

**PUERTO RICO ELECTRIC POWER AUTHORITY**

**FOURTH AMENDMENT  
PROFESSIONAL SERVICES AGREEMENT  
2018-P00091D**

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 June 20, 2018 by Resolution No. 4612, PREPA's Governing Board authorized the execution of the Third Amendment of the Agreement for the Fiscal Year 2018-2019, subject to the approval of the Office of Management and Budget (OMB), and Fiscal Oversight Management Board (FOMB).

WHEREAS: The Agreement expires on July 31, 2018 and the OMB and FOMB has not completed the review process.

WHEREAS: In order to be able to continue uninterruptedly with FEP services, while the FOMB and OMB approvals was received, on July 31, 2018 the Parties approved the Third Amendment to the Agreement to extend its term for additional fifteen days, from August 1 to August 15, 2018.

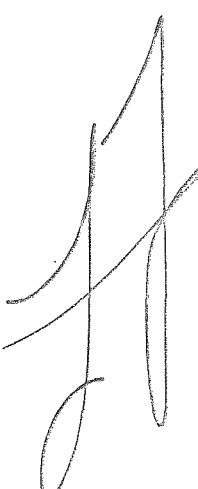
WHEREFORE: In accordance with PREPA's Governing Board Resolution No. 4612 and the recommendations made by the FOMB in its letter of August 1, 2018, both Parties hereby agree, to the following:

#### **Terms and Conditions**

1. Amend the Agreement to specifically state that FEP and Mr. Todd Filsinger in the role of Chief Financial Adviser (CFA) shall report to PREPA's Chief Executive Officer (CEO), as directed by and in accordance with PREPA's revised Fiscal Plan, as revised and approved by the FOMB as of August 1, 2018 (Fiscal Plan).
2. Amend the Scope of the Agreement, as directed by and in accordance with PREPA's revised Fiscal Plan, to state that FEP and the CFA in support of PREPA's CEO shall perform the following:
  - a. Provide the CEO with general financial and managerial support on such matters as budgeting, financial management, cash management, and expense approval.



- b. Provide advice and support the CEO on the implementation of the fiscal and operational restructuring reforms and initiatives outlined in the certified Fiscal Plan and the implementation of the certified Budget.
- c. Provide assistance and support on any other matters as such shall be requested by the CEO.



No part of the CFA's role or scope, as redefined in the Fiscal Plan, shall be interpreted or construed to infringe on the CEO's responsibility or authority over PREPA's day-to-day operations; implementing financial, operational and administrative restructuring efforts and initiatives consistent with the approved PREPA Fiscal Plan and Budget; ensuring an effective and efficient interaction with FOMB; or supporting the implementation of the PREPA Transformation Plan, including the generation asset transaction and T&D concession, and collaborating with the working group established for the PREPA Transformation Plan.

3. PREPA's CEO and the CFA will establish, during the thirty (30) days after the execution of this Fourth Amendment, key performance metrics associated with the Scope of Work. Nothing related to the establishment and implementation of such metrics shall change the meaning of any other parts of this Agreement.
4. Amend Article 1, BILLING AND PAYMENT, to increase the Agreement amount by eleven million one hundred thirty thousand dollars (\$11,130,000), including reimbursable expenses, from ten million five hundred thousand dollars (\$10,500,000) to twenty-one millions six hundred thirty thousand dollars (\$21,630,000).

Supersede APPENDIX A "Schedule of Filsinger Energy Partners Professional who may be Assigned to this Matter" with the revised APPENDIX A "Schedule of Filsinger Energy Partners Professional who may be Assigned to this Matter" dated August 6, 2018, attached hereto, and incorporated by reference.

Also, supersede paragraph eight of the Agreement to require email notification to PREPA's General Counsel for purposes of superseding the existing "Schedule of Professionals" of Appendix A, such that should FEP assign another person not included in Appendix A, to attend to PREPA's matters pursuant to this Agreement, FEP shall promptly send PREPA an amended "Schedule of Professionals", to include such person's name and position for incorporation into this Agreement, approval of which from PREPA shall not be unreasonably withheld. Unless PREPA objects in writing within five (5) business days upon receipt of the amended "Schedule of Professionals", the amended "Schedule of Professionals" shall be considered approved as submitted. The Discounted Rate Table of Appendix A shall remain unchanged.

5. Amend Article 2, TERM, to extend the term of the Agreement for Fiscal Year 2018-2019, from August 16, 2018 to June 30, 2019.
6. Amend Article 8, INDEPENDENT CONTRACTOR, to include that as an independent contractor, neither FEP or its officers, directors, and employees shall have any supervision authority over PREPA, PREPA's employees, or PREPA's contractors. Additionally, amend Article 8 to delete the following language: "; provided, however,



Mr. Todd Filsinger shall have the authority to bind PREPA, solely in his capacity as the CFA”, such that the entire Article 8 states as follows:

PREPA and FEP agree that FEP’s status hereunder, and the status of any agents, employees and subcontractors engaged by FEP, shall be that of an independent contractor only and not that of an employee, agent, director or officer of PREPA nor shall they be considered a public servant of PREPA or the Commonwealth of Puerto Rico. FEP, its subcontractors, and their officers, directors, and employees are not agents or employees of PREPA and have no authority to obligate or bind PREPA in any way. Neither FEP or its officers, directors, and employees shall have any supervision authority over PREPA, PREPA’s employees, or PREPA’s contractors.

