisfaction of PREPA, the necessary documentation certifying that FEP nor any of its owners, affiliates of subsidiaries, if applicable, have any debt, outstanding debt, or legal procedures to collect child support payments that may be registered with the Puerto Rico Child Support Administration (known in Spanish as the *Administración Para El Sustento de Menores (ASUME)*). FEP will be given a specific amount of time to deliver said documents. 3 L.P.R.A. § 8611 et seq.-----
- H. FEP shall provide a Good Standing Certificate issued by the Department of State of Puerto Rico.-----
- I. FEP shall provide a Certification of Incorporation, or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.-
- J. **Special Contribution for Professional and Consulting Services**: As required by Act No. 48-2013, as amended, PREPA will withhold a special contribution of one point five percent (1.5%) of the gross amounts paid under this Contract.----
- K. **Social Security and Income Tax Retentions**: In compliance with Executive Order 1991 OE- 24; and C.F.R. Part 404 et. Seq., FEP will be responsible for rendering and paying the Federal Social Security and Income Tax Contributions for any amount owed as a result of the income, from this Contract.-----



L. **Income Tax Retention Law:** PREPA shall deduct and withhold ten percent (10%) of any and all payments to residents of the Commonwealth of Puerto Rico as required by the Internal Revenue Code of Puerto Rico. In case of US citizens and Non US citizens, which are nonresidents of the Commonwealth of Puerto Rico FEP will be retained twenty percent (20%) and twenty-nine percent (29%) respectively. PREPA will remit such withholdings to the Government of Puerto Rico's Treasury Department (known in Spanish as *Departamento de Hacienda de Puerto Rico*). FEP will request PREPA not to make such withholdings if, to the satisfaction of PREPA, FEP timely provides a release from such obligation by the Government of Puerto Rico's Treasury Department. 3 L.P.R.A. § 8611 et seq., 2011 L.P.R. 232; 232-2011.-----

M. **Compliance with Act No. 1 of Governmental Ethics:** FEP will certify compliance with Act No. 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, which stipulates that no employee or executive of PREPA nor any member of his/he immediate family (spouse, dependent children or other members of his/her household or any individual whose financial affairs are under the control of the employee) shall have any direct or indirect pecuniary interest in the services to be rendered under this Contract, except as may be expressly authorized by the Governor of Puerto Rico in consultation with the Secretary of Treasury and the Secretary of Justice of the Government. 3 L.P.R.A. § 8611 et seq.-----



- N. **Law 168-2000: Law for the Strengthening of the Family Support and Livelihood of Elderly People:** FEP will certify that if there is any Judicial or Administrative Order demanding payment or any economic support regarding Act No. 168-2000, as amended, the same is current and in all aspects in compliance. Act No. 168-2000 "*Law for the Strengthening of the Family Support and Livelihood of Elderly People*" in Spanish: "*Ley para el Fortalecimiento del Apoyo Familiar y Sustento de Personas de Edad Avanzada*", 3 L.P.R.A. §8611 et seq.-----
- O. **Law Num. 127, May 31, 2004: Contract Registration in the Comptroller's Office of Puerto Rico Act:** Payment for services object of this Contract will not be made until this Contract is properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.-----
- P. **Dispensation:** Any and all necessary dispensations have been obtained from any government entity and that said dispensations shall become part of the contracting record.-----
- Q. Articles extracted, produced, assembled, packaged or distributed in Puerto Rico by enterprises with operations in Puerto Rico, or distributed by agents established in Puerto Rico shall be used when the service is rendered, provided that they are available.-----



R. **Rules of Professional Ethics:** FEP acknowledges and accepts that it is knowledgeable of the rules of ethics of his/her profession and assumes responsibility for his/her own actions.-----

S. **Prohibition with respect to execution by public officers: (3 L.P.R.A. 8615(c))**
No public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.-----

T. **Prohibition with respect to contracting with officers or employees: (3 L.P.R.A. 8615(d))**-----
No executive agency may execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect economic interest during the last four (4) years prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice.