Consistent with the foregoing, PREPA and FEP acknowledge and agree that neither the role of CFA performed by Todd W. Filsinger, nor his role as Senior Managing Director and equity holder of FEP will render the certification required under Section 1 of this Agreement false or inaccurate. FEP, its subcontractors, and their officers, directors, and employees are not eligible for PREPA’s employee benefit programs, such as (without limitation) vacations, sick leave, retirement benefits and others because of its condition as an independent contractor. FEP is fully and solely responsible for all taxes, assessments, penalties, fines, and interest relating to wages and benefits paid to FEP’s employees under this Agreement, pursuant to all federal, state and local laws, including required withholding from wages of



employees, regardless of the characterization of those employees by the Parties, administrative agencies, or the courts.

7. Supersede Article 23, CFA APPROVAL RIGHTS OVER CONTRACTS IN EXCESS OF \$2 MILLION, from the Agreement with the revised Article 23 that states "CFA shall not have approval authority over contracts, expenditures, or transfers of funds in excess of \$2 million."

8. 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, the Contractor 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. The Contractor, 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. The Contractor 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. The Contractor will be given a specific amount of time to produce said documents. During the term of this Contract, the Contractor agrees to pay and/or to remain current with any repayment plan agreed to by the Contractor 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, the Contractor 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. The Contractor accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every Contractor and Sub Contractor whose service the Contractor 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:** The Contractor 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")). The Contractor 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. The Contractor 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 Contractor does not owe any tax accruing to such governmental agency. To request such Certification, Contractor will use the form issued by the MRCC (called "CRIM-Certificados, Radicación, Estado de Cuenta y Todos los Conceptos" in the website). The Contractor will deliver upon request any documentation requested by PREPA. During the Term of this Contract, the Contractor agrees to pay and/or to remain current with any repayment plan agreed to by the Contractor with the Government of Puerto Rico with regards to its property taxes.

The Contractor shall provide a Personal Property Tax Filing Certification, issued by the MRCC which indicates that Contractor 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 Contractor 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 1<sup>st</sup> 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. The Contractor shall furnish a Certification issued by the Treasury Department of Puerto Rico which indicates that Contractor 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. The Contractor shall provide a Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Contractor has filed his Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods.
- F. The Contractor shall provide a copy of Contractor's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.
- G. **Puerto Rico Child Support Administration (ASUME)**: The Contractor shall present, to the satisfaction of PREPA, the necessary documentation certifying that the Contractor 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)*). The Contractor will be given a specific amount of time to deliver said documents. 3 L.P.R.A. § 8611 et seq.;

- H. The Contractor shall provide a Good Standing Certificate issued by the Department of State of Puerto Rico.
- I. The Contractor 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., the Contractor 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 seven percent (7%) 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 the Contractor 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*). The Contractor will request PREPA not to make such withholdings if, to the satisfaction of PREPA, the Contractor 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:** The Contractor 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:** The Contractor 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:** The Contractor 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.** Contractor 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. The Contractor 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.

Contractor shall furnish a sworn statement to the effect that neither Contractor 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 Contractor 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.



Contractor 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 Contractor 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 Contractor has requested a review or adjustment of this debt, Contractor will certify that it has

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made such request at the time of the Contract execution. If the requested review or adjustment is denied and such determination is final, Contractor will provide, immediately, to PREPA a proof of payment of this debt; otherwise, Contractor accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments.

Y. **Consequences of Non-Compliance:** The Contractor 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 the Contractor 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.

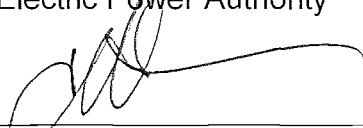
12. Termination: PREPA shall have the right to terminate this Agreement with thirty (30) days prior written notice to FEP. Moreover, PREPA shall have the right to terminate this Agreement immediately in the event of negligence, dereliction of duties or noncompliance by FEP.

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

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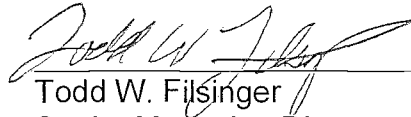
In WITNESS THEREOF, the Parties hereto have agreed to execute this Fourth Amendment in San Juan, Puerto Rico, on this 15 day of August, 2018.-----

Puerto Rico Electric Power Authority



\_\_\_\_\_  
José F. Ortiz Vázquez  
Chief Executive Officer  
EIN:

Filsinger Energy Partners, Inc.



\_\_\_\_\_  
Todd W. Filsinger  
Senior Managing Director  
EIN:



APPENDIX A

Schedule of Filsinger Energy Partners Professionals who may be Assigned to this Matter  
Updated: August 6, 2018

Professional	Title
Todd W. Filsinger	Senior Managing Director
Gary Germeroth	Managing Director
Stephen Kopenitz	Managing Director
Paul Harmon	Managing Director
Dave Andrus	Director
Norm Spence	Director
Robert Monday	Director
Timothy Wang	Director
A. Scott Davis	Director
Mike Green	Director
Nathan Pollak	Director
Rusty Evans	Director
Don Chambless	Managing Consultant
Laura Hatanaka	Managing Consultant
Mashiur Bhuiyan	Managing Consultant
Samuel Schreiber	Managing Consultant
Jill Kawakami	Managing Consultant
Matt Lee	Managing Consultant
Chad Balken	Managing Consultant
Marcus Klintmalm	Managing Consultant
Emilie Kelly	Managing Consultant
David "Biff" Whitten	Managing Consultant
Pamela Morin	Consultant
Allison Horn	Consultant
Janalee Chmel	Consultant
Kyle Chamberlain	Analyst
McGlynn Nickel	Analyst