U. **Prohibition with respect to contracts with officers and employees of other Government entities: (3 L.P.R.A. 8615(e))**-----
No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor gives express authorization



thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice.-----

V. **Prohibition with respect to evaluation and approval by public officers:**

(3 L.P.R.A. 8615(f))-----

No public officer or employee who has the power to approve or authorize contracts shall evaluate, consider, approve or authorize any contract between an executive agency and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.-----

W. **Prohibition with respect to execution by public officers contracts with**

former public officers: (3 L.P.R.A. 8615(h))-----

No executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after two (2) years have elapsed from the time said person has ceased working as such.-----

X. **Anti-Corruption Code for a New Puerto Rico.** FEP agrees to comply with the

provisions of Act No. 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico. FEP hereby certifies that it does not represent particular interests in cases or matters that imply a conflicts of interest, or of public policy, between the executive agency and the particular interests it represents.-----



FEP shall furnish a sworn statement to the effect that neither FEP nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for FEP has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico or any of the crimes included in Act 2-2018.-----

FEP hereby certifies that it has not been convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.-----

PREPA shall have the right to terminate the agreement in the event FEP is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250



through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.---
If any of the previously required Certifications shows a debt, and FEP has requested a review or adjustment of this debt, FEP will certify that it has made such request at the time of the Contract execution. If the requested review or adjustment is denied and such determination is final, FEP will provide, immediately, to PREPA a proof of payment of this debt; otherwise, FEP accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments.-----




Y. **Consequences of Non-Compliance:** FEP expressly agrees that the conditions outlined throughout this Section are essential requirements of this Contract. Consequently, should any one of these representations, warranties or certifications be incorrect, inaccurate or misleading, in whole or in part, there shall be sufficient cause for the PREPA to render this Contract null and void, and FEP shall reimburse the PREPA all moneys received under this Contract.-

10. **Termination by the Chief of Staff of the Governor of Puerto Rico and Interagency agreements:** Pursuant to Memorandum No. 2017-001, Circular

Letter 141-17, of the Office of the Chief of Staff of the Governor of Puerto Rico (Secretaría de la Gobernación) and the Office of Management and Budget (Oficina de Gerencia y Presupuesto – OGP), the Chief of Staff shall have the authority to terminate this Agreement at any time. If so directed by the Chief of Staff, PREPA will terminate this Agreement by delivering to FEP a notice of termination specifying the extent to which the performance of the work under this Agreement is terminated, and the effective date of termination. Upon the effective date of termination, FEP shall immediately discontinue all services affected and deliver to PREPA all information, studies and other materials property of PREPA. In the event of a termination by notice, PREPA shall be liable only for payment of services rendered up to and including the effective date of termination.-----

Both Parties acknowledge and agree that the contracted services herein may be provided to another entity of the Executive Branch which enters into an interagency agreement with PREPA or by direct disposition of the Office of the Chief of Staff.

These services will be performed under the same terms and conditions in terms of hours of work and compensation set forth in this Agreement. For the purpose of this clause, the term “entity of the Executive Branch” includes all agencies of the Government of Puerto Rico, as well as public instrumentalities, and public corporations.-----

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12. **Termination:** PREPA shall have the right to terminate this Agreement with thirty (30) days prior written notice to FEP. Moreover, PREPA shall have the right to

terminate this Agreement immediately in the event of negligence, dereliction of duties or noncompliance by FEP.-----

All other terms and conditions, established in the Agreement remain unaltered and fully enforceable. This is the agreement between the appearing Parties under this Fifth Amendment and so is hereby ratified.-----

In WITNESS THEREOF, the Parties hereto have agreed to execute this Fifth Amendment in San Juan, Puerto Rico, on this 15 day of March of 2019.-----

Puerto Rico Electric Power Authority

Filsinger Energy Partners, Inc.



José F. Ortiz Vázquez
Chief Executive Officer
EIN:



Todd W. Filsinger
Senior Managing Director
EIN